City of York Council | Committee Minutes

Meeting	Joint Standards Committee Hearings Sub-Committee
Date	11 October 2016
Present	Councillors Cannon, Perrett and Hayes
In attendance	Mr Laverick – Independent Person Mr Docherty – Monitoring Officer Mr and Mrs Harrison – Complainants Councillor Marquis – Chair of Strensall with Towthorpe Parish Council Councillor Chambers – Strensall with Towthorpe Parish Councillor Ms Nunn – Clerk to Strensall with Towthorpe Parish Council

1. Declarations of Interest

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they may have in respect of business on the agenda. None were declared.

2. Exclusion of Press and Public

Members gave consideration as to whether the public and press should be excluded from the meeting during consideration of annexes 2, 4, 5, 6, 7, 8, 9, 10 and 11 of agenda item 3 on the grounds that they contain information relating to individuals and which are likely to reveal the identity of individuals.

Members took into consideration the views that had been put forward by the complainants and the subject Members.

Resolved: (i) That the report and annexes be made publically available on the Council's website.

(ii) That the hearing be held in public but the committee's deliberations be held in private.

3. Complaint against Members of Strensall with Towthorpe Parish Council

Consideration was given to a complaint brought by Graham and Mandy Harrison against twelve current and one former member of Strensall with Towthorpe Parish Council. The complaint related to the behaviour of the following Parish Councillors when dealing with Mr and Mrs Harrison's application for permission to have services cross land which the Parish Council leases from City of York Council:

Councillor Keith Marquis (Chair of the Parish Council)
Councillor Dennis Baxter
Councillor Duncan Hill
Councillor Tony Fisher
Councillor Chris Chambers
Councillor John Chapman
Councillor Lawrence Mattinson
Councillor Kevin Ogilvy
Councillor Tracey Flannery
Councillor Geoffrey Harvey-Walker
Councillor Judy Smith
Councillor Ralph Plant
Former Councillor Cath Edwards

The matter had been referred to the Hearings Sub-Committee for determination following an investigation.

Introductions were carried and the procedure for the hearing was explained.

Determining factual disputes

The Panel confirmed that they had read the investigator's report and the written submissions from the complainants and the Parish Councillors.

The Panel noted that some concerns had been raised by the subject members regarding the investigating officer's report but that other facts were agreed by both parties.

The Panel gave consideration to the following allegations of breaches of the Code of Conduct:

(i) Use of the words “profit through deception” in a letter from the Chairman of the Parish Council to Hague and Dixon Solicitors

(ii) Councillor Plant failing to declare an interest in Mr and Mrs Harrison’s matters at the meeting on 11 August 2015

(iii) Bias and no lawful reason to refuse request, evidenced by comments made at the Parish Council meeting on 13 October 2015 in relation to a similar request for services made by Transcore in respect of land known as Sevenoaks.

(iv) Bias shown in a letter of 9 September 2015 from the Parish Council to Mr and Mrs Harrison.

The Panel asked questions of and heard representations from the parties.

[The meeting was adjourned at 11.10am and reconvened at 11.40am].

Following the adjournment the Panel asked further questions of the parties before adjourning to consider their decision.

[The Parish Councillors and Clerk to the Parish Council withdrew from the meeting at 12.25pm]

Panel’s Findings

Having considered the written documentation and the verbal representations made at the meeting, the Panel

Resolved:

(i) That the failure of Councillor Plant to declare an interest at the meeting on 11 August 2015 was a breach of the Code of Conduct.

Reason: The decision might reasonably be regarded as affecting Councillor Plant’s well-being as it related to the granting of access for services on a development on the street where he lived. The Panel noted that Councillor Plant had accepted that he had failed to declare an

interest. The Panel did not regard the interest as “prejudicial” under the Council’s Code of Conduct. The Panel also noted that Councillor Plant did not speak on the item.

(ii) That the wording “profit through deception” in the letter of 11 August 2015 was a breach of the Code of Conduct by Councillors Marquis, Plant, Baxter, Hill, Fisher, Mattinson, Ogilvy and Smith.

Reason: A reasonable person would find such a comment seriously disrespectful. A serious allegation of this nature requires justification by clear evidence which had not been produced and the sending of this letter to a third party could and has improperly conferred a disadvantage to Mr and Mrs Harrison.

(iii) That, in respect of the letter of 9 September 2015, the Committee did not consider that the letter itself merited serious criticism. The Panel did, however, note that part of the letter had caused Mrs Harrison particular upset. The Parish Council should therefore reflect on whether it wished to acknowledge and express some regret for the inadvertent upset that had been caused.

Reason: In recognition of the upset that the letter had caused to Mr and Mrs Harrison.

