AGENDA ITEM NO: 7

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
12 June 2012

Subject: **OMBUDSMAN REPORT – BAGBY AIRFIELD, BAGBY**

Whitehorse Ward
Scrutiny Committees
Leader of Council: Councillor N W Huxtable

1.0 PURPOSE AND BACKGROUND:

1.1 This report considers a report received from the Local Government Ombudsman into an investigation of a complaint about the District Council. The report considers the issues raised by the Ombudsman and the recommendations that she is making to the Council.

2.0 DECISIONS SOUGHT:

2.1 Members are asked to approve a response to the Ombudsman's report.

3.0 THE OMBUDSMAN'S REPORT:

3.1 The Ombudsman's report is attached as an Annex to this report.

3.2 A residents group in Bagby had complained that the Council:-

- failed to exercise control over unauthorised development at Bagby Airfield;
- had given inaccurate, misleading, or wilfully incomplete advice about planning issues to do with the airfield;
- had failed to properly consider the need for an Environmental Impact Statement for planning applications at the airfield;
- had failed to engage with the local community over planning control of activities at the airfield.

3.3 The background to the complaint is contained within the Ombudsman's report, but relates to how the Council has dealt with unauthorised development at Bagby Airfield, Bagby since at least 1997.

3.4 The Ombudsman found that some of the complaints by the complainants were not maladministration. However, she did conclude that the Council had been guilty of maladministration through a "failure to maintain planning control over the use of the airfield for flights". The Ombudsman also found that this had caused injustice for residents through disturbance from increased numbers of flights and a sense of frustration and apprehension about the possibility of uncontrolled future expansion (paragraphs 64 to 66 of the Ombudsman's report refer).

3.5 The Ombudsman's report requests the Council to:-

- issue a public apology to the residents about its failure to exercise proper control over the use of the airfield and the impact on their amenity;

- seek to recover planning control over the use of the airfield and, in particular, within 12 weeks of the Council considering the Ombudsman's report, consider a further report from Officers about the implications of making a Discontinuance Order under Section 102 of the Town and Country Planning Act 1990;

- provide funding of up to £5,000 for each village of Bagby and Thirkleby for projects of community benefit agreed with the respective Parish Councils.

4.0 REPONSE TO THE OMBUDSMAN'S REPORT:

4.1 The Ombudsman's report was received on 13 April 2012 and the Council is required to consider the report and tell the Ombudsman what action it has taken or proposes to take within 3 months of that date, namely by 12 July 2012.

4.2 Each of the recommendations is now considered in turn:-

Public Apology:

4.3 The Council has been found guilty of maladministration in this case by failing in 1997 to realise that there had been a breach of planning control when ownership of the airfield changed. Acting on this at the time may have prevented some of the problems associated with the airfield which were subsequently identified. Whilst it is arguable whether the problems associated with the airfield are as significant as stated by the Ombudsman, there is no doubt that the difficulties being encountered by the Council in controlling the planning situation at the airfield have been exacerbated by that omission and that this is causing disturbance and anxiety to some residents. In those circumstances it is considered appropriate to publicly apologise about the maladministration by writing to both Parish Councils and Action 4 Refusal.

Regaining Planning Control over the Use of the Airfield:

4.4 The Council has been continuing to seek to control inappropriate development at the airfield since significant complaints began to be received in 2007/2008. There are a number of factors at play in seeking to bring about an appropriate resolution to the concerns of local residents. This has involved, amongst other things:-

- dealing with planning applications by the owner of the airfield;
- dialogue with the local community and the owner of the airfield;
- seeking to establish the lawful use of the airfield;
- taking enforcement action where possible and appropriate.

4.5 The Planning Committee in September 2011 authorised:-

- enforcement action in respect of a number of specific items where breaches of planning control could be identified as unlawful;

- further work involving a consultant to try and identify the extent of any lawful or unlawful use of the airfield in general.

4.6 The Ombudsman has now suggested a further mechanism for regaining planning control, namely the consideration of a Discontinuance Order under Section 102 of the Town and Country Planning Act 1990.

4.7 All of the above factors need to be considered together and are the remit of the Planning Committee. Indeed, the Cabinet is not permitted under statutory provisions to make development control decisions. Therefore it is recommended that the Planning Committee be asked to consider all outstanding matters in relation to planning control at Bagby Airfield, including the implications of making a Discontinuance Order under Section 102, within 12 weeks of today's date.

