
TOWN & PARISH COUNCIL STANDARDS SUB-COMMITTEE22 SEPTEMBER 2014

Present:- District Councillors P Honeywood, F Nicholls and J White; Town/Parish Councillors J Halls and R Taylor

Also Present:- Mr J Wolton (Independent Person)

In Attendance:- Monitoring Officer (Lisa Hastings) and Senior Democratic Services Officer (Ian Ford)

Also in Attendance:- Tim Earl (Head of Legal Services and Deputy Monitoring Officer, Suffolk County Council) [Investigating Officer] and Debbie Bunce (Legal Administration and Information Officer – Tendring District Council)

(9.35 a.m. - 10.47 a.m.)

1.. ELECTION OF CHAIRMAN OF THE SUB-COMMITTEE

It was moved by District Councillor F Nicholls, seconded by District Councillor J White and RESOLVED that District Councillor P Honeywood be elected Chairman of the Sub-Committee for this meeting.

2. APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Parish Councillor Peter Cannons.

3. DECLARATIONS OF INTEREST

There were no declarations of interest recorded at this time.

4. HEARING TO DETERMINE OUTCOME OF EXTERNAL INVESTIGATION – FAILURE TO COMPLY WITH THE MEMBERS’ CODE OF CONDUCT

It was reported that a complaint had been received in December 2013 from a member of the public, Mrs Lee, regarding the actions of an Alresford Parish Councillor, Simon Carlsson-Browne. The complaint was summarised as a lack of consultation and declaration of interests in relation to allocation of sites within Tendring District Council’s (TDC) draft Local Plan in that the public had not been made aware of the St. Andrew’s Close site option which it was alleged had been suppressed from the consultation. Further it had been alleged that the use of Cockaynes Lane had not been communicated and that Parish Councillor Carlsson-Browne lived in St. Andrew’s Close. It had also been alleged that as the Parish Councillor Carlsson-Browne was the Chairman of Alresford Parish Council’s (APC) Planning Committee he had a responsibility to ensure that a proper consultation was undertaken with residents on the content of TDC’s draft Local Plan.

The Sub-Committee was made aware that Parish Councillor Carlsson-Browne had responded to the complaint by stating that APC’s Planning Committee meetings had been held in November and December 2012, the first being inquorate and that therefore a second meeting had been called to ratify the decision taken in November 2012 and to approve APC’s submission to TDC. He had further stated that both meetings had been properly advertised.

The Sub-Committee was advised that after considering responses from both parties, the

District Council's Monitoring Officer had decided on 9 January 2014 that it was reasonable and appropriate that this matter merited further investigation. Both parties had been informed of that decision and that TDC had appointed Tim Earl, Head of Legal Services at Suffolk County Council to undertake the investigation on behalf of the Monitoring Officer. Mr Earl's final report had been received on 29 July 2014, which concluded that there was evidence that the Members' Code of Conduct had been breached. Mr Earl's comprehensive report was before the Sub-Committee as Appendix 3 to the Report of the Monitoring Officer.

It was reported that in accordance with the Complaints Procedure the Monitoring Officer had decided that this matter should be reported to this Sub-Committee in order to conduct a hearing before deciding whether Parish Councillor Carlsson-Browne had failed to comply with the Code of Conduct and, if so, whether to take any action.

The Sub-Committee was reminded that in March 2014, TDC's Standards Committee had approved the Hearing Procedure to be followed by both that Committee and this Sub-Committee when holding a hearing. Both parties had been provided with a copy of the Mr Earl's report and the Hearing Procedure before the Sub-Committee. The Procedure was before the Sub-Committee as Appendix 4 to the Report of the Monitoring Officer.

It was reported that the Monitoring Officer had consulted with TDC's Independent Person (Mr J Wolton) which had resulted as follows:

"The Independent Person has considered the report of the Investigator and found the same to demonstrate a thorough investigation has been undertaken and there is no reason not to conclude with the findings that breaches of the Code of Conduct have occurred. No representation was received in respect of the sanctions however, the Independent Person believes it is necessary for the Parish Council to consider how the Local Plan and impact on Alresford can be moved forward, and drawing a line in the sand and learning from the lessons of the last 12 months. It is understood that the draft Local Plan still requires some decisions in respect of Alresford and proper involvement of all parties is essential."