(iv) That, in respect of the allegation that there had been bias and no lawful reason to refuse the request, the Panel believed that the decisions at the three Parish Council meetings had been based on their animus towards Mr and Mrs Harrison and had improperly conferred a disadvantage on them which was in breach of the Code of Conduct:

Councillors Marquis, Plant, Chapman, Chambers, Harvey-Walker, Baxter, Smith, Flannery, and former Councillor Edwards were in breach on 9 June.

Councillors Marquis, Plant, Baxter, Hill, Fisher, Mattinson, Ogilvy and Smith were in breach on 11 August.

Councillors Marquis, Plant, Baxter, Hill, Fisher, Chambers, Chapman, Mattinson, Ogilvy and Flannery were in breach on 9 September.

Reasons: The Panel were not persuaded that the request had been refused on proper grounds.

[The complainants, the Parish Councillors and the Clerk to the Parish Council rejoined the meeting at 12.55pm]

The Parish Councillors and Clerk to the Parish Council were informed of the Panel's decisions. They were invited to return to the meeting at 2.00pm to make representations regarding sanctions.

[The meeting was adjourned at 1.10pm and reconvened at 2.00pm]

Determining Sanctions

The parties were informed of the sanctions that were available to the Panel and invited to make representations as to what sanctions they believed to be appropriate. It was noted that the Panel's findings would be reported to each member of the Parish Council, the Clerk to the Parish Council and to the complainants.

The parties made representations. Councillor Chambers referred to a complaint that he had lodged about the investigation.

The parties left allowing the Panel to deliberate.

[The complainants, the Parish Councillors and the Clerk to the Parish Council withdrew from the meeting at 2.35pm]

The Panel recorded their view that all parties had been offered sufficient opportunity to present their case.

The Panel gave consideration to the sanctions to be imposed in response to the breaches of the Code of Conduct.

Resolved: (i) That, in respect of Councillor Plant's failure to declare an interest at the meeting on 11 August 2015, no formal sanction be applied.

The committee did not consider this to be the most serious of breaches. The Panel did, however, recommend that Councillors be reminded to take care when dealing with issues relating to near neighbours.

(ii) That, in respect of the Panel's findings that Councillors have treated Mr and Mrs Harrison with disrespect and have improperly conferred a disadvantage on them, each Councillor concerned be formally censured.

(iii) That a copy of the Panel's decision notice be appended to the minutes of the meeting.

(iv) That the Panel was pleased to note some acknowledgement from the Parish representatives that this matter had not been handled well and recorded their view that the Parish Council may wish to consider issuing an apology.

Councillor Perrett, Chair
[The meeting started at 10.20 am and finished at 2.45 pm].

City Of York Council

Standards Sub Committee

11th October 2016

DECISION NOTICE

IN ATTENDANCE:

Members of Sub Committee:

Cllr. C. Perrett (Parish Member and Chair)

Cllr. J. Hayes

Cllr. M. Cannon

Advisers to the Sub Committee

Mr. D. Laverick – Independent person

Mr. A. Docherty – Monitoring Officer

Ms. J. Carr – Democracy Officer

Complainants

Mrs. M. Harrison

Mr. G. Harrison

Parish Council representatives

Councillor Keith Marquis – Chair of the Parish Council

Councillor Chris Chambers

Mrs. Susan Nunn – Clerk to the Parish Council

1. Background

1.1. The Sub Committee was constituted in accordance with procedures approved by the City of York Council's Joint Standards Committee to consider complaints from Mr. and Mrs. Harrison in relation to the conduct of members and one former member of the Strensall with Towthorpe Parish Council.

1.2. The Sub Committee had the benefit of a report from Rachel McKevitt (a solicitor who had independently investigated the complaints) and also written representations from the parties. Mr. and Mrs. Harrison attended the hearing. Councillors Marquis and Chambers along with Mrs. Susan Nunn also attended as representatives of the Parish Council. Other Members of the Council chose not to attend, as is their right. We are satisfied that all parties to this complaint have had sufficient opportunity to state their case.

2. History to the Complaint

2.1. There is a reasonably long history to this complaint which is set out in the papers we have read and was discussed at the hearing. We would summarise the key background facts as follows.

2.2. Mr. and Mrs. Harrison own the property in Strensall in which they live. Between that property and the highway there is a strip of land owned by the City of York Council but which has been leased to the Parish Council since 1996.

