

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE STANDARDS COMMITTEE

TUESDAY, 20TH MAY 2008 AT 2.00 P.M.

PRESENT: Mrs. N. E. Trigg (Chairman - Independent Member), Councillor S. P. Shannon, Mr. S. E. Allard (Independent Member), Mr. N. A. Burke (Independent Member) and Mr. J. Cypher (Parish Councils' Representative)

Subject Member: Councillor C. J. Tidmarsh

Investigating Officer: Mrs. V. Brown

Officers: Mrs. S. Sellers and Ms. D. Parker-Jones

Observer: Councillor E. C. Tibby

1/08 **APOLOGIES FOR ABSENCE**

Following a change to the membership of the Committee, an apology for absence was received from Councillor Miss. D. H. Campbell JP, who had replaced Councillor C. R. Scurrell on the Committee.

The Chairman further advised that, as the complainant in the matter under consideration, Councillor E. C. Tibby would not be participating in the proceedings.

2/08 **DECLARATIONS OF INTEREST**

No declarations of interest were received.

3/08 **FINAL DETERMINATION OF ALLEGATIONS OF FAILURE TO FOLLOW THE CODE OF CONDUCT**

The Committee considered a report on alleged failures to follow the Code of Conduct.

On 22nd November 2007 the Standards Board for England had referred to the Monitoring Officer for local investigation three allegations, made by Councillor E. C. Tibby, that Councillor C. J. Tidmarsh had failed to comply with the Code of Conduct, in that at a meeting of the Planning Committee on 16th July 2007 Councillor Tidmarsh had: failed to declare a prejudicial interest; misused his official position and acted improperly to seek to secure an advantage for a friend; and failed to correctly declare a personal interest.

A report of the Investigating Officer dated 27th March 2008, which had found in respect of two of the allegations that Councillor Tidmarsh had not failed to follow the Code and in respect of one allegation that Councillor Tidmarsh had

failed to follow the Code, was considered. The Committee was asked to consider whether, based on the facts set out in the report, it agreed with the Investigating Officer's findings.

RESOLVED:

- (a) that in respect of the first allegation that Councillor Tidmarsh failed to correctly declare his interest in planning application B/2007/0498, Councillor Tidmarsh failed to comply with the Code as alleged but no sanction be imposed as it was felt that Councillor Tidmarsh had made a genuine mistake which had led him to make an inaccurate declaration;
- (b) that in respect of the second allegation that Councillor Tidmarsh failed to declare a prejudicial interest in planning application B/2007/0498, Councillor Tidmarsh did not fail to comply with the Code as alleged; and
- (c) that in respect of the third allegation that Councillor Tidmarsh misused his official position and acted improperly to seek to secure an advantage for a friend, Councillor Tidmarsh did not fail to comply with the Code as alleged.

(A copy of the Committee's full decision, together with the reasons for it, is appended.)

The meeting closed at 4.36 p.m.

Chairman

Standards Committee Hearing 20th May 2008

Standards Board for England ("SBE") Ref: 20011.07

Introduction

SBE reference number:	SBE: 20011.07
Date of report:	27th March 2008
Name of Member:	Councillor J Tidmarsh
Name of Member's representative:	N/A
Relevant authority concerned:	Bromsgrove District Council
Ethical Standards Officer:	Ms J Rogers
Investigating Officer:	Mrs V Brown
Date of the hearing:	20th May 2008
Names of Standards Committee members:	Mrs. N. E. Trigg (Chairman) Mr. S. E. Allard Mr. N. A. Burke Mr. J. Cypher Councillor S. P. Shannon
Standards Committee Legal Adviser:	Mrs. S. Sellers
Committee Services Officer:	Ms. D. Parker-Jones

Details of referral and findings of the Investigating Officer

The referral from the ethical standards officer (ESO)

On 22nd November 2007 the ESO referred 3 allegations about Councillor Tidmarsh to the Monitoring Officer for investigation. The allegations were investigated by Mrs. V. Brown, Solicitor, who prepared a report of her findings.

The Investigating Officer reached the conclusion that in relation to two allegations there had been no failure to comply with the Code of Conduct. These two allegations are listed at (a) and (b) below.

In relation to the third allegation listed at (c) below the Investigating Officer reached the conclusion that there had been a breach of the Code of Conduct and under paragraph 5(7)(d) of the Regulations the Investigating Officer referred her report to the Standards Committee for a hearing in accordance with the Regulations.

Summary of the Allegations

That Councillor Tidmarsh failed to comply with the Council's Code of Conduct (namely the code of Conduct adopted by the Council in 2002) in that at a meeting of the Planning Committee on 16th July 2007 he:-

- a) Failed to declare a prejudicial interest in item B/200/0498 in relation the the Crossroads Garage on Kidderminster Road; and
- b) That at the same meeting of the Planning Committee Councillor Tidmarsh misused his official position and acted improperly to seek to secure an advantage for a friend; and
- c) That at the same meeting Councillor Tidmarsh failed to correctly declare a personal interest in relation to application B/2007/0498.

Procedure followed by the Standards Committee on 20th May

As the Investigating Officer's report contained findings of both non breach and breach, following consultation with the subject member it was agreed that all matters would be considered by the Standards Committee on 20th May in a hearing in two parts; in the first part of the hearing the two findings of non breach would be considered (allegations (a) and (b)), and provided that these findings were agreed by the Committee then in the second part of the hearing the Committee would consider the finding of breach (allegation (c)).

