

HEARING IN RELATION TO A POSSIBLE BREACH OF THE CODE OF CONDUCT

- **SBE reference number:** 14110.06
- **Date of report:** 17th January 2007
- **Name of member:** Mr W J Smith – Parish Councillor
- **Relevant authority concerned:** Wanborough Parish Council
- **Name of Ethical Standards Officer:** Mr Nick Marcar
- **Name of relevant Monitoring Officer:** Mr Stephen Taylor
- **Name of Investigating officer:** Miss K R Trickey (Foot Anstey Solicitors)
- **Date of the hearing:** 23rd March 2007
- **Names of Standards Committee Hearings Panel members:**

Chairperson: Mr Trevor Davies
Member: Councillor Melanie Duff
Member: Councillor Fay Howard
Member: Mr Paul Morris
Parish Representative: Mr Mike Compton
- **Name of legal adviser to the Hearings Panel:** Mr Stephen Taylor
- **Name of clerk at the hearing:** Miss Sarah Lawrence

Introduction

A meeting of the Standards Committee Hearings Panel ('the Panel') of Swindon Borough Council was convened on 23rd March 2007 to conduct a Hearing of Complaint in respect of an allegation that Mr Smith had breached Wanborough Parish Council's Code of Conduct by either failing to declare an interest, or declaring an interest, but failing to withdraw from meetings during which his planning applications were discussed.

The complaint had been referred by the Standards Board for England to Swindon Borough Council's Monitoring Officer for local investigation and determination. The referral was dealt with in accordance with Statutory Guidance and the Council's own adopted Hearings Procedure.

The Monitoring Officer appointed Miss Karen Tricky of Foot Anstey, Solicitors, as the Investigating Officer and she attended the meeting to present her report.

Mr Smith, a Parish Councillor at Wanborough Parish Council was present at the meeting and elected to present his own case to the Committee. He was supported by Mrs Smith.

The Allegation

A complaint was received by the Standards Board for England on 22nd February 2006 from Ms Kay Lacey with regard to Mr WJ Smith who is a member of Wanborough Parish Council.

The core of the complaint related to meetings which took place on 4th September 2002, 26th January 2004 and 2nd February 2006 at which various applications affecting the land and business at Redlands Farm, Wanborough, were considered.

In particular, the complainant alleged that Mr Smith had a personal and prejudicial interest in the applications, by virtue of him being the owner / occupier of Redlands Farm, and did not leave the meeting room when the matters were discussed. It was alleged that he remained in the room to answer questions on his particular applications, contrary to the Council's Code of Conduct.

In response the pre-hearing questionnaire, Mr Smith had confirmed that he had prejudicial interests in the applications concerned and that he had made the relevant declarations of interest, but that he had stayed in the room as that was the custom and practice of the Parish Council. He had not voted, but did answer questions on the applications at the request of the Chair and specifically on 2nd February following a formal resolution of the Parish Council that 'the Council was happy for him to stay in the room to answer questions only'.

Mr Smith had requested in advance that the hearing be held in private session, but during the pre-hearing stage the Hearings Panel had been unable to identify any grounds under the Local Government Act 1972 on which the public could be excluded, taking into account the 'public interest' test. No further application was made at the meeting by Mr Smith to hold part of the hearing in private.

Witnesses

The Investigator, Miss Karen Tricky, presented her report. She called no witnesses in support of the report as the key facts had not been disputed by Mr Smith.

Mr Smith called the Chair of the Parish Council, Mr Bill Suter, to support his account of the normal operation of Wanborough Parish Council, and the request of the Chair and resolution of the Council that he remain to answer questions on the applications concerned.