Providing Funding for Projects of Community Benefit:

4.8 The Ombudsman has determined that rather than trying to compensate individuals in the parishes of Bagby and Thirkleby the Council should seek to compensate the communities by providing up to £5,000 for each community for projects of community benefit agreed with the respective Parish Councils. It is recommended that the District Council should give £5,000 to both Bagby and Thirkleby Parish Councils on the understanding that the Parish Councils would use the funding for projects of community benefit.

5.0 LEGAL IMPLICATIONS:

5.1 The Council is required to consider the Ombudsman's report and inform the Ombudsman of its response within 3 months of receipt of the report. The Council is not obliged to follow the recommendations of the Ombudsman. However, if the Council does not follow the recommendations then the Ombudsman is entitled to issue a further report and to require the Council to advertise its failure to follow the recommendations in local newspapers.

6.0 FINANCIAL IMPLICATIONS AND EFFICIENCIES:

6.1 The payment of £5,000 to each Parish Council has not been budgeted for, but the funds can be made available from the Service Improvement Reserve.

Revenue Effects	**2012/13 £**	**2013/14 £**	**2014/15 £**	**2015/16 £**
Cost……	£10,000	0	0	0
Financed by: Service Improvement Reserve				
	£10,000	0	0	0

6.2 There may be significant financial implications of regaining planning control over the use of the airfield. In particular, the making of a Discontinuance Order can leave the Council liable for compensation to the landowner if it adversely affects relevant interests in the land. It is not possible to identify such costs at this time, but this would be a matter for consideration by the Planning Committee when it considers the report referred to above.

7.0 RISK ASSESSMENT:

7.1 Risk in not approving the recommendation:

Risk	Implication	Prob*	Imp*	Total	Preventative action
Poor publicity	Adverse reaction of the public, lowering esteem for the Council.	5	2	10	None available. Approve the recommendations.

Prob = Probability, Imp = Impact, Score range is Low = 1, High = 5

7.2 There are no other significant risks of complying with the recommendations at this stage. Any risks connected with consideration of a Discontinuance Order will be considered by the Planning Committee.

8.0 CONCLUSIONS:

8.1 The Ombudsman's findings in terms of maladministration are not disputed. There is no reason to disagree with the recommendations of the Ombudsman in terms of the apology and the payment of "compensation" to the local communities.

8.2 The question of whether it is possible to "regain planning control" and in particular make a Discontinuance Order is a matter for the Planning Committee. However, the Council can agree that the Planning Committee will consider that matter within the timescales requested by the Ombudsman.

9.0 RECOMMENDATIONS:

9.1 It is recommended that:-

(1) a public apology is issued on behalf of the Council by the Chief Executive;

(2) the Planning Committee consider within 3 months the latest position regarding Bagby Airfield and in particular whether a Discontinuance Order under Section 102 of the Town and Country Planning Act 1990 should be made;

(3) a sum of £5,000 be paid to each of Thirkleby and Bagby Parish Councils for projects of community benefit.

MARTYN RICHARDS

Background papers: Correspondence with Ombudsman

Author ref: JMR

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ANNEX

Local Government
OMBUDSMAN

Report

an investigation into complaint no 11 006 363 about Hambleton District Council

12 April 2012

Beverley House 17 Shipton Road York YO30 5FZ

Investigation into complaint no 11 006 363 about Hambleton District Council

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

This report has been produced following the examination of relevant files and documents.

The citizens who complained and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Report summary

Bagby airfield had a planning permission limited to a named person and to the number of flights. The airfield has operated in contravention of that permission.

The Council has missed a number of opportunities to notice the unlawful use and to take appropriate action. As a result the unauthorised use became immune from enforcement action and the Council has lost planning control over the number of aircraft using the airfield.

Planning control is particularly important because the Civil Aviation Authority cannot regulate the Airfield and there is no power to enforce against noise created in the air.

The Council's maladministration has caused residents in the area the injustice of disturbance from flights and a sense of frustration and apprehension about the possibility of uncontrolled future expansion.

The Ombudsman recommends the Council should:

- consider taking action to try to stop the current use; and
- provide funding of up to £5,000 for each village of Bagby and Thirkleby for projects of community benefit agreed with the respective Parish Councils.