PART ONE – INVESTIGATING OFFICER’S FINDINGS OF NO BREACH

Section1: The allegations

1.1 As referred to above, the Investigating Officer reached the conclusion that in relation to two allegations there had been no failure to comply with the Code of Conduct. For ease of reference those two allegations were that at a meeting of the Planning Committee on 16th July Councillor Tidmarsh:-

- a) Failed to declare a prejudicial interest in item B/200/0498 in relation to the Crossroads Garage on Kidderminster Road; and
- b) That at the same meeting of the Planning Committee Councillor Tidmarsh misused his official position and acted improperly to seek to secure an advantage for a friend.

Section 2: Decision

2.1 The Standards Committee reached the following decision:

That having considered the Investigating Officer’s report and specifically the findings of no breach in relation to allegations (a) and (b) the Committee resolved that Councillor Tidmarsh had not failed to comply with the Code of Conduct.

The reasons for the Committee’s decision are as follows:-

- In respect of allegation (a) there was no need for Councillor Tidmarsh to have made any declaration as there was no personal interest.
- In respect of allegation (b) the Committee agreed with the Investigating Officer’s view that although the comments were misguided that Councillor Tidmarsh did not act improperly.

No legal advice was given in this part of the Hearing.

PART TWO – INVESTIGATING OFFICER’S FINDING OF BREACH

Section 1: The allegation

- 1.1 As referred to above, the allegation in relation to which the Investigating Officer made a finding of breach related to point (c) above namely that at a hearing of the Planning Committee on 16th July Councillor Tidmarsh failed to comply with the Code of Conduct in that he failed to correctly declare a personal interest in relation to application B/2007/0498.
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Section 2: Oral and written submissions (procedural)

- 2.1 No oral or written submissions were made.
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Section 3: Findings of fact

- 3.1 **The following facts in the Investigating Officer’s report were undisputed and the standards committee finding of facts are:**

The facts set out in paragraphs 4.1 to 4.24 of the Investigating Officer’s report.

Section 4: Decision on whether the Code was breached

4.1 Summary of submissions by Councillor Tidmarsh

- 4.1.1 That he had mistakenly confused the identities of the owner of the site (Mr Naveed) whom he did not know and the owner of the adjoining business (Mr Narang) whom he had bought some gates from 15 years ago and subsequently met at two social events.
- 4.1.2 That based on this mistake he had failed to correctly declare his personal interest in this matter as he referred to knowing “the applicant as a friend” which was plainly wrong. He actually knew the objector as a friend and did not know the applicant at all. He only realised the mistake as to the identity of the two individuals at a later date. He stated that he regretted

his actions and expressed his apologies to Mr Naveed and Mr Narang (both of whom were present at the hearing in the public gallery).

- 4.1.3 Councillor Tidmarsh did not dispute that there had been a breach of the Code of Conduct. At the time he thought he was acting properly by making the declaration but he acknowledged that he had wrongly identified Mr Naveed.

4.2 Summary of submissions by the Investigating Officer

- That confusing the identity of Mr Naveed and Mr Narang resulted in Councillor Tidmarsh making an inaccurate declaration of interest.
- That there is no specific part of the Code covering this type of error and the SBE were not able to give any general guidance other than to consider the alleged breach in the context of the facts of the case.
- That in applying that test Mrs Brown was of the view that the Code of Conduct had been breached in that it is implicit that any declarations made must be accurate; this is necessary for the dual purpose of both protecting elected members and conducting decision making in a way which is transparent to members of the public. In this case the declaration made was inaccurate as to the identity of the person named and the Councillor's relationship with them, therefore Mrs Brown was of the opinion that the Code had been breached.

4.3 The Standards Committee's decision on whether or not there has been a breach of the Code

- 4.3.1 The Standards Committee reached the following decision after considering the submissions of the parties:

- That the Committee is in agreement with the Investigating Officer's finding the Councillor Tidmarsh made a technical breach of the Code of Conduct by making an inaccurate personal declaration.
- However the Committee noted that the inaccurate declaration arose due to Councillor Tidmarsh making a genuine mistake and that there was no intention on his part to mislead.
- The Committee further noted that Councillor Tidmarsh had during the hearing publicly apologised for any embarrassment caused to Mr Naveed and Mr Narang over this matter.

- 4.3.2 The relevant sections of the Code of Conduct are:

Paragraphs 8 and 9 and the general principle underpinning the Code of Conduct that its purpose is to uphold standards on public life and that therefore all declarations made under the Code must be accurate.

4.3.3 The Standards Committee's reasons for this decision were:

That it agreed with the Investigating Officer that whilst there us no specific part of the Code covering this type of error, the Code was breached in that it is implicit that any declarations made must be accurate.

4.4 Details of legal advice given

None.

Section 5: Sanction

5.1 None imposed as the Standards Committee were in agreement that Councillor Tidmarsh made a genuine mistake as to the identity of Mr Naveed and Mr Narang which lead him to make an inaccurate declaration

Section 6: Right to appeal

6.1 Councillor Tidmarsh has the right to apply in writing to the President of the Adjudication Panel for England for permission to appeal the Standards Committee's findings. The President of the Adjudication Panel must receive written notice requesting permission to appeal within 21 days of the receipt by Councillor Tidmarsh of notification of the Standards Committee's finding.

Section 7: Recommendations to the authority

7.1 The Committee wish to emphasise to all Members that they should avoid making unnecessary or inaccurate declarations. Where there is an element of doubt in Members' minds as to the nature, if any, of their interest, the Committee urges Members to seek advice from the Monitoring Officer preferably, prior to the relevant meeting.

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Chairman of the Standards Committee

Dated: