

1. You are unhappy with the way ██████ dealt with your pre-application advice for the erection of a log cabin within your, garden, namely:
 - a) you are unhappy ██████ responded to your pre-application enquiry without first making a site visit, especially after you clearly asked for one when you gave your paperwork and spoke to our receptionist;

We give advice about pre-applications in many places; [our website](#) says: *“Dependent on the type of development you are considering, one of our Planning Officers may not need to speak to you at all before sending you their pre-application advice. Alternatively, they may require a discussion with you either by phone or via a pre-arranged meeting at our offices or on-site; they will advise you if this is the case.”*

and

“If your fee includes a meeting(s), the Planning Officer will advise if, how and/or when this will happen ...”

The application form, [also on our website](#) and which you completed, states: *“The more detailed information you give us the quicker and more accurate our response can be. Occasionally an officer may need to arrange a site visit.”*

In February 2021, [our Councillors approved the new charging schedule from 1 April 2021](#) (for applications, like yours which fell under our previous charges amounts, before 1 April 2021, we had a leaflet on our website with the charges within it). On our website fee list now, we advise meetings are: *“... maximum offered at Case Officer discretion”,* as we no longer use the guidance document. For clarity, the guidance document at the time you made your application stated: *“Requests for pre-application advice, including a request for a meeting, need to be made in writing and sent to: Strategic Development & Planning North Devon Council Lynton House Commercial Road Barnstaple EX31 1DG... Enquiries must also be accompanied by the appropriate fee. The fees are based on the size, type and likely complexity of the proposal. It includes a site visit by the planning officer if necessary...”*

I have met with our Customer Services Supervisors and asked them to remind our reception and telephone team that whilst one meeting is noted as being included in a pre-application review, they should emphasise to our customers that this would always be a choice by the planner and not the customer. I am sorry if we did not make this clear during your visit. I also note, you did receive a visit from ██████, albeit after they sent you their response.

- b) you claim ██████ gave you ‘positive verbal confirmation at a site meeting’ with you; you advise they specifically confirmed they could apply the same conditions as they had to a holiday let for a property opposite yours;

Often, when I am investigating a complaint, I have conflicting advice from a customer and one of our officers, as in this case. I understand your claim and am not disputing it. However ██████ advised me they were cautious when you met, so as not to give any promises, as they say they always do during any site visit and again, I do not dispute this.

Therefore, I do not feel it would be professional of me to comment on a specific allegation about what a member of our staff said or did not say when I do not have any independent witnesses to corroborate what actually happened / was said at the time. That said, if you have evidence to support this part of your complaint, by an independent third-party, please can you forward this to me and I shall be happy to re-open this part of your complaint.

- c) you are unhappy ██████ did not respond to you for ‘over three months’, despite our 28-day aim. You explain you tried unsuccessfully to speak to them during this period; when you did speak to them, they apologised for the delay, then took a further four months to reply to your phone calls, messages and emails;**

I have looked at our planning and customer services records however, as we do not routinely record telephone calls, I cannot trace or note any calls you may have had directly to ██████.

I think, as I will be referring to event dates later on in this response, it will be helpful for me to provide you with key timelines for both the pre-application request and full application (again, any underlining is mine, for emphasis):

DETAILS REMOVE AS WOULD IDENTIFY COMPLAINANT

As you will see from the timeline, ██████ met all times and deadlines for the pre-application and full application responses. I note they were awaiting information from you / your agent on occasion, however this did not impact the deadline dates. Indeed, when I was looking at our records, I noted their contact with your agent was prompt (often the same day as she had contacted them), so I cannot criticise ██████ for any obvious delays on their part. In respect of their contact with you after they had made their site visit, it appears from the timeline that they had advised they needed more information from you before they could assess your proposal change from annexe to holiday use. I cannot see he received anything, hence their response to you on 23.06.2020.

- d) you received ██████ written response to your pre-application enquiry, claiming it was ‘the opposite’ of what they had discussed with you, including a list of requirements you would need to meet for us to consider granting planning permission;**

I cannot find evidence ██████ spoke to you before you they sent you their pre-application advice on 30.10.2020, this was for the proposal you paid

for and completed the application form for, which you described on your pre-application request form as: *“To erect a log cabin as an annexe to the main property within the garden”*.

After they sent this, you contacted them and they arranged the site visit and met with you. I understand it was only at this meeting ██████ became aware of your intention of the development not to be an annexe but that you intended for it to be used as a separate holiday accommodation. They followed-up this meeting to explain in writing they did not believe we would support a development of that kind and why.