Complaint

1. A residents' group complains the Council:

   - has failed to exercise control over unauthorised development at Bagby airfield;
   - has given inaccurate, misleading or wilfully incomplete advice about planning issues to do with the airfield;
   - has failed to properly consider the need for an environmental impact statement for planning applications at the airfield;
   - has failed to engage with the local community over planning control of activities at the airfield.

Background: planning law relating to this complaint

Planning enforcement

2. Carrying out development without planning permission is not an offence. Local planning authorities can serve an enforcement notice requiring a breach of planning control to stop. A planning authority must serve an enforcement notice in specified, statutory timescales. For unauthorised change use of land the timescale is 10 years from when it started[1].

3. Planning permissions can be restricted to a named individual.

4. The law specifically allows for planning permission to be granted after a change of use or new operational development has started[2].

Discontinuation

5. Under certain conditions, a local planning authority can make an order requiring a use of land to stop, and/or imposing conditions on a continued use and/or requiring buildings or works to be altered or moved. The conditions are that the Council has taken account of the development plan and any other material consideration and believes it would be expedient in the interests of the proper planning of their area (including the interests of amenity):

   - that the use of land should be not continue or that continued use of land should be subject to conditions;
   - that any buildings or works should be altered or removed;

   The order may include a planning permission[3].

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[1] Town and Country Planning Act 1990 s171B
[2] Town and Country Planning Act 1990 s73A
[3] Town and Country Planning Act 1990 s102

6. The planning authority has to refer a discontinuance order to the Secretary of State. He can refuse, confirm or modify the order or include a planning permission in the order. The local planning authority must notify the owner, the occupier and any person who it thinks the order would affect. Those people must have an opportunity to make representations to the Secretary of State.

7. If the Secretary of State confirms a discontinuance order, the local planning authority has to compensate someone who can show that the order has damaged their interest in or enjoyment of the land. The local planning authority might also have to pay the cost of any work to comply with an order[4].

Background: Planning History

8. **1973-1980** The Council granted planning permissions for a light aircraft hanger and use of the airfield by named individuals. In 1980 it granted planning permission (ref: 2/80/009/0015A) for private flying for the benefit of Mr L. That permission ended if and when he stopped occupying the airfield. Flying was restricted to 40 take offs and 40 landings per week, between 06.00 and 23.00 hours.

9. **1986** The Council refused two planning applications to increase the number of flights (to 200 per month and to 60 per 7 days respectively). Its reasons were that more intense use would have an unacceptable impact on the amenity of nearby residents and the character of the area. It granted retrospective planning permission for five hangers (ref: 2/86/009/0015E) and planning permission for a portable multi-purpose building (ref: 2/86/009/0015F). Both permissions were for the benefit of Mr L and on condition that the site should be cleared if and when he left the airfield.

10. **1987** Through a Planning Inspector, the Secretary of State removed the condition that the hangers were only for the benefit of Mr L.

11. **1988** The Council granted planning permission for a hanger for aircraft/ parts storage workshop (ref: 2/88/009/0015H).

12. **1989** The Council granted planning permission for an underground fuel storage tank and fuel pump (ref: 2/89/009/0015J)

13. **1990** The Council granted planning permission for a hanger (ref: 2/90/009/0015K). The floor of the hangar is about 50% larger than approved.

14. **1995 and 1998** The Council granted planning permission for a pig-keeping building on the site of the aircraft storage and workshop building.

15. **2005** The Council granted planning permission for the pig keeping building to be used as an aircraft hanger (ref: 2/05/009/0015N).

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[4] Town and Country Planning Act 1990 s115

16. **2006** The Council granted planning permission for a hanger (ref: 06/00482/FUL). The hangar is 4.3 metres wider than approved.

17. **2008 and 2009** The applicant withdrew planning application 08/01109/FUL and the Council refused planning application 09/00231/FUL. The two applications included a replacement club house, an 18-bedroom hotel, 7/6 additional hangers, wind turbines, new vehicular access.

18. **2009-2010-2011** On appeal in June 2011, a Planning Inspector decided:

- The Council was right to refuse planning permission (ref: 10/01272/FUL) for a clubhouse, new/extended hangars, new workshop, artificial matting on main runway, relocated fuel line, access and car parking.

- The Council was right to refuse planning permission (ref: 09/04039/FUL) for a helicopter landing pad and jet fuel stop facility.

