

DECISION NOTICE

BREACH OF THE CODE OF CONDUCT – SANCTION IMPOSED

Wiltshire Council Reference No: WC 33/09

Date of Determination 14 October 2010

Subject Member

Councillor Kenneth Ludlow - Winterslow Parish Council

Subject Member's Representative

Mr Roger Hardy

Complainant

Mr M Paver

Hearing Sub-committee Membership

Mr P Gill – Chairman (Independent Co-Opted Member)

Councillor P Fuller (Wiltshire Council Member)

Ms P Turner (Town / Parish Co-Opted Member)

Monitoring Officer / Legal Adviser

Mr I Gibbons

Investigating Officer

Mr R Wiltshire

Clerk

Ms P Denton

Complaint

The Hearing Sub-Committee of Wiltshire Council's Standards Committee met to consider an investigation report on a complaint that Councillor Kenneth Ludlow had failed to comply with the Model Code of Conduct for Members, adopted by Winterslow Parish Council.

The complainant alleged that Councillor Ludlow failed to declare a personal or prejudicial interest at a meeting of the Parish Council on 11 May 2009, in breach of the requirements of paragraphs 8, 9, 10 and 12 of the Code of Conduct, and that Councillor Ludlow's actions brought the Council into disrepute in breach of paragraph 5 of the Code of Conduct.

The complaint was assessed by the Standards Assessment Sub-committee of Wiltshire Council on 10 August 2009, and was referred to the Monitoring Officer for investigation.

The Monitoring Officer delegated his investigatory powers to Mr Roger Wiltshire, Investigating Officer, pursuant to section 82A of the Local Government Act 2000.

The Standards Consideration Sub-Committee considered the Investigating Officer's report on 27 July 2010 and decided that the alleged breaches of paragraphs 9(1) and 12(1) of the Code relating to the declaration of personal and prejudicial interests should be referred to a Standards Committee Hearing for determination.

A hearing was therefore conducted by the Hearing Sub- Committee on 14 October 2010 in accordance with Regulations 18 and 19 of the Standards Committee (England) Regulations 2008 and the Council's Procedure for Determination of Complaints.

The Chairman introduced those present and explained the purpose and process for the hearing.

There were no declarations of interest by the members of the Sub-Committee.

Preliminary Issues

The Sub-Committee considered submissions from the parties on whether the hearing should be open to the public. No objections were raised to the matter being heard in public. The Sub-Committee also received advice from the Legal Adviser on the legal position and statutory guidance from Standards for England.

The Sub-Committee decided not to exclude the public from the hearing as they considered that the public interest in openness and transparency outweighed the public interest in preserving confidentiality.

Summary of Evidence Considered and Representations Made

The Sub-committee considered the following evidence and representations:

1. The written complaint;
2. The Investigator's report dated 13 July 2010, which contained evidence from interviews conducted with the Subject Member, the Complainant, and others, as well as copies of relevant documents.
3. Representations at each stage from the Subject Member and his representative and the Investigating Officer.
4. Oral evidence from the Subject Member.

The Sub-Committee adjourned the meeting to consider its decision at each stage of the hearing. The parties withdrew on each occasion. The Clerk and the Legal Adviser remained with the Sub-Committee to record their decision and provide advice on matters of law and procedure.

FINDINGS OF FACT (Stage 1)

After hearing from the parties the Sub-Committee made the following findings of fact:

1. On the 23rd April 2009 the Local Planning Authority received a planning application from Mr Martin Paver for a first floor extension to his property: Woodspring, Livery Road, Winterslow. Details of the planning application were placed on the Local Planning Authority's website.
2. The garden of Mr Paver's property abuts the garden of Cllr Ludlow. Cllr Ludlow's property does not appear on the plan of properties held on the Local Planning Authority website, but Cllr Ludlow's property, Southview, Weston Road, Winterslow, is included on the list of neighbours held on the website.
3. On the 30th April 2009 the Local Planning Authority sent notice of the planning application to all the properties included on the list of neighbours, including Cllr Ludlow's property. According to the planning office these letters are courtesy letters, they are not required by statute.
4. Proof of posting is not proof of receipt and Cllr Ludlow can not remember receiving or seeing the letter from the Local Planning Authority.
5. The Local Planning Authority received one objection to the planning application from the immediate neighbour of Mr Paver, Mr Richards, who is the owner of the property Bel Etage.
6. Cllr Ludlow is also a neighbour of the owner of Bel Etage; the gardens of the properties adjoin.
7. Mr Paver's planning application was discussed at the Winterslow Parish Council meeting on Monday the 11th May 2009. At that meeting Cllr Ludlow objected to Mr Paver's planning application. Cllr Ludlow did not declare an interest, either personal or prejudicial, in the planning application at any time during the meeting. He participated in the meeting and voted on the application.