The Sub-Committee was informed that the Monitoring Officer had agreed with Mr Earl's conclusion that Parish Councillor Simon Carlsson-Browne had failed to comply with the Members' Code of Conduct (as detailed in paragraphs 8.35 to 8.66 of the Investigation Report).

A summary of the findings post July 2012, was submitted as follows:

- i. Has there been any failure to disclose or act upon a non-pecuniary interest?
 - No (paragraphs 8.35 and 8.36)
- ii. Has there been a failure to disclose or act upon a pecuniary interest?
 - Yes and No;
 - The failure to disclose a DPI until October 2012 is a breach of the obligation to disclose (paragraph 8.41);
 - There was no failure to act on a DPI (paragraphs 8.44 and 8.45).
- iii. Has there been any other breach of the Code or of the 7 principles of Public Life?
 - a. Did SCB mislead fellow councillors or members of the public, whether actively or by omission?
 - Yes (paragraphs 8.47, 8.50, 8.54, 8.56, 8.58, 8.60, 8.61 and 8.62);
 - There was no evidence that promises to contact TDC were carried out;
 - It took a reminder from TDC to resurrect due consideration of the Local Plan;
 - The draft submission prepared was wholly inadequate and there is no evidence it was circulated at the meeting;

- Proper discussions on alternative sites did not take place and therefore, not all options were considered by the Committee;
- Councillor Carlsson-Browne was not up to date with the current position regarding all the sites;
- Reasons given for past decisions were not relevant;
- Relying on information he knew to be wrong; and
- Recklessly or deliberately providing flawed information to TDC and the public to justify and seek to prevent proper scrutiny of earlier decision making.
- Breach of multiple elements of the code including Selflessness, Honesty and Integrity, Openness, Objectivity and Leadership.

b. Did SCB seek to mislead or improperly influence officers of TDC?

- No (paragraph 8.65)

The Sub-Committee was advised that it must reach its decision after following the Hearing Procedure and after considering the comments from the Independent Person and that if its decision was contrary to the recommendation from both the External Investigator and the Monitoring Officer, the detailed reasons for that decision must be recorded and published within the Decision Notice.

The Sub-Committee was further advised that if it agreed with the recommendations of the External Investigator and the Monitoring Officer it must consider what action to take with regard to the available sanctions. The Additional Observations made by the External Investigator at paragraphs 9.1 to 9.9 to his report were felt to be relevant in that regard.

The Monitoring Officer referred to correspondence that Parish Councillor Simon Carlsson-Browne had sent to Mr Earl in which he had intimated that he would resign from APC. The Monitoring Officer informed the Sub-Committee that she had contacted Parish Councillor Simon Carlsson-Browne and the Interim Clerk of APC to confirm this, however no reply had been received from Parish Councillor Simon Carlsson-Browne and the APC's Interim Clerk had stated that he not received a resignation letter. However, the Monitoring Officer was able to inform the Sub-Committee that Parish Councillor Simon Carlsson-Browne had not attended any APC meeting for over six months and that therefore he was disqualified from the office of a Parish Councillor for Alresford under Section 85 of the Local Government Act 1972. She stated that therefore there would be no need to formalise sanctions in that case but it would still be appropriate to give an indication as to what sanctions would have been applied in the light of the fact that Simon Carlsson-Browne could stand for the District or a Parish Council in the future.

The Chairman made opening remarks and explained to all persons present that:

(i) The hearing had been convened in accordance with the Council's Complaints Procedure and that an investigation had been conducted, the outcome of which was that it was considered there was evidence of a failure to comply with the Members' Code of Conduct;

(ii) The Parties had been aware of the content of the Investigator's Report and that this had been circulated to all Members of the Sub-Committee;

(iii) The Monitoring Officer had referred the matter for a hearing either because upon conclusion of the investigation, informal resolution had not been successful or it was not appropriate to do so, for the reasons given within her report; and

(iv) The purpose of the Hearing was to consider the Investigators Report, evidence in support and representations from the Parties. If the Sub-Committee departed from the recommendation from either the Investigating Officer and/or the Monitoring Officer detailed reasons would be required to be published in the Decision Notice.