- The Council was wrong to refuse planning permission (ref: 09/03959/FUL) for geo-textile matting to east-west runway and a concrete apron to a hangar. He granted planning permission.

- The Council was wrong to issue enforcement notices against the construction of a hanger; concreting the aprons to two hangars; concreting and installing matting on the east-west runway. He granted planning permission.

The Inspector reported that a number of other buildings etc at the airfield did not have planning permission but had become immune from enforcement action.

Control of Development at Bagby Airfield

Control lost

19. The residents' greatest concern is about the number of flights because of the effect on their amenity. The Council has lost planning control over this serious issue. This has come about in two ways.

20. First, Mr L left the airfield in 1997 but flights continued. This was in breach of the 1980 planning permission that applied only to him. The Council did not take any action.

21. Secondly, the Council never monitored the number of take offs and landings. It says it did not have enough resources. The current operators claim that for over ten years there have regularly been more flights than the 1980 planning permission allowed. They say that the Council cannot now take enforcement action to reduce the number of flights (see paragraph 2 above).They have produced estimates, based on fuel consumption to support their claim.

22. The residents' group disputes the operator's claim. The Council took the view that it could not take enforcement action and so had no control over the number of flights.

23. At the appeal in 2011, the Planning Inspector said that:

- once Mr L was no longer involved with the airfield, the 1980 planning permission ceased to have effect;
- this meant the condition limiting flights to 40 take offs and 40 landings also ceased to have effect;
- the use of the airfield for flying after 1997 had thus become unlawful from when Mr L stopped being involved.

(The Council report the Inspector as saying that his views should not be taken as a definitive statement of the law).

24. The use of the land for flights has been uninterrupted since 1997 and so has become immune from enforcement. The owner of the airfield, the Council and the Planning Inspector believe that since at least 2007 the local planning authority has had no control over the number of flights.

25. There is no definitive record as to the number of flights in any given period during the lifetime of the airfield operations. The operator and the Council have put forward various estimates based on a number of indicators and assumptions. None have been agreed. The operator's estimates are generally higher than the Council's. Both sets of estimates indicate that there has frequently and significantly been more than the 40 take-offs and 40 landings per week as originally permitted.

26. The Planning Inspector recorded in his report on the 2011 appeal that there was very little empirical evidence for the estimated flight numbers and he had little confidence in either set of estimates. He said that he would have had more confidence if a full year's monitoring had been carried out under controlled and agreed conditions.

A proposal to restore control

27. When the operator applied for planning permission in 2010 to expand the airfield (ref: 10/01272/FUL) he suggested that it should be subject to a number of conditions including:

- Limiting flight numbers to 160 per week (80 take-offs and 80 landings);
- A system of monitoring the number of flights;
- Delineation of a 'no fly zone';
- A restriction on helicopter use;
- No flying between 11.00pm and 07.00am;
- The establishment of an airfield consultative committee.

28. The Council's officers saw this as a way to restore control over the use and development of the airfield. They recommended that planning permission should be granted subject to conditions, including some similar to those suggested by the operator. However, there was a great deal of opposition from residents and parish councils. The Council refused planning permission and so did the Planning Inspector.

The effect of planning policy

29. Planning authorities should decide planning applications in accordance with planning policies in the local Development Plan unless there are material considerations to the contrary.[5]

30. When the operator appealed against the refusal, the Planning Inspector identified three key issues:

- noise and disturbance which would arise from the proposed development;
- the impact on the rural landscape and
- the effect on the rural economy.

He concluded that the application did not comply with relevant planning policies in respect of noise and disturbance and the rural economy.

31. The specific policies were CP1, CP2, CP4 and DP1. These deal with: promoting sustainable development: for a better quality of life; safer and environmentally friendly transport; appropriate development within settlement hierarchies and protecting amenity especially with regard to privacy, security, noise and disturbance and pollution etc.

32. The Planning Inspector considered that the limits on flying suggested by the operator (by then 1000 flights per month) would be so far in excess of the best estimate of current activity (4940 flights per year) that there would be a '*significant if not serious*' effect in terms of disturbance to residents in nearby villages and the surrounding area.

33. An additional reason for the Inspector for dismissing the appeal was that it had not been shown that the development would support a sustainable rural economy.

