

**BROMSGROVE DISTRICT COUNCIL**

**STANDARDS COMMITTEE**

**18TH OCTOBER 2011**

**FINAL DETERMINATION HEARING**

**COMPLAINT REFERENCES: 03/10 and 04/10**

Responsible Portfolio Holder	Councillor Mark Bullivant
Relevant Head of Service	Claire Felton, Monitoring Officer

**1. SUMMARY**

- 1.1 On 15th June 2010 the Standards Assessment Sub-Committee met and considered two complaints made by Mr David Boardman and Mr Peter McHugh that Councillor David Matthews of Alvechurch Parish Council had breached the Alvechurch Parish Council Code of Conduct. Specifically, it was alleged that Councillor Matthews had failed to declare an interest during discussions of the proposed development of a site at Birmingham Road, Alvechurch at three Alvechurch Parish Council meetings. The Assessment Sub-Committee decided to refer the complaints for investigation. Accordingly, the Monitoring Officer appointed Mrs Tracy Lovejoy as the Investigating Officer.
- 1.2 The Investigating Officer's report into her enquiries was issued on 27th June 2011. The Investigating Officer's report was considered by the Standards Committee on 8th August 2011. The report contained one finding that Councillor Matthews had failed to follow the Code of Conduct by not declaring a personal interest during consideration of the proposed development site at Birmingham Road at the Alvechurch Parish Council meetings of 13th July 2009 and 14th September 2009. The Standards Committee referred the matter to a final hearing.
- 1.3 The hearing (known as a Final Determination Hearing) is to take place on 18th October 2011. The Committee is therefore requested to determine the allegation of failure to follow the Code.

**2. RECOMMENDATION**

- 2.1 Members are requested to consider the Investigating Officer's report attached at Appendix 2 and may reach one of the following decisions:
- 2.1.1 that the Subject Member has not failed to comply with the relevant Code of Conduct; or

- 2.1.2 that the Subject Member has failed to comply with the relevant Code of Conduct but that no action needs to be taken; or
- 2.1.3 that the Subject Member has failed to comply with the relevant Code of Conduct and that a sanction should be imposed. The regulations provide that any one, or any combination, of the following sanctions can be imposed:
  - 2.1.3.1 censure;
  - 2.1.3.2 restriction for a period not exceeding 6 months of the Subject Member's access to the premises of the authority or the Subject Member's use of the resources of the authority, provided that those restrictions are reasonable and proportionate to the nature of the breach and that they do not unduly restrict the Subject Member's ability to perform the functions of a Member;
  - 2.1.3.3 partial suspension of the Subject Member for a period not exceeding 6 months;
  - 2.1.3.4 suspension of the Subject Member for a period not exceeding 6 months;
  - 2.1.3.5 that the Subject Member submits a written apology in a form specified by the Committee;
  - 2.1.3.6 that the Subject Member undertakes such training as the Committee specifies;
  - 2.1.3.7 that the Subject Member participates in such conciliation as the Committee specifies;
  - 2.1.3.8 partial suspension of the Subject Member for a period not exceeding 6 months or until such time as the Subject Member submits a written apology in a form specified by the Committee;
  - 2.1.3.9 partial suspension of the Subject Member for a period not exceeding 6 months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Committee specifies;
  - 2.1.3.10 suspension of the Subject Member for a period not exceeding 6 months or until such time as the Subject Member has submitted an apology in a form specified by the Committee; or

- 2.1.3.11 suspension of the Subject Member for a period not exceeding 6 months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Committee specifies.

### **3. KEY ISSUES**

#### Financial Implications

- 3.1 There are no financial implications arising from this report.

#### Legal Implications

- 3.2 The Local Government Act 2000 introduced primary legislation to enable the implementation of a Members' Code of Conduct, and this was amended by the Local Government and Public Involvement in Health Act 2007 (LGPIHA 2007) insofar as it related to the application of the Members' Code of Conduct to their private lives. The local assessment regime was introduced by the LGPIHA 2007, and further expanded in the Standards Committee (England) Regulations 2008 which also set out the rules and procedures governing the investigation and determination of complaints.
- 3.3 Members are reminded that at the meeting of the Standards Committee on 8th July 2011 consideration was given to whether the complaint should remain confidential under Section 100 I of the Local Government Act 1972, as amended. The decision was made to lift the exemption on publicising this matter. However, Members will still need to be mindful not to disclose any personal information into the public domain. Members are asked to note that both the Investigating Officer's report and the Schedule of Evidence contain personal data. Any written material that is published will be redacted to remove the personal data. However, Members are asked to note that personal data cannot be discussed in public session. Were members wishing to discuss the parts of the report and Schedule of Evidence which contain personal data in detail at the Final Determination Hearing, then that part of the meeting would have to be held in closed session.

#### Service/Operational Implications

- 3.4 Following the outcome of the Consideration Meeting on 8th July 2011, the complaint to be decided at the Final Determination Hearing is as follows:-
- That the Subject Member failed to declare a personal interest during consideration of the proposed development site at Birmingham Road at the Alvechurch Parish Council meetings of 13th July 2009 and 14th September 2009.

## Documents

- 3.5 A copy of the hearing procedure is attached at Appendix 1. A copy of the Alvechurch Parish Council Code of Conduct is attached at Appendix 2. The Investigating Officer's report is attached to this report as Appendix 3. The Schedule of Evidence (referred to as Appendices A to DDD in the Investigating Officer's report) has been circulated to Members of the Committee and Councillor Matthews and is included as background papers to this report. Additional comments have been received from Councillor Matthews and a copy of his letter dated 29th August 2011 is attached at Appendix 4, together with an addendum detailing a slight amendment to that letter.

