

NORTH HERTFORDSHIRE DISTRICT COUNCIL

STANDARDS COMMITTEE

MINUTES

**Meeting held at the Council Offices, Gernon Road, Letchworth Garden City
on Tuesday, 29 July 2008 at 7.30p.m.**

PRESENT: *Mr N. Moss (Independent Chairman) and Mr P. Chapman (Independent Vice-Chairman)
Parish Councillors M. Goddard and R. Wornham and District Councillor A. Bardett.*

IN ATTENDANCE: *Kim Sawyer (Deputy Monitoring Officer and Legal Adviser), Parish Councillor Joe Beavis (Kings Walden Parish Council, Mr P. Healey (representing Parish Councillor Beavis), Mrs B. Williamson (Chairman of Kings Walden Parish Council), Mrs Heath (Vice-Chairman of Kings Walden Parish Council), Mrs Beavis and Mr I. Gourlay (Senior Committee and Member Services Officer – Clerk to the Committee).*

1. APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of District Councillors Judi Billing, S. Bloxham, Lee Downie, D. Kearns, Bernard Lovewell, M.R.M. Muir and L.W. Oliver.

2. MINUTES

RESOLVED: That the Minutes of the meeting of the Committee held on 12 June 2008 be approved as a true record of the proceedings and signed by the Chairman.

3. NOTIFICATION OF OTHER BUSINESS

No other items were presented for consideration.

4. CHAIRMAN'S ANNOUNCEMENTS

There were no Chairman's Announcements.

5. HEARING FOLLOWING INVESTIGATION – PARISH COUNCILLOR BEAVIS (KINGS WALDEN PARISH COUNCIL)

SECTION 1: PRELIMINARY DOCUMENTS

On 8th May 2007, the Ethical Standards Officer (ESO) had referred an allegation about Parish Councillor Hilary John (Joe) Beavis (JB) of Kings Walden Parish Council to the Monitoring Officer of North Hertfordshire District Council ('NHDC'), Frances Bogie, for investigation. The allegation was investigated by Frances Bogie, who had prepared a report of her findings. The investigator's report ('the report') concerned possible breaches of the Code of Conduct for Parish Councils ('the Code') under paragraphs 5, 8 and 10(a) and 10(b) of the Code. The investigator had referred her report to the NHDC Standards Committee for a hearing in accordance with the Regulations.

The allegation was that JB had failed to declare an interest at a meeting of the Kings Walden Parish Council held on 28 February 2007, and had failed to withdraw from the room, when a planning application relating to Darley Hall was considered.

SECTION 2: ORAL AND WRITTEN SUBMISSIONS (PROCEDURAL)

At the outset of the hearing Parish Councillor Wornham requested advice on whether he should step down from the Committee for the hearing as he had known Councillor Williamson's (a witness for JB) husband for a number of years. Kim Sawyer advised that he should consider whether an allegation of bias might ensue. If he had known Councillor

Williamson's husband in a business capacity only (i.e as a fellow councillor) then it was unlikely that there could be an issue of bias. It essentially depended upon the nature of the relationship between the parties. Councillor Wornham did not consider that the relationship would cause his impartiality to be compromised.

SECTION 3: FINDINGS OF FACT

In the pre-hearing process summary, JB indicated that a number of findings of fact were in dispute. However at the hearing (and after taking legal advice) he agreed that he did have a prejudicial interest relating to the planning application for Darley Hall and that he had failed to leave the room during consideration of the matter in breach of paragraph 10(a) of the Code of Conduct.

The following findings of fact remained in dispute:

(a) At the meeting JB contended that he did not set out the substance of his objections to the Parish meeting as is implied from paragraph 6.7 of the investigator's report. He said he had offered to leave the meeting and had notified the other Councillors that he had sent a letter of objection, but that they did not know what those objections were.

(b) JB contended that he did not vote at the meeting, contrary to paragraph 6.8, 6.11, 6.12, 6.13 and 7.5 of the report.

(c) JB contended that he did respond to the draft report, contrary to paragraphs 6.9 and 6.15 of the report.

(d) JB contended that he did not seek improperly to influence the decision of the meeting, contrary to paragraph 7.7 of the report.

(e) JB contended that the earlier planning application had no relevance to this matter, contrary to paragraph 7.8 of the report.

(f) JB contended that he had no motive to seek to confer an advantage on himself by remaining in the room to answer questions on the planning application.

Summary of evidence:

Evidence was given verbally by JB and Councillor Williamson (the Parish Council Chairman) at the meeting. JB told the hearing that he had advised members of the parish council that he had made an objection to the planning application, and that he had sought to leave the room, but that he had been asked to remain by the Chairman. He said he had remained only to answer questions put forward by the other members, but that he had not voted on the matter.

Councillor Williamson said at the hearing that JB was a man of great integrity and that he would not, in her view, have sought to influence the planning decision

It was noted at the hearing that the parish council was not the decision-making authority for planning applications. It had powers to make observations only.

Summary of submissions about disputed facts by Mr Healey:

Mr Healey, JB's legal advisor, contended that it was not a requirement of the Code to declare a prejudicial interest. It was only a requirement to declare a personal interest.

Mr Healey submitted that JB had satisfied the requirement to declare a personal interest because this was a small community in which everyone knew where JB lived and, therefore, what his interest was. Mr Healey noted also that JB had announced to the other councillors at the meeting that he had written a letter of objection to Mr Poulter's application in a personal capacity.

However, Mr Healey added, JB now accepted that where a member's interest was also prejudicial, as it was in this case, he was required under the Code to leave the room. Although he had begun to leave the room, JB had failed to do so on 28th February 2007 and it was accepted that he had breached the Code for that reason.