8. Winterslow Parish Council voted unanimously to oppose Mr Paver's planning application.
9. The list of neighbours was not included in the paperwork passed to Winterslow Parish Council. No one from the Local Planning Authority attended the meeting, and no one present at the Parish Council meeting of 11th May mentioned that Cllr Ludlow was a neighbour or a person potentially affected by the planning application.
10. Cllr Ludlow was acting in his official capacity as a member of Winterslow Parish Council throughout the Parish Council meeting of 11th May 2009, including participating in and voting on Mr Paver's planning application.
11. Parish Councils are consulted with regard to planning applications relating to their areas. However, although their views may be taken into account in the Local Planning Authority's decision, the Parish Council's decision is not binding on the Local Planning Authority and there have to be valid planning reasons for an application to be refused by the Local Planning Authority.
12. The Local Planning Authority considered Mr Paver's application and turned the application down as in this case the authority considered there were relevant planning grounds for refusing the application.
13. Mr Paver successfully appealed against the decision to refuse his planning application. The success of the appeal was not dependent upon or affected by Cllr Ludlow's involvement in the Parish Council's response to the consultation.
14. The investigating officer has visited Cllr Ludlow's property and found the distance between Cllr Ludlow and Mr Paver's properties to be approximately 80 metres. Cllr Ludlow's view of Mr Paver's property is partly obscured by trees and the extension may only be visible to Cllr Ludlow from parts of the garden. The gardens do connect but Cllr Ludlow is not directly affected by Mr Paver's proposed extension, that is, he is not overlooked nor his views, light or access affected.
15. The geography of the relevant properties is shown in the photographs produced by the Subject Member.

These findings of fact were then used as the basis for the Sub-Committee's consideration at Stage 2 on the question of whether there had been a breach of the Code of Conduct.

DECISION ON A POSSIBLE BREACH OF THE CODE OF CONDUCT (Stage 2)

After hearing representations on this issue from both parties the Sub-Committee concluded in relation to each of the relevant provisions of the Code as follows:

Paragraph 9(1) - Subject to sub-paragraphs (2) to (5), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

The Sub-Committee found that Councillor Ludlow should have declared a personal interest in the planning application at the meeting of the Parish Council on 11 May 2009, and that by failing to do so he had breached paragraph 9(1) of the Code.

Reasons

Councillor Ludlow himself accepted that he should have declared a personal interest due to the fact that his property was adjacent to the application site.

The Sub-Committee concurred with the Investigating Officer's findings that Councillor Ludlow had a personal interest because the planning application related to or was likely to affect his property, 'Southview' which was included in his Register of Interests.

Paragraph 12(1) - Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority.

- (a) you must withdraw from the room or chamber where a meeting considering the business is being held.***
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;***
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting; unless you have obtained a dispensation from your authority's standards committee; and***
 - (b) you must not seek improperly to influence a decision about that business.***
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the***

business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

The Sub-Committee concluded that Councillor Ludlow did not have a prejudicial interest in the matter and, therefore, did not breach paragraph 12(1) of the Code.

Reasons

The Sub-Committee recognised that the geography of the properties was determinative in this case. In the light of their finding that the complainant's planning application had no significant impact on Mr Ludlow's property the Sub-Committee were satisfied that a member of the public with knowledge of the facts would not regard his interest as so significant that it would be likely to prejudice his judgment of the public interest. The test for a prejudicial interest in paragraph 10(1) of the Code was not, therefore, met.

SANCTION (Stage 3)

After hearing representations from the Investigating Officer and from the Subject Member and his representative, the Sub-Committee decided that the appropriate sanction in these circumstances was to require Councillor Ludlow to undertake training on the Code of Conduct.

RECOMMENDATION

The Sub-Committee also recommended that training on the Code of Conduct should be extended to the clerk and all members of Winterslow Parish Council to ensure consistency in the knowledge and application of the requirements of the Code within the Council.

The training is to be arranged by the Monitoring Officer at the earliest opportunity and should be delivered in plain language.

This Decision Notice is sent to the Complainant, the Subject Member, Winterslow Parish Council and Standards for England.