As I advise earlier in this response, I cannot comment on what may / may not have been discussed on site, I must look at evidence to make a judgement. In this case, I cannot find fault with ██████ second tranche of advice to you, based on your proposed amended use of the cabin, (indeed, I could argue that they exceeded your expectation, as they could have insisted you make and pay for a separate pre-application enquiry, as your proposal had changed).

As I cannot find any proof ██████ gave you, or your agent, any indication of a positive outcome for your proposal for holiday accommodation at the pre-application stage, I cannot uphold this part of your complaint. I believe it is worth me explaining at this point that, in all cases, our pre-application advice is always a Planning Officer’s view and explanation on what someone can expect if they make a full application. We are careful in all cases to explain this when we give that advice, as we cannot predict an outcome of a full application until we have it to fully review and get consultee opinion on.

Pre-application advice exists so we can assist people in explaining what we would need to consider a proposal and the likelihood of its success, before they go through the expense of making a full application. The only way for anyone to properly ‘test’ a proposal, is for them to make a full application. If we should refuse this, they can further ‘test’ it by making an appeal to the Planning Inspectorate, which is the position you are in.

- 1. i) You are unhappy ██████ pre-application written advice to you about planning policy DM18 was incorrect and misleading, as they listed and quoted DM18 as being required for the 'area' you live in and requested a market report showing the benefit to the ‘area’**

As I have explained, ██████ pre-application advice was for your proposal: *“To erect a log cabin as an annexe to the main property within the garden”*, so I cannot agree they gave you any misinformation as part of this response; their reply to you was thorough and comprehensive.

Following their advice on 30.10.2019, you explained the change of your proposal, wishing to instead make a holiday accommodation. On 07.11.2019, ██████ emailed you, *“... if you can clarify this, I will carry out further consultations and provide an update response relating to holiday use...”*.

On 23.06.2020, you contacted ██████, asking for an update and they emailed you that day, explaining: “*You have not submitted further information in terms of elevations, location or a business plan for the proposal... In respect of the above, I am not convinced at this stage that your proposal would accord with the principles of DM18 to provide tourism accommodation in the open countryside.*”

I cannot find evidence you supplied anything further to ██████, so again, I believe their advice at this stage was clear and cannot agree with your view it was ‘misleading’, as they clearly state at this stage your proposal does not conform with our planning policy DM18, the same finding in the full application.

ii) You advise ██████ again confirmed misinformation to you, in writing, for application ██████;

Your agent submitted full application ██████ on ██████ December 2020, at this time ██████ was on a period of Christmas leave; however, when they returned, they assessed the documents and on 13.01.2021 they emailed your agent to express their concerns about the proposal.

In this email, whilst they clearly raise concerns about the proposal meeting our planning policy DM18, I do not think they clearly and comprehensively explained why and how. I have read the information they sent several times and I believe it was confusing and overcomplicated. I feel it was only when they received the consultee response from our Planning Policy Team, we had an easily understandable response, which explained in plain English how and why the proposal did not meet planning policy; ██████ sent this to your agent the same day.

Therefore, whilst I cannot agree with you ██████ gave you ‘misinformation’, I believe their information to your agent was not clear on 13.01.2021 (although I appreciate their commitment to customer care in making your agent aware of their concerns as soon as possible in the application process).

Six days after they gave your agent unclear advice, they then sent very clear information, so I apologise if, within this short timeframe you or your agent were confused in any way. The Planning Policy Team consultee response plainly disagreed with the assertion of your agent’s statements in the submission and this is why we use consultees – they are the experts and their view is always needed by a planner to be able to understand implications of a proposal, whether it be on highways, drainage or planning policy, as in this case.

- 2. You explain ██████ rang your agent on 19.01.2021 and explained they had ‘made a mistake’, as they had not realised planning policy DM18 was not for the ‘area’ as they had previously advised, it was site-specific;**

Again, as we do not record telephone calls and [REDACTED] does not recall the same conversation as your agent, I will not comment on what may / may not have been discussed. I must use the evidence I have to make a judgement.

[REDACTED] I cannot see where they 'consistently' gave you or your agent incorrect advice about planning policy DM18. As I highlight earlier in this response, I can only find evidence that [REDACTED] raised concerns about both log cabin proposals at this site (the annexe and as holiday accommodation). I cannot see any proof [REDACTED] gave you or your agent any impression, at any time, the proposal would be likely to gain planning approval.

That said, I believe [REDACTED] written explanations were not always clear and, after speaking to [REDACTED], they agreed that they could have made this information more understandable when explaining planning policy DM18 – although they strongly deny your allegation this was because they did not understand the policy. They also does not recall telling your agent they had made a 'mistake'.

Looking at the timeline, in hindsight, [REDACTED] could have used their site visit, or replied to one of one of the copied emails from your agent with Mr Young at DCC, to clarify exactly why we would not support holiday accommodation at this site, which is that there is no existing holiday accommodation there to replace. This is a very unambiguous point and I believe had they explained this at the outset, you may have chosen NOT to submit a full application, so I shall address this point further in my response to point 6., below.

3. i) you explain you obviously cannot satisfy planning policy DM18, so question why we asked you to provide information at pre-application stage to support your holiday cabin proposal;

and

li) you explain there were no objections to your full application proposal, so ask why we did not explain our stance earlier and save you the expenses you went to;

As I cover in my responses to earlier points, we concluded your pre-application response which was for a different proposal that the application and I can find no fault in our actions for this.

After we sent you the view on the annexe, you changed the pre-application proposal, from an annexe to a holiday cabin and [REDACTED] visited you to discuss this, then asked you for more information so they could assess it – they did not receive any more information, so sent their view without it. This view was that the proposal you discussed did not meet our planning policy DM18 and would likely not receive planning approval.

I have discussed this complaint with Mrs Bailey our Planning Services Manager and we agree that we need to look at improving the way we respond

to pre-application requests. On occasion, as I believe this case demonstrates, our Planners will use a lot of technical details and language, which give a large amount of complex information. This can be extremely confusing for someone who is not an agent or someone with no prior planning knowledge.

We need to appreciate an applicant will often just want an indication of whether their proposal is viable or not, with a brief and clear explanation of why. Our 'template' appears, in some cases as this one, to have evolved into a three+ page list of complex legislation and planning policy. Whilst this can be useful, it is not always clear and understandable.

I have been investigating planning complaints for almost 20 years and I still read some information sent to customers and feel confused. Part of my role is to work with Mrs Bailey on improving our services, such as pre-applications. We had already recognised a need to change the way we send out our pre-application advice and begun to implement some changes before looking at your complaint. I know this may be cold comfort to you, as you have already been through this process and are unhappy with it, but I hope you are comforted we have learnt a further lesson from your complaint to improve this service to you and others in the future.

- 4. You have asked for us to resolve your concerns (as you have a 'legal route' lodged and suspended with you home insurers legal team) by granting you planning permission, instead of you needing to take this action. You believe we can now approve your application using 'material considerations indicate otherwise';**

Planning law is set out in legislation and, to ensure transparency, consistency and equality of service, we will always adhere to this.

For application [REDACTED], [REDACTED] reviewed the proposed holiday home development in line with national and local planning policy. Their view was based on consultee advice and was signed off by our Lead Officer, who judged it to be a 'sound' decision.

Your only avenue now, to challenge our planning refusal for your proposal, is to lodge an appeal with the Planning Inspectorate, as I discussed with you some weeks ago.

It is not within my power as a complaint investigator to seek to change a planning decision made by one of our professional planners, as long as we followed the correct procedure in doing so (which we did). My role is to check they acted within law, policy and procedures in making their judgement and address your concerns.

- 5. You claim that had [REDACTED] correctly known and explained to you planning policy DM18, you would not have continued with a full application process. You explain you have spent a considerable amount of money (including paying for an ecology report, levels report,**

architects fees, site clearing costs, mortgage and legal advice and getting a mortgage) and wasted months of your time in the process;

I believe there is some fault by us in this case, as I have covered previously in this reply. Your pre-application advice was for an annexe to your home and ██████ advised you that this was likely to be refused.

██████, although visiting the site and discussing potential holiday accommodation with you, did not receive any detail from you about your holiday home proposal at the pre-application stage, despite them requesting it. However, despite this, I would have expected them to know policy DM18 and to have made it very clear to you at their site visit and in writing that, unless you had an existing holiday use *at the site*, your proposal would not meet planning policy DM18 and would be unlikely to get our permission / approval.

Upon reading their email advice to you of 23.06.2020, this does not do this, instead they explain (again, underlining is mine, for emphasis): *"In respect of the above, I am not convinced at this stage that your proposal would accord with the principles of DM18 to provide tourism accommodation in the open countryside. If an application were submitted, it should be supported by a statement outlining how the development helps to improve the diversity of the existing tourism offer in the area. You would need to show how this development would help to improve and diversify the existing holiday offer. For example are there other larger holiday units in the village centre or could this provide for a larger number of occupants."* I believe this advice is misleading and encouraged you to make a full application.