The Members of the Sub-Committee, the Investigating Officer, the Independent Person

and the Monitoring Officer then formally introduced themselves. The Monitoring Officer highlighted that the Town and Parish Councillors were representatives and non-voting members of the Sub-Committee, however, their views had to be taken into account by the District Councillors when making their decision.

Mr Earl then summarised his report, agreed with the Monitoring Officer's summary highlighting paragraphs 8.56 to 8.62 of his report and read out to the Sub-Committee the contents of correspondence that he had received from Simon Carlsson-Browne following the finalisation of his report, which in his view did not indicate that Simon Carlsson-Browne had accepted the contents of his report nor had challenged any of its contents. Mr Earl also made reference to an email received from Simon Carlsson-Browne that had contained a profanity which had been completely unacceptable and inappropriate regardless of whether the sending of such an email had not been intended.

District Councillor Nicholls asked Mr Earl if he had found Simon Carlsson-Browne to be co-operative during his investigations. Mr Earl stated that Simon Carlsson-Browne had fully answered his questions during a lengthy set of interviews but that during subsequent correspondence he had found Simon Carlsson-Browne to be unhelpful and slow in responding.

Parish Councillor Taylor stated that he was distressed by the lack of support given to Simon Carlsson-Browne by his fellow APC Members and its then Clerk given Simon Carlsson-Browne's difficult personal circumstances at that time. He felt that a way needed to be found to make Clerks aware of their requirement to appropriately advise their Members. He stated that, in his opinion, many Parish Councils were struggling to understand the new conduct regime and were finding it particularly confusing with regard to declaring interests. Mr Earl, whilst stating that this was probably a matter for TDC's Monitoring Officer to consider, agreed that the new legislation was difficult to understand and that Parish Clerks needed to be robust in dealing with their Parish Members. He felt that the then APC Clerk had not given the appropriate support to Simon Carlsson-Browne.

The Sub-Committee, then retired to deliberate and reach its decision. The Monitoring Officer and the Senior Democratic Services Officer also accompanied them to advise on any legal points raised and to record the decision.

Following such deliberations the hearing resumed.

The Chairman asked Mr Earl if APC's Register of Interests was now on its website. Mr Earl responded that he had accessed that Register via TDC's own website but stated that he believed that they were on APC's website as well. Parish Councillor Ernie Osborne, Chairman of APC, who was present in the public gallery confirmed that this was the case.

RESOLVED that the unanimous decision of the Sub-Committee be as follows:-

"That the Sub-Committee agrees that Parish Councillor Simon Carlsson-Browne has failed to comply with the Members' Code of Conduct and that therefore the following action should now be taken:

- (1) That the Sub-Committee's findings in respect of Parish Councillor Simon Carlsson-Browne's conduct be published on Tendring District Council's and Alresford Parish Council's websites;
- (2) That the Sub-Committee's findings be reported to Alresford Parish Council for its information;
- (3) That Alresford Parish Council be advised that if Simon Carlsson-Browne was still a serving member of Alresford Parish Council the Sub-Committee would have recommended that he be removed from its Planning Committee; and
- (4) That Tendring District Council's Monitoring Officer is instructed to write to all Clerks

(courtesy copy to the Chairmen) of Town/Parish Councils in the District to invite the said Chairmen and Clerks to attend a training session on the new Members' Code of Conduct and specifically on the disclosure of interests."

The Chairman thanked Tim Earl and Lisa Hastings for all their hard work and thanked Members for their attendance.

5. MEMBERS' PLANNING CODE/PROTOCOL

There was submitted a report (A.2) by the Monitoring Officer, which sought approval of the Model Council Members' Planning Code/Protocol produced by Lawyers in Local Government (2014).

It was reported that, as part of the Council's Monitoring Officer's fundamental review of Codes and Protocols adopted by Tendring District Council in respect of decision making, the Planning Matters; Local Protocol for Councillors (third edition – March 2011) had been reviewed with consideration given to recommended good practice and national guidance.

The Monitoring Officer informed the Committee that rather than simply update the existing Local Protocol adopted by the Council in 2011, she had felt that it would be more appropriate to propose a new document, which was based on the Model Council Members' Planning Code or Protocol produced by the national body "Lawyers in Local Government (LLG)". That Model Code had been produced in accordance with the changes to the ethical framework in 2012 and guidance issued by the DCLG. Members were advised that the Model Code/Protocol could be adapted to cover and include the specific requirements of Tendring District Council.