Oral and Written Submissions

The Investigating Officer's Case

In accordance with Statutory Guidance and the Council's adopted Hearings Procedure, Miss Karen Tricky of Foot Anstey Solicitors, the appointed Investigating Officer, presented her case:

- The complaint, the subject of the hearing, concerned the allegation that Mr Smith at meetings of the Parish Council on 4th September, 26th January 2004, and 2nd February 2006 had a personal and prejudicial interest in the applications before the Parish Council, by virtue of him being the owner / occupier of Redlands Farm, and remained in the room contrary to the Parish Council's Code of Conduct, in order to answer questions on his particular applications.
- The Investigating Officer considered if the Code applied to the circumstances of the case, if Mr Smith had personal and prejudicial interests and if Mr Smith had declared those interests. The Investigating Officer concluded that:
 - In the three Council meetings concerned, Mr Smith was acting in an official capacity or conducting the business of the Council and therefore the Code clearly applied to Mr Smith.
 - Mr Smith had declared interests at those meetings and although not specified in the minutes as personal and prejudicial, were treated as such by the Chair and Clerk. It was concluded that Mr Smith recognised that he had prejudicial interests. In addition, it was considered that a reasonable and objective observer would consider the interests to be personal, affecting Mr Smith more than anyone else in the area, and to be prejudicial as likely to prejudice his opinion of the matter concerned.
 - It was common practice at Wanborough Parish Council that Members with prejudicial interests did not to leave the room, as

there was not considered to be a suitable place to withdraw to, but drew back from the table and took no part in the decision, unless asked to answer questions put by the Chair. The Investigator stated that these were not valid reasons for ignoring the requirement in the Code for withdrawal following the declaration of a prejudicial interest.

- Mr Smith had prejudicial interests in the planning applications affecting Redlands Farm and in accordance with the common practice had declared those interests at the three meetings when the applications were considered, but had not left the meeting room, which was contrary to Paragraph 10(a) of the Wanborough Parish Council Code of Conduct.
- Training on the Code of Conduct had been made available to Mr Smith during his five years as a Parish Councillor, but he had not taken up any opportunities for training.
- Mr Smith had not sought a dispensation to speak on his applications from the Standards Committee of the Borough Council.

Mr Smith's Case

In accordance with Statutory Guidance and the Council's adopted Hearings Procedure, Mr Smith presented his case and circulated a written statement in response to the Investigators' Report and Presentation. Mr Smith indicated that he did not dispute the facts set out in the report but made the following representations concerning the interpretation of the Code and in respect of mitigation:

- ⌘ Mr Smith apologised and confirmed that he now understood that he should have left the room when his applications came before the Parish Council, and has done so on every occasion since.
- ⌘ Mr Smith confirmed that he was booked to attend a training session to be delivered by the Borough Council's Monitoring Officer on the Code of Conduct in May 2007 and that he understood that all other Members of Wanborough Parish Council would also be attending training.
- ⌘ Mr Smith confirmed that he had declared his interests and took no part in the decision or discussion of any of the applications concerned. He had only stayed to answer questions, but had not influenced the decision. He stated that it was clear from the resolutions of the Parish Council on those occasions that he had not influenced the outcome, as on the first occasion the Parish Council had recommended refusal and on other occasions it had recommended onerous conditions.
- ⌘ Mr Smith stated that he had honestly believed that he was abiding by the Code of Conduct.
- ⌘ Mr Smith stated that he should have understood that the Parish Council could not take a vote to enable him to stay in the room to answer questions on the application on 2nd February 2007, that this was a misguided decision, but had been taken in good faith.
- ⌘ Mr Smith advised that the applications concerned were of a specialist nature, and that he had had a series of face-to-face meetings with the Officers from the Planning Authority to explain the details of the

applications to the Borough Council. The Borough Council had held a public meeting in Wanborough, which was attended by 150 people, to understand the issues. Wanborough Parish Council had wanted to have the benefit of that complex information when making their recommendations to the Planning Authority, but he now understood that this was not the appropriate way to achieve this and apologised.

The Investigating Officer confirmed that she had no questions for Mr Smith and agreed with his statement.