2.3. In 2007 the Harrisons obtained permission from the City of York Council to construct a vehicle crossing over the land. As the land was the subject of a long lease to the Parish Council, their approval was also required but it was not obtained. There was a difference of views as to why that might have been. Mrs. Nunn told us that she thought the Harrisons had misinterpreted the permission they received from the City Council. The view of Mr. and Mrs. Harrison, as set out in correspondence they submitted with the complaint, is that they tried to obtain the relevant permissions and they and others were not aware of the Parish

Council's interest. It is not necessary for us to reach a view on how it came to be that the necessary consent was not obtained but we note that there appears to be no suggestion of any bad faith on the part of Mr. and Mrs. Harrison.

2.4. The access way then began to be constructed. This led to a long dispute with the Parish Council. This dispute was resolved in December 2011 when the Parish Council agreed to grant an easement for pedestrian and vehicular access across the leased land.

2.5. For reasons which it was unnecessary for us to explore, it took two years for the formal legal documents to be completed. They were finally completed in August 2013.

2.6. In December 2013 the Harrisons submitted an application for outline planning permission for a dwelling in their garden. Access would be obtained through the new access way. Planning permission for a dwelling was granted in April 2014.

2.7. Subsequently solicitors acting for the proposed purchasers of the building plot sought agreement from the Parish Council for the running of services across the new access way to service the proposed dwelling. The Parish Council refused that request at their meeting on 11th August 2015.

3. The Standards complaint

3.1 Mr. and Mrs. Harrison raise a number of issues in their complaint. We have identified four key areas largely in line with those identified in the investigator's report.

3.2 Councillor Plant's alleged failure to declare an interest

Mr and Mrs Harrison complained that Cllr. Plant was a signatory to the lease between City of York Council and the Parish Council. We confirm that this did not create an interest which he would have needed to declare. They also complained that he failed to declare an interest at the Parish Council meeting on 11th August 2015. We have been told that Cllr. Plant lives on the same street and opposite, or almost opposite, the Harrisons.

3.2 Cllr. Plant has said that he does not know the Harrisons and did not speak at the meeting in relation to the item affecting their property. He did vote on the matter but that did not affect the result as the decision was unanimous. On other occasions Cllr. Plant has declared an interest in matters relating to the Harrisons' property.

3.3 Cllr. Plant was unable to attend the hearing but he made written submissions to the Standards Sub Committee and confirms that he accepts that he should have declared an interest at the meeting on 11th August 2015.

3.4 The Parish Council representatives who attended the hearing expressed an opinion that Cllr. Plant did not have an interest to declare.

3.5 The Parish Council's code of conduct requires interest to be declared in a number of circumstances but of specific relevance to this case is paragraph 1(d) which can be summarised as saying that a member has a personal interest in business where a decision in relation to that business might reasonably be regarded as affecting the Councillor's well being or financial position to a greater extent than the majority of other inhabitants of the area.

3.6 When a Councillor has a personal interest in business being discussed the Council's code says that this interest must be declared.

3.7 The investigating officer says in her report:

"*A decision such as granting access for services on a development on land on the street where Councillor Plant lives could, in my view, affect Councillor Plant's well-being and as such I find that Councillor Plant's failure to declare an interest is a breach of the Code of Conduct***."**

3.8 We agree with that statement of the Investigating Officer. We do not, however, consider this to be the most serious of breaches. We have seen no evidence to suggest that the interest would have been regarded as "prejudicial" under the Council's code. We accept that Cllr. Plant did not speak on the item (although the Council's code would have allowed him speak and vote after

declaring his interest). We note that Cllr. Plant has declared an interest on other occasions.

3.9 In those circumstances no sanction is required but we would remind Councillors to take care when dealing with issues relating to near neighbours.

4. Letter of the 11th August 2016

4.1 Following the meeting of the 11th August (when the minutes record a letter was approved for signature by the Chairman) a letter was sent to the solicitors acting for a proposed purchaser of the Harrison's Property. It says that the Parish Council:

"remains adamant that, if this were agreed, the vendors would profit through deception"

4. A subsequent letter of the 9th September 2015 says that "the views expressed in the (earlier) letter were those of the entire Parish Council".

4.3 To allege that someone is guilty of attempting to profit through deception is a very serious matter and we asked the Parish representatives for their explanation as to why those words were used.

4.4 We were told that a number of draft letters had been prepared reflecting different possible outcomes and the Parish Council approved the particular version to be sent out.

4.5 Although the Parish Council's representatives stated that the letter might have been badly worded and breached the code of conduct the Parish Council was still of the view that deception had taken place. They said that during a meeting in 2011 Mr. and Mrs. Harrison had denied that the second access way was to enable a house to be built on the land. They said this happened twice. The view of the Parish Council's representatives was that this was deception.