The Monitoring Officer also informed the Committee that consultation had taken place with the Head of Planning Services and it was proposed that the following provisions of the current "Planning Matters: Local Protocol for Councillors (March 2011) be incorporated into the Model Protocol:

- Provisions relating to Site Visits contained at paragraphs 9.6 and 9.8, concerning how the Planning Committee Chairman will open the formal site visit and the procedure to be followed thereafter, including the Planning Committee members staying together as a Group (this would be included within section 7 of the Model Protocol); and
- The training provisions set out in Section 14 to include the mandatory training expectations on Planning Committee and Local Plan Committee members and named substitutes (this would be included within Section 11 of the Model Protocol).

In addition, it was suggested that the Committee recommend to Council that the document, once approved, be included within Part 6 of the Council's Constitution, relating to Codes and Protocols.

The proposed Planning Code/Protocol was before the Committee as the Appendix to item A.2 of the Report of the Monitoring Officer.

Having considered the proposed Planning Code/Protocol:

It was moved by Councillor Johnson, seconded by Councillor P B Honeywood and:

RESOLVED that the LLG Model Council Members' Planning Protocol, as amended at the meeting and as set out in the Appendix to these Minutes, be approved and adopted.

RECOMMENDED TO COUNCIL that the LLG Model Council Members' Planning Protocol be included within Part 6 (Codes and Protocols) of the Council's Constitution.

6. ESSEX POLICE AND MONITORING OFFICER PROTOCOL

There was submitted a report (A.3) by the Monitoring Officer, which informed the Committee of the outcome of negotiations between Essex Police and Monitoring Officers across Essex to agree a Protocol which would apply County-wide, on dealing with potential breaches of the Disclosable Pecuniary Interest requirements.

The Monitoring Officer reminded the Committee that, under Section 34 of the Localism Act 2011, the Government had introduced summary offences, relating to elected and co-opted Councillors' failure to disclose / register and participate in a meeting where they had certain interests (termed Disclosable Pecuniary Interests –“DPI”). Those were detailed in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

As the prosecution of such offences would be by the Police (by virtue of Section 34(5) of the Localism Act 2011), Essex Police and Essex Local Authority Monitoring Officers had agreed a Protocol relating to the reporting of / information sharing for potential criminal offences arising under Section 34 Localism Act 2011.

The Protocol was before the Committee as the Appendix to item A.3 of the Report of the Monitoring Officer.

It was moved by Councillor P B Honeywood, seconded by Councillor Nicholls and:

RESOLVED that the contents of the report and the Essex Police and Essex Local Authority Monitoring Officers Protocol be noted.

7. ORAL REPORT FROM THE INDEPENDENT PERSON (JOHN WOLTON) ON HIS RECENT ATTENDANCE AT AN EXTERNAL IP WORKSHOP

The Committee received an oral report from the Independent Person (IP) (John Wolton) on his recent attendance at an external IP workshop.

A copy of Mr Wolton's notes was circulated to the Committee.

8. UPDATES FROM THE MONITORING OFFICER AND/OR DISCUSSION TOPICS

(1) Quarterly Update on Complaints etc.

The Monitoring Officer circulated to the Committee a written quarterly update, the contents of which, following discussion, was noted.

(2) Committee on Standards in Public Life (CSPL) Guidance Document

The Committee discussed the contents of the CSPL Guidance Document “Ethics in Practice: Promoting Ethical Conduct in Public Life” (July 2014).

The Monitoring Officer confirmed that, as part of the Induction Training Day for District Councillors elected in May 2015, she would be providing training on conduct and standards matters.

(3) Date of the Next Meeting of the Committee

Councillor Hawkins asked if the date of the next meeting of the Committee, which was currently scheduled for Wednesday 18 March 2015, could be changed as he would be

unable to make that date.

The Chairman indicated that he would be happy to consider that request and would consult with Officers as to possible alternative dates.

9. EXCLUSION OF PRESS AND PUBLIC

RESOLVED that, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of Agenda Item 9 on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act.

Chairman