Witness called by the Mr Smith – Mr Bill Suter

- ⌘ Mr Bill Suter confirmed that he was the Chairman of Wanborough Parish Council and had been a Parish Councillor for 10 years.
- ⌘ Mr Suter confirmed that the role of the Parish Council was to comment on applications and make recommendations to the Planning Authority, but that it was not the decision-making body.
- ⌘ Mr Suter stated that Mr Smith has always declared his interests and his presence in the room had not affected the decision of the Parish Council on these applications.
- ⌘ Mr Suter stated that very few applications that come to the Parish Council have the complexity of Mr Smith's applications, and that by staying to answer technical questions, Mr Smith had enabled Wanborough Parish Council to make an informed recommendation. In hindsight Mr Suter stated that Mr Smith might have applied for dispensation to speak on his applications, or alternatively, the Parish Council could have sought expert advice. However, Mr Suter stated that he did not consider that there had been time for the Parish Council to seek such advice.
- ⌘ Mr Suter stated that Mr Smith's actions were not meant to breach the Code of Conduct.
- ⌘ Mr Suter confirmed that the Chair, Vice-Chair, Clerk and other members of Wanborough Parish Council would be attending training on the Code of Conduct in May 2007.

At this point in the proceedings, the Investigating Officer and Panel were given the opportunity to question Mr Bill Suter on the evidence he had given, and received the following responses:

- ⌘ In response to the question from the Investigator as to whether he would try to ensure all Members of the Parish Council attended the training, Mr Suter advised that the Clerk had written to all members and all had confirmed that they would be attending a training session.
- ⌘ In response to a question from the Panel as to whether the Clerk ever advised Members to leave the room or the option of a dispensation, Mr Suter confirmed that the question of whether there are declarations of interests is put at each meeting, that the Clerk and Chair would give advice if asked, but that it was up to the Member to determine if they had prejudicial interests.

- ⌘ In response to a question as to what arrangements had been put in place by the Clerk to advise Members to leave and to put items at the end of the Agenda where there were likely to be declarations, Mr Suter confirmed that at the last meeting such an item was put at the end of the agenda so that the person concerned could declare and leave the meeting.

The Panel's Findings of Fact

Having considered the evidence presented by both parties to the case, the Panel made the following findings of fact:

- Wanborough Parish Council adopted a Code of Conduct for its members on 3rd April 2002.
- Mr Smith is a member of Wanborough Parish Council.
- Mr Smith and his immediate family reside at Redlands Farm, and planning applications have been submitted to Wanborough Parish Council for consideration in respect of the recreational flying part of the business at Redlands Farm, Wanborough.
- Mr Smith was present in an official capacity as a Parish Councillor at the meetings of Wanborough Parish Council on 4th September 2002, 26th January 2004 and 2nd February 2006 when planning applications for Redlands Farm were considered.
- Mr Smith declared interests in the applications at those meetings and these were recorded but it was not specified as to whether they were personal or prejudicial. Mr Smith has confirmed that he understood them to be personal and prejudicial. In addition, the Chair and Clerk had treated the interests as prejudicial.
- Mr Smith has confirmed that his ownership of Redlands and the recreational flying business was generally known in the village and at the Parish Council. In addition, his ownership was included in Mr Smith's Register of Interest (at J1) signed on 3rd July 2002.
- In accordance with the accepted custom and practice of Wanborough Parish Council regarding prejudicial interests, Mr Smith remained in the room during the consideration of his applications, but did not vote.
- In addition, Mr Smith only spoke when asked to do so by the Chair during the consideration of his applications. The Parish Council had voted on 2nd February 2006 that the Mr Smith should stay to answer questions, but this was not normal practice.

- Mr Suter has confirmed the general lack of understanding at the Parish Council of the specific requirement to vacate the room following the declaration of a prejudicial interest.
- Training has been made available by the Borough Council's Monitoring Officer. However, not all Parish Councillors nor the Clerk have attended all and in some cases any of the training. Mr Smith has confirmed that he has not attended any training.
- No applications for dispensation had been made to the Borough Council's Standards Committee by Councillor Smith or granted to him to cover the declarations of interests connected with his planning applications.