Awareness of the problem

34. The first record of a complaint specifically about disturbance from airfield activities is from 2005 although residents' concerns put to the local parish council (Bagby and Balk Parish Council) led it to object to the 1980 planning application and it wrote to the Chief Planning Officer in 1985 and 1986 to query the number of flights taking place.

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[5] Planning and Compulsory Purchase Act 2004, s38(6); formerly Town and Country Planning Act 1990, s54A

35. Letters from the then Chief Planner at that time refer to the practical difficulties in monitoring the number of flights. These letters show that inquiries had revealed that the operator did not have to keep a register of the number of flights. The Chief Planner was aware that there was a flight register that recorded fewer than the permitted number of take-offs and landings. He accepted that he could not verify the accuracy of the record. In reply to a query from a resident in 1984 he said: *'I do rely on local residents to keep an eye on the airstrip and advise me of any breaches of conditions'.*

36. At the end of 1996 and the beginning of 1997 there was correspondence between Mr D, a relative of Mr L, and the Council. In that correspondence Mr D referred to Mr L's imminent retirement (set for 12 April 1997) and asked whether the planning permission could be 'transferred' to a Trust that would be the owner of the airfield. The Council told Mr D that a new planning application would be needed and sent him the necessary forms. Mr D assured the Council that he would observe planning requirements. He said he would make further contact although his plans for the airfield were some way from being complete.

37. There was further correspondence on the need for a planning application around March 2001. A planning officer, Officer W, wrote to the Aero Club, referring to the personal planning permission granted to Mr L and saying: *'the airfield is being run in breach of* (the personal) *permission'.* He invited the operator to make a planning application and sent appropriate forms. The operator did not apply. There is no record of the Council following up the breach of planning control.

38. In 2005 a resident wrote to the Council's Enforcement Officer complaining about activity at the airfield, especially noise from a stunt plane. The resident said he understood that the operator did not have planning permission and asked how it was apparently able *'to do as it liked'* in the village.

39. The Enforcement Officer replied that she had researched the previous planning history and the only limits on flying were the 40 landings and 40 take-offs per week and on hours of use.

40. In 2005 the Bagby and Balk Village Society (which maintains local amenities) wrote to the Council. It was concerned about the development of a new runway. In 2007 the Society again drew attention to safety concerns arising from the runway's use, following an accident to an aircraft trying to land .

41. The earliest indication of the Council trying to regain planning control following the change of operator is at the end of 2007/early 2008. The operator's agents discussed proposals for a planning application for a hotel on the site (see paragraph 17 above). In January 2008, Officer W wrote to the agents with detailed questions about operational development (buildings, runways etc) and the use of the airfield in the previous 10 years. He also referred to how the Development Plan policy might relate to any future planning applications.

The response of local residents to the use of the airfield

42. The airfield is on the edge of the village of Bagby and about three miles from the neighbouring village of Thirkleby. The Planning Inspector at the 2011 appeal, described the effect of the planes on residential amenity:

> *"... the area surrounding the airfield is generally quiet... The airfield is nearby and an aircraft, once it begins its take off and whilst it is climbing to its cruising altitude, can be clearly heard. The noise is not loud but it is strident and intrusive. If the plane is circuiting the airfield, the noise, albeit at a lower level, rises and falls as power is applied through turns. The noise remains intrusive until the plane is brought into land when it glides towards the runway...Helicopters landing are as noisy as when they are taking off....Airplanes performing aerobatics over the airfield are especially noisy and disturbing for local residents...Noise from aircraft and helicopters will occur at any time and particularly at normal leisure times, will vary and fluctuate in level, will occur directly over Bagby and Thirkleby and will, given all these factors, cause significant disturbance for the residents of these two villages and outlying dwellings."*

43. When the operator appealed against the Council's refusal of planning application 10/01272/FUL many residents wrote letters opposing further expansion of the airfield and describing its impact on local amenity. Letters came from residents in the villages of Bagby and Thirkleby and from farms and businesses in the area. They reported that noise from aircraft, particularly helicopters, disrupted enjoyment of home and garden, especially during fine weather. Residents referred to stunt-flying aeroplanes as noisy and flown in an apparently dangerous and irresponsible manner. A number of objectors referred to distress to animals: farm livestock, domestic pets and those kept as part of a business (eg in a stables or cattery).