Turning to the other allegations against JB, Mr Healey submitted that in order for JB's conduct to amount to 'improper' conduct and, thereby, for it to be in breach of paragraphs 5 and 10(b), there would have to be some evidence of intent or motive. Mr Healey stated that this was not supported by the evidence put forward by JB, namely that he had remained in the room only to answer questions; that he had not voted; that in the absence of his information the other members would have had little factual information about the layout of Darley Hall and would have been unable properly to consider the application.

The Deputy Monitoring Officer ('DMO') acting as legal advisor to the Committee read out a passage from Page 61 of the Standards Board for England's Case Review 2007 on the Code regarding what amounted to 'improper'. The DMO also reminded the Committee that three months following this admitted breach, the Code had changed and now permitted members with prejudicial interests to remain in the room and address the meeting before leaving prior to voting.

SECTION 4: DECISION ON WHETHER THE CODE WAS BREACHED

The Standards Committee considered each of the investigator's recommendations in paragraph 9.1 of the report that JB had

- (a) failed to declare a prejudicial interest contrary to paragraph 8 of the Code.
- (b) failed to withdraw from the meeting contrary to paragraph 10(a) of the Code.
- (c) sought improperly to influence the outcome of a decision contrary to paragraph 10(b) of the Code
- (d) sought improperly to use his position to confer an advantage or disadvantage on any person, contrary to paragraph 5(a) of the Code

The Standards Committee found as follows:

- (a) The Committee considered that that JB had both a personal and prejudicial interest. In reaching that decision, the committee applied the objective tests as set out at sections 7 and 9 of the 2001 Code of Conduct.

The Committee concluded:

- That JB had recognised that he had a personal interest because of where he lived in relation to the property which was the subject of the applicant, Mr Poulter's application;
- That JB had satisfied the requirement to declare that interest.
- That JB had made a personal objection to NHDC because he considered, among other concerns, that the drainage aspect of Mr Poulter's application may have affected his property directly and adversely;

and, therefore, that a person with knowledge of those facts would conclude that he had a personal and prejudicial interest.

The Committee noted that there was no requirement in the 2001 Code of Conduct to declare a prejudicial interest. The Committee decided, therefore, that JB could not breach the Code in this way.

- (b) The Committee noted JB's acknowledgement that he had a prejudicial interest, but that he had failed to withdraw from the room. However, the Committee also noted his explanation at the hearing, supported by the evidence of the Chairman of the Parish Council, that he had begun to withdraw; but that he had then decided to remain, at the request of the Chairman, to answer questions. Members noted also the account of the Chairman at the hearing that before attempting - but failing - to leave, JB had moved away from the table at which discussion of the Darley Hall application was taking place.

Nevertheless, the Committee concluded, JB had remained and should not have done. The Committee decided, therefore, that JB **had breached the Code**.

(c) The Committee considered paragraph 7.7 of the Investigator's report and the advice given by the Deputy Monitoring Officer that the test was set out at page 61 of the Standards Board for England's Case Review 2007, in that

"Any conduct that unfairly uses a Member's public position to promote private interests over the public interest will be improper."

The Committee did not consider that, by remaining in the room to answer questions on the planning application, JB was seeking improperly to influence the outcome of the decision. The Committee was satisfied that his principal motive was to serve his constituents and not himself.

The Committee heard evidence at the hearing from the Chairman of the Parish Council that JB was a man of great integrity and that he had been asked to stay to explain the application. The Committee was advised that if the current Code of Conduct had been in operation at the time of this complaint, JB would have been permitted to remain to make representations. The Committee decided, therefore, that Councillor Beavis **did not breach the Code**.

(d) In the light of the previous conclusion, there was no evidence that JB had sought to confer an advantage on himself. The question remained whether or not JB had sought improperly to confer on, or secure a disadvantage for, Mr Poulter.

The Committee considered paragraph 7.9 of the Monitoring Officer's report and the letter of objection submitted by JB about the planning application.

The Committee noted:

- that a refusal of Mr Poulter's application could be a disadvantage to him;
- that JB's involvement in his parish council's consideration of the application could have contributed to a refusal;
- that such involvement by JB, therefore, could have contributed to a disadvantage to Mr Poulter.

However, the Committee decided that in all the circumstances of JB's involvement in his parish council's consideration of the application, his conduct was not improper. The Committee decided, therefore, that Councillor Beavis **did not breach the Code**.

SECTION 5: SANCTION

As the investigator was absent from the hearing the DMO gave advice that similar cases on the Standards Boards website had shown that training was an appropriate form of sanction in respect of the section of the Code which the Committee decided that JB had breached. JB and Mr Healey were invited to offer an opinion on the sanction proposed, but declined.

The Standards Committee considered that training was an appropriate sanction for JB.

SECTION 6: RIGHT TO APPEAL

Parish Councillor Beavis had the right to apply in writing to the president of the Adjudication Panel for England for permission to appeal against the Standards Committee's finding. The president of the Adjudication Panel must receive written notice requesting permission to appeal within 21 days of the member's receipt of notification of the Standards Committee's finding.

SECTION 7: RECOMMENDATIONS TO THE AUTHORITY (KINGS WALDEN PARISH COUNCIL)

The Standards Committee recommended in addition that parish council members should also attend training. It was noted that two training sessions had been arranged by NHDC which had not been attended by the Kings Walden Parish Councillors. The Parish Council were also recommended to change their agenda for future meetings to include a section inviting Members to declare any interests they may have.

The meeting ended at 10.30pm

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Chairman