The Panel's Decision on whether the Code was breached

Having considered the evidence presented by the Investigating Officer and by Mr Smith:

- The Panel found that Mr Smith breached Wanborough Parish Council's Code of Conduct by failing to withdraw from the room as required by paragraph 10, during the Parish Council's discussion and determination of applications in which he had personal and prejudicial interests at meetings on 4th September 2002, 26th January 2004 and 2nd February 2006.
- The Panel noted that Mr Smith has admitted to a breach of the Code of Conduct and apologised.

Having determined that a Breach of the Code of Conduct had occurred the Panel invited any additional representations from the Investigator, Mr Smith and the witness Mr Suter as to the recommendations of the Panel and sanctions to be imposed, as follows:

The Investigator made the following points:

- ⌘ Mr Smith was not the only member of Wanborough Parish Council to have understood that he was not required to leave the room following the prejudicial interest, and the Clerk did not advise otherwise.
- ⌘ Mr Smith had accepted that he has breached the Code and has apologised, and it is considered that it is due to a lack of training and understanding of the Code that a Breach has resulted.
- ⌘ That it is recommended that Mr Smith attends training and only if that training is not carried out within a set period, that a three month suspension should apply to recognise the seriousness of not withdrawing.
- ⌘ That it be recommended that all Members of the Parish Council and Clerk also attend training.

Mr Smith responded that he accepted that the Wanborough Parish Council's custom and practice breached the Code, but this was done in good faith. He

considered that the suggested 3 months suspension was a long time, but confirmed that he was committed to attending the training.

Mr Suter, in response to a question from the Panel, agreed that he would welcome the opportunity for the Monitoring Officer and an Independent Member of the Standards Committee to meet all Members of Wanborough Parish Council to discuss issues arising from this case.

The Panel withdrew from the meeting to consider its recommendations and returned and announced its decision.

Sanction:-

- The Panel determined that Mr Smith be censured in relation to the failure to leaving the room following the declaration of a prejudicial interest, in accordance with paragraph 10 (a) of the Wanborough Parish Council Code of Conduct.
- The Panel determined that Mr Smith must receive appropriate training, to the satisfaction of the Monitoring Officer, within 3 months of the date of this hearing.
- The Panel determined that if Mr Smith has not received the appropriate training as set out above by 22nd June 2007, he shall be suspended as a Parish Councillor for a period of 1 month from 23rd June 2007 to 22nd July 2007.

Recommendation: -

In addition to its findings and formal sanction, the Panel made the following recommendations: -

- That all Wanborough Parish Councillors should attend training on the Code of Conduct within the next 3 months.
- That the Clerk to Wanborough Parish Council should undertake training on the Code of Conduct, and receive a briefing from the Monitoring Officer as to her roles and responsibilities, within the next 3 months.
- That the Monitoring Officer should make available to Parish Council Chairs and Vice-Chairs any training sessions on chairing of meetings that are arranged for Borough Councillors.
- That Wanborough Parish Council be requested to invite the Monitoring Officer and an Independent Member of the Standards Committee to attend a future meeting of the Parish Council to discuss any issues arising from this matter.

- That the Monitoring Officer circulate a summary of this matter, together with this decision, to all Parish Councils in the Borough of Swindon and ask the Clerks to confirm that they are satisfied that their Parish Council is operating in accordance with the Code of Conduct.

Right To Appeal

The Council's Monitoring Officer advised Mr Smith that, if he chose to, he was able to appeal against the findings of the Panel by applying to the President of the Adjudication Panel for England. The application must be made within 21 days of receiving notice of the Panel's decision and must outline the reasons for his appeal and whether he would want the appeal to be carried out in writing or in person.