4.6 The Harrisons were asked about when they had decided to put in the application. They indicated that they decided to try to create a

building plot only after they had obtained the deed of grant. They said that, had they wished to do this before that time, then they would have asked for a right of way for services alongside the pedestrian and vehicle right of way. They pointed out that discussions over the access way had been going on for a very long time. They also described their changed family circumstances which they said prompted them to decide to try to create and sell a building plot.

4.7 The Harrisons were asked about the relatively short time period between the deed of grant being finalised and the planning application being put in. Planning applications often take time to prepare and it was suggested to the Harrisons that this might indicate that, at least by August 2013, they had some idea that they were intending to create a building plot. The Harrisons denied this pointing out that an outline planning application requires limited detail and saying that the plans were drawn up by a friend.

4.8 In our view a reasonable person would regard the use of the words "profit through deception" as seriously disrespectful. It would require clear evidence before any such comment could be justified. The evidence does not justify it. We further take the view that putting this comment in a letter to a third party has improperly conferred a disadvantage on the Harrisons. We therefore find Councillors Marquis, Plant, Baxter, Hill, Fisher, Mattinson, Ogilvy and Smith to be in breach of the code of conduct.

5. Letter of the 9th September 2015

5.1 Mr. and Mrs. Harrison's complaint centres on the wording of this letter. Our view is that the letter itself does not merit serious criticism. It is obvious though that part of the letter has caused Mrs. Harrison particular upset and Mr. and Mrs. Harrison raised this with us specifically at the hearing.

5.2 While we find that the letter itself does not breach the code of conduct the Parish Council may wish to reflect on whether it wishes to acknowledge and express some regret for the inadvertent upset that has been caused.

6. Bias and no lawful reason to refuse the request

6.1 The final paragraphs though of the letter of 9th September 2015 do concern us. They say:

"The Parish Council, with the support of the City of York Council, are not prepared to permit any Deed of Easement to allow you to profit from the erection of a new property, accessed in this way. The Parish Council feel that you misled them in order to achieve your wish to profit from providing a building plot made accessible by the second structure.

This is the stance taken by the Parish Council who now consider this matter is closed".

6.2 The decision to refuse the Harrisons' request had been made at a meeting on 9th June 2015, confirmed on the 11th August and further confirmed on the 9th September. We were not provided with any evidence that the City Council's position on the deed was linked to any profit that might arise to the Harrisons.

6.3 Cllr. Marquis told us that the refusal of permission was designed to protect the green belt. The Harrisons' house is not in the land treated as green belt in Strensall but is close to it. We were told that the Parish Council was concerned about the precedent effect this would have. We had some difficulties with this.

- The effect on the green belt is not mentioned in either the letter of the 11th August or that of the 9th September. If this were the true reason for refusal then it is difficult to see how the letters meet the principles underpinning the code of conduct including those of openness or honesty.

- The Parish Council objected to the outline planning application but not on the grounds of any impact on the green belt. Cllr. Marquis said that because the Harrison's house was not in the green belt this would not have been a valid planning objection. However, it seemed to us that if the "precedent" argument had validity, it must do so as a planning argument.

- At their meeting on 13th October 2015 the Parish Council approved a request from Transcore to put services across the leased land although this has not progressed because of a City Council objection. The minutes record: “the parish council viewed each request as a separate item and this would in no way set a precedent for any other property”. Cllr. Chambers, who chaired that meeting, was unable to help us understand why the Transcore request would not set a precedent but the Harrisons’ would.

6.4 In our view the decisions at the three Parish Council meetings were based on their animus towards the Harrisons and improperly conferred a disadvantage on them in breach of the code of conduct.

Councillors Marquis, Plant, Chapman, Chambers, Harvey-Walker, Baxter, Smith, Flannery, and former Councillor Edwards were in breach on the 9th June.

Councillors Marquis, Plant, Baxter, Hill, Fisher, Mattinson, Ogilvy and Smith were in breach on the 11th August.

Councillors Marquis, Plant, Baxter, Hill, Fisher, Chambers, Chapman, Mattinson, Ogilvy and Flannery were in breach on the 9th September.

7. Sanctions

7.1 As previously indicated no formal sanction is required for Councillor Plant’s failure to declare an interest on the 11th August 2015.

7.2 In respect of our findings that Councillors have treated Mr. and Mrs. Harrison with disrespect and have improperly conferred a disadvantage on them we formally censure each Councillor concerned.

7.3 We direct that a copy of this decision notice be appended to the minutes of the meeting.

7.4 We were pleased to note some acknowledgment from the Parish representatives that this matter has not been handled well. The Parish Council may consider it appropriate to issue an apology.

Cllr. C. Perrett

Cllr. J. Hayes

Cllr. M. Cannon

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