## Pre-Hearing Process

- 3.6 Standards for England (SfE) advises that a pre-hearing process should be followed before a Final Determination Hearing to try to allow matters at the hearing to be dealt with more fairly and economically by alerting the parties to possible areas of difficulty and, if possible, allowing them to be resolved before the hearing itself. A questionnaire was sent to the Subject Member to identify:

- if the Subject Member disagrees with any of the findings of fact in the investigation report, and if so whether they are likely to be relevant to the issues to be determined;
- whether evidence about those disagreements will need to be heard during the hearing;
- decide whether there are any parts of the hearing that are likely to be held in private;
- any factors the Subject Member would wish the Standards Committee to take into account if it finds that the Subject Member has failed to follow the Code of Conduct;
- whether the Subject Member will be represented at the hearing;
- whether the Subject Member intend to call any witnesses; and
- whether any special arrangements need to be made.

- 3.7 Councillor Matthews's response to the pre-hearing questionnaire is contained in the letter at Appendix 4. He states that he is not seeking to challenge the contents of the Investigating Officer's report. He accepts that there was an "unintended" breach of the Code of Conduct for which he apologises. He states that he will be attending the hearing. Councillor Matthews has further confirmed orally to Officers that he does not intend to be represented at the hearing, nor will he be calling any witnesses. Save for the personal data referred to earlier in this report which must remain exempt, Councillor Matthews has advised that he does not wish for any part of the Investigating Officer's report or the hearing to be withheld from the public/held in private. The Investigating Officer has also advised that it is not her intention to call any witnesses.

### Procedure for the Hearing

- 3.8 As referred to above, the procedure to be followed at the hearing is attached as Appendix 1 of the report.

### Non-attendance of the Subject Member

- 3.9 SfE guidance is that the Committee may consider the report in the Subject Member's absence if the Subject Member does not attend the hearing. If the Committee is satisfied with the Subject Member's reason(s) for not being able to attend the hearing, it should arrange for the hearing to be held on another date.

### Determining the Complaint

- 3.10 SfE guidance is that the hearing is a formal meeting of the Council and not a court of law. Evidence is not given under oath but the Committee is required to decide factual evidence on the balance of probabilities. The Committee should work in a demonstrably fair, independent and politically impartial way.

### Sanctions

- 3.11 If the Committee finds that a Subject Member has failed to comply with the Code of Conduct the sanctions which it may apply are set out in paragraph 2.
- 3.12 The Adjudication Panel for England has produced advice for its own case tribunals which the SfE suggests should be considered by Standards Committees. This advises that in deciding what action to take, the tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus the action taken by the Committee should be designed both to discourage or prevent the particular Subject Member from any future non-compliance and also to discourage similar action by others. Tribunals should take account of the actual consequences which have followed as a result of the Subject Member's actions while at the same time bearing in mind what the possible consequences might have been even if they did not come about.
- 3.13 SfE guidance provides that when deciding on a sanction the Committee should ensure that it is reasonable and proportionate to the Subject Member's behaviour. Before deciding what sanction to issue, the Committee should consider the following questions, along with any other relevant circumstances:
- What was the Subject Member's intention? Did the Subject Member know that he was failing to follow the Code of Conduct?

- Did the Subject Member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result of failing to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the Subject Member accept they were at fault?
- Did the Subject Member apologise to the relevant people?
- Has the Subject Member previously been warned or reprimanded for similar misconduct?
- Has the Subject Member failed to follow the Code of Conduct before?
- Is the Subject Member likely to do the same thing again?
- How will the sanction be carried out? For example who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a Subject Member has repeatedly or blatantly misused the relevant authority's information technology resources, the Committee may consider withdrawing those resources from the Subject Member.

#### Aggravating and mitigating factors when deciding sanctions

3.14 The Adjudication Panel for England has published guidance on aggravating and mitigating factors it takes into account when assessing an appropriate sanction and these include:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the Code of Conduct, particularly when formed after taking appropriate advice;
- A Member's previous record of good service;
- Substantiated evidence that the Member's actions have been affected by ill-health;
- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the Member;
- Compliance with the Code since the events giving rise to the determination;
- Actions which may have involved a breach of the Code may nevertheless have had some beneficial effect for the public;
- Dishonesty;
- Continuing to deny the facts despite clear contrary evidence;
- Seeking unfairly to blame other people;
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code;

- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

### Decision

- 3.15 The Committee should announce its decision at the end of the hearing and SfE advises that it is good practice to make a short written decision available on the day of the hearing. The Committee must give its full written decision to the relevant parties as soon as possible after the hearing, in most cases this should be within 2 weeks of the hearing. The Committee must arrange for a summary of the decision and reasons for it to be published in at least one newspaper circulating in the area of the authority involved. If the Committee finds that the Subject Member did not fail to follow the Code of Conduct the Subject Member is entitled to decide that no summary of the decision should be passed to local newspapers.

### Customer/Equalities and Diversity Implications

- 3.16 None identified.

## **4. RISK MANAGEMENT**

- 4.1 The risk of negative public perception of the decision making process is the main risk associated with this report. Open and transparent decision making is a basic principle of governance and the Standards Committee has a role to promote high standards of conduct in public life throughout the District whether at Parish or District level.
- 4.2 This risk is being managed as follows:
- Risk Register: *Legal, Equalities and Democratic Services*  
Key Objective Ref No: 2  
Key Objective: *Effective ethical governance*

## **5. APPENDICES**

Appendix 1	Hearing Procedure
Appendix 2	Code of Conduct for Alvechurch Parish Council
Appendix 3	Investigating Officer's report dated 27th June 2011
Appendix 4	Letter from Councillor Matthews dated 29th August 2011

## **6. BACKGROUND PAPERS**

Schedule of Evidence (Appendices A to DDD of Investigating Officer's Report)

## **7. KEY**

N/a

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