44. Many letters referred to the character of the airfield changing from small scale operations for aircraft enthusiasts to a fully commercial enterprise. There appeared to be consensus that this had begun in 2006 when the airfield changed hands. One objector wrote that what had once been an addition to Bagby had now become its bane.

The alleged misleading advice

45. This aspect of the complaint refers to a letter written by Officer W to the local MP in February 2008. A resident had raised concerns after a flying accident and the MP asked for a response. Officer W's letter said that all the buildings at the airfield had the required planning permission except for one hangar. In fact there were a number of other unauthorised operational developments. The Council subsequently took enforcement action on the runway and concrete hangar aprons as well as the hangar.

46. The letter referred to major development proposals then at the pre-application stage. It said a public meeting had been held and the local community would continue to be involved. It did not mention the breach of control relating to Mr L's personal use or to the uncertainty about the number of flights.

Environmental Impact Statement (EIA)

47. Assessing the impact of development proposals on the environment is part of the normal planning process. EIA procedures require systematic consideration of any proposals likely to have a significant effect[6]. In such cases, the applicant must provide an environmental statement. The local planning authority must screen every planning application and decide whether an EIA is required. An applicant can volunteer to submit an EIA and the local planning authority or a Planning Inspector can demand one.

48. The Regulations[7] specify types of development for which an EIA is required or where an EIA would be required, if the local planning authority considered it would be appropriate after considering specified characteristics of the proposals.

49. The courts[8] have stated that: *'...whether a process or activity has sufficient environmental effects is a matter for the judgement of the planning authority. In making that judgement it must have sufficient details of the nature of that development of its impact on the environment and any mitigating measures. Equally it is for the planning authority to decide whether it has sufficient information to make the relevant judgement'.*

50. Officers' reports to the Planning Committee on the 2009 and 2010 planning applications referred to the requirements of the EIA regulations and guidance from central government. They said that the screening required by Regulations had led officers to conclude that the likely impact of the proposals was below the threshold requiring an EIA. The residents question how officers could reasonably have come to this conclusion bearing in mind the increased numbers of flights envisaged in 2010 in particular.

51. At the 2011 appeal the Planning Inspector noted the residents' view that an EIA was required and that planning permission could not lawfully be granted without one. He did not comment because he had rejected the appeal and refused planning permission.

Community involvement in the planning process

52. The residents say the Council's planning officers have tried to limit public involvement in the various proposals for the airport. They refer to a lack of engagement with the local parish council(s) and to what they see as a misleading and uninformative response to the local MP (see paragraph 45 above).

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[6] Town and Country Planning (Environmental Impact Assessment Regulations) 1999 SI No 293. See also advice to local planning authorities in circular 02/99.

[7] Ibid, regs 5 and 7 and Schedules 1, 2 and 3

[8] R (on the application of Hereford Waste Watchers) v Hereford CC [2005] Env.L.R 29 at paragraph 34.

53. The Council's Statement of Community Involvement is a statutory document adopted in March 2006. It sets out how the Council will notify and engage with the public in preparing planning policy and dealing with planning applications.

54. In preparing the Statement of Community Involvement the Council sent questionnaires to parish councils and other bodies asking about their preferred methods of involvement. The Statement reports that the preferred method of consultation was through examination of documents (paper followed by electronic) but that there was little apparent support for public meetings.

55. The Statement says that for major development proposals an applicant will be encouraged to consult with the Council over whether to consult with the community before submitting a planning application. The Statement says that this type of community engagement will be encouraged.

56. For the planning application in 2009 (ref: 09/00231/FUL) the operator and the Parish Councils organised public meetings. The report to the Planning Committee referred to large numbers of representations from members of the public and effective use of the Council's web-site as a discussion forum.

57. In 2010 the operator organised a public meeting in Bagby Village. Officer W attended. The residents refer to a '*barrage of complaints*' to the Council after the meeting. The Council subsequently acknowledged that '*some people expressed strong concerns*' in reaction to what they saw as the officer's support for the proposals.

58. Following the 2010 planning application, the Council produced a three page statement summarising what it saw as the result of the planning history on the site (ie that it had no control over flying at the airfield) together with the latest proposals and inviting the public to respond.

59. The Council's Environmental Health Officer was consulted about the planning application. She commented after meetings with residents about noise and inviting them to submit diary sheets to show the impact of noise.