Within my role as complaint investigator I have to determine if any of our officers or practices has been at fault. If I judge we have, then I must decide if the fault has caused you an injustice and, if so, to put you (as the complainant) back into the position you would have been in but for the fault.

As I have already explained:

1. I believe ██████ did not take an opportunity to make our position very clear (in respect of planning policy DM18) at the site visit or during contact with your / your agent afterwards during the pre-application stage. We accept this advice was misleading;
2. had ██████ made our position clearer at the earliest opportunity, you may have chosen not to (or delayed) make a full application and pay for / supply all the documentation needed for that application;
3. furthermore, ██████ advice following the application submission, on planning policy DM18 could and should have explained what it did six days later, that the proposal was not acceptable, as it did not meet planning policy.

I have considered this information, along with supplied copies of your expenditure relating to your complaint / the application. I have also considered if we can put you back into the position you would have been in but for the

fault. Taking all of this into account and having discussed them with my colleagues, we agreed:

- **[full planning application fee]**; we accept you would have been unlikely to submit a full application had we clearly explained at pre-application stage that you would be unlikely to gain permission for holiday accommodation because you did not have existing holiday accommodation. That said, you may have chosen to 'test' the application process, as pre-application advice is just an indicator. Therefore, we would like to offer you a refund of the full application fee and service charge that you paid of £487;
- **[the Ecology Report, to support your full application]**; again, we accept you would have been unlikely to submit a full application had we clearly explained at pre-application stage that you would be unlikely to gain permission for holiday accommodation because you did not have existing holiday accommodation. That said, you may have chosen to 'test' the application process, as pre-application advice is just an indicator. Therefore, we would like to offer you a refund of the ecology report costs, of £295;
- **[the grounds clearance fees]**; we will not consider these [REDACTED] costs as part of this complaint. We would not advise, accept or expect any need to arrange for site clearance or other works until they had secured planning permission. We did not indicate at any stage we were likely to support your proposal, so we would not reimburse these costs;
- **[the legal fees, time & travel for signing legal documents to transfer legal ownership]**; we will not consider any of these fees / costs as part of this complaint. You made a personal choice to take this action and it does not form part of our requirement for you to make the application. Again, we did not indicate at any stage we even knew of this action, nor did we require it, so we would not reimburse these costs;
- **[Agent / architect fees]** you will have needed plans, documents for your original (annexe) and a follow-up pre-application submission (holiday home) proposals, for [REDACTED] to give you a full response. In addition, we believe to appoint an agent to act on your behalf was a choice you made to assist you, not a necessity or based on our recommendation. The Planning Portal and our officers / website can and will guide applicants through the planning process, so I cannot agree we would be responsible for any of your agent's fees in this instance;
- **[the levels survey]**; again, we accept you would have been unlikely to submit a full application had we clearly explained at pre-application stage that you would be unlikely to gain permission for holiday accommodation because you did not have existing holiday accommodation. That said, you may have chosen to 'test' the application process, as pre-application

advice is just an indicator. Therefore, we would like to offer you a refund of the levels survey costs, of £450;

As well as this compensation offer of £1,232.00 (without prejudice) as full and final settlement of your compensation claim, we would like to sincerely apologise for any frustration and anxiety you have felt during the application and complaint process. It is never our intention to make customers feel apprehension in dealing with us and we are sorry you needed to complain. I assure you we will learn a lesson from this case.

If you would like to accept our ex-gratia without prejudice offer, please can you reply to this email with the attached form completed, as this concludes my review, which is final with no provision for you to ask us to review it again (meaning we shall not correspond further about the same matter). This does not stop you from making a new complaint about other matters in the future, or if you remain unhappy with the outcome of this complaint, you can pursue your dissatisfaction by asking the [Local Government and Social Care Ombudsman \(LGSCO\)](#) (the Ombudsman) to review your complaint.

The Ombudsman looks at individual complaints about councils, all adult social care providers (including care homes and home care agencies) and some other organisations providing local public services. It investigates matters fairly and impartially and is free to use. You usually have up to 12 months to do this, starting from the date you first knew about the matter you complained about, not from the date of this letter. The Ombudsman will normally only consider complaints made within that time but can decide to look at older complaints if there is a good reason to do so. There are some matters the Ombudsman cannot or will not investigate. In these cases it will explain clearly the reason for its decision.

The Ombudsman's contact details are: website: www.lgo.org.uk, telephone: 0300 061 0614, opening hours: Monday to Friday - 10am to 4pm (except public holidays); you will need to provide them with a copy of this letter and our earlier responses to you, so they can consider your complaint.

Yours sincerely,

Mrs Jo Teasdale

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