The importance of planning control

60. Planning control is particularly important because there appears to be no other ways of protecting residents' amenity. The Civil Aviation Authority advised the Council that it has no regulatory oversight of the airfield (which is not licensed by the Authority) or over matters of safety.

61. The Council's Environmental Health Officer advises that noise created in the air cannot be a statutory nuisance and is not subject to proceedings under environmental health legislation.

Recent Actions

62. The Council's Planning Committee met on 15 September 2011. It identified 14 issues for further consideration and potential action under planning enforcement powers. It resolved to pursue these issues. It recognised that it needed significant and expensive further research on the number of flights which might be lawful.

63. At the date of this report, the Council expects the results of research into the use of the main runway by the end of April 2012. The Council will then consider whether it can use the information for enforcement action to restrict the number of flights. The Council has issued enforcement notices on a number of subsidiary uses of the airfield. The operator has appealed against those notices.

Decision

Maladministration causing injustice

64. Losing planning control over the use of land as an airfield is an extreme and most serious failure of planning administration. It has come about because the Council's planning officers failed to take appropriate action or make appropriate inquiries:

- From 1980 to 1997 they did not regularly check on the personal element of the planning permission and did not make any arrangements for monitoring the number of flights. Advice from central government is that planning conditions should be enforceable (amongst other qualities).[9]
- They knew in 1996/7 that Mr L would no longer be involved and did nothing about the fact that the planning permission was limited to him personally.
- They told the operator in 2001 that he needed planning permission but took no further action.
- In 2005 the Enforcement Officer wrongly assessed that the 1980 planning permission still applied.

65. The Council's failure to maintain planning control over the use of the airfield for flights was maladministration.

66. This has caused injustice for the residents through disturbance from increased numbers of flights and a sense of frustration and apprehension about the possibility of uncontrolled future expansion.

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[9] Circular 11/95: The use of conditions in planning permissions, paragraph 14.

Other matters raised in the complaints

67. The Council's letter of February 2008 to the MP does not mention the most significant issues to do with the airfield and does not reflect the spirit of community involvement in town planning. It was factually incorrect in saying that only one hangar did not have planning permission. This reflects badly on the Council but could cause no injustice to the residents who have complained. In the circumstances I can see no value in making a finding about whether the letter amounts to maladministration.

68. The Council's planners considered whether or not to require the operator to produce an environmental impact assessment. They judged that it was not necessary. The law says that the Local Government Ombudsman shall not criticise the merits of a decision taken without maladministration. There is no indication that the decision in this case was the result of maladministration. In any event not requiring the operator to produce an environmental impact assessment has not caused an injustice to the residents because the Council refused the planning application.

69. The planning applications of 2009 and 2010 resulted in a great deal of public involvement. I cannot see what the Council could reasonably have done to create greater public engagement with the planning issues at the airfield. Its decisions about public consultation beyond the statutory requirements is not an issue of maladministration.

Remedy

70. The Council should issue a public apology to the residents about its failure to exercise proper control over the use of the airfield and the impact on their amenity.

71. The Council needs to re-gain planning control over the use of the airfield. The present position is: '*flying is lawful but there is no definitive position as to how many flights might be lawful*'. Enforcement action will be difficult and uncertain.

72. Local planning authorities can make an order to require a land use or operational development to stop or continue but subject to planning control specified by the local planning authority. The local planning authority can do this if it considers that it would be: "*expedient in the interests of proper planning*".

73. When the Council has the results of the research into the lawful number of flights it will need to consider whether it can regain control over the number of flights. I recommend that it should also consider the possibility of making a discontinuance order. It should ask its officers to report, within 12 weeks of it considering this Report, on the implications of making a discontinuance order under s102 of the Town and Country Planning Act 1990.

74. I do not think it is appropriate to recommend payments to individual residents for loss of amenity as a result of the Council's maladministration. The number of people affected makes it impracticable to assess the impact on individuals. However, many residents have gone to a great deal of time and trouble in making representations about the planning issues. They would not have needed to do so much if the Council had not lost planning control. In recognition of this, I recommend the Council should provide funding of up to £5,000 for each village of Bagby and Thirkleby for projects of community benefit agreed with the respective Parish Councils.

75. I am aware that the residents have used professional advisers. That was their choice and I do not recommend that the Council should re-imburse the cost.

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12 **April 2012**