

## **Case Reference: SC2**

Report of an investigation under Section 59 of the Local Government Act 2000 by Michael Perry, Monitoring Officer of Uttlesford District Council into an allegation concerning Cllr John Freeman.

**DATE: 20 October 2009**

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## **1 Executive summary**

- 1.1 An allegation was made by Dr David MacPherson that Cllr Freeman failed to declare a personal interest in matters before the Parish Council at which such an interest should have been declared and that he improperly used his position to secure for another person an advantage in that he allegedly alerted a prospective developer via a friend that a fellow councillor owned some land which may be suitable for development by that developer and that he facilitated supported the progression of the plans through the Parish Council by holding discussions in committee without public consultation and subsequently wrote a letter of support on behalf of the Parish Council to support the application.
- 1.2 In carrying out my investigation I interviewed the complainant, Elaine Baynes (formerly Parish Clerk to the council), by telephone Kathy Whiteley (who had stood in for the clerk on two occasions) and Cllr Freeman. I also examined minutes of various meetings of the Parish Council obtained from the Parish Clerk, on line and provided by Cllr Freeman. I also received a letter addressed "" from Christopher Askew.

## **2 Cllr Freeman's official details**

- 2.1 Cllr Freeman was co-opted onto Thaxted Parish Council in or about 2002. He was re-elected unopposed in 2007. He is not a member of any other relevant authority. Cllr Freeman was elected to the chair of Thaxted Parish Council for the first time at the annual meeting in May 2006 and has served in that role ever since.
- 2.2 Cllr Freeman gave a written undertaking to observe the Code of Conduct on 10 May 2007.
- 2.3 Cllr Freeman has not received any training on the Code of Conduct but confirms that he has a copy and that he has read it.

## **3 The relevant legislation and protocols**

- 3.1 The council has adopted a Code of Conduct in which the following paragraphs are included:
  - Paragraph 5 (A member must not conduct himself or herself in a manner which could be reasonably regarded as bringing the office or authority into disrepute).
  - Paragraph 6A (Not to use a member's position improperly to confer for any other person an advantage)
  - Paragraph 8 (Definition of Personal Interest)
  - Paragraph 9 (Disclosure of Personal Interest)

- Paragraph 10 (Prejudicial Interest in General)
- Paragraph 12 (Effect of prejudicial interest on participation)

#### **4 Summary of the material facts**

- 4.1 In 2007 an organisation known as ResCU became interested in developing a plot of land at Thaxted for a respite care centre. ResCU is a charity which provides such facilities.
- 4.2 Christopher Askew is a trustee of ResCU. He is also a personal friend of Cllr Freeman.
- 4.3 In common with many Parish Councils, Thaxted Parish Council will discuss confidential business 'in committee' which means that the press and public are excluded from that part of the meeting. At all relevant times it was not the practice of the Parish Council to propose a motion to move into committee nor to propose a motion to exclude the press and public. A brief minute was taken of proceedings in committee but there was no reference in the main minutes to show that the council had moved into committee. It appears from the minutes that the meeting is called to a close and that members reconvene in committee when the press and public have left.
- 4.4 The first indication of the Parish Council being aware of ResCU's interest in the land in Thaxted is to be found in a minute of the Parish Council meeting held on the 21 June 2007. That minute records that the councillors in attendance were those listed on page 93/07 of the minutes of the public meeting held earlier that evening. Those minutes indicate that Cllr Freeman was present as chairman. The minute in committee states 'the chairman had received a letter from Debbie Stephen of ResCU. She wanted to arrange a meeting with the Parish Council in order to fully brief councillors on their plans prior to the submission of any planning application.' The minute discloses that only Cllr Hingston declared an interest. It was agreed that they [ResCU] would be invited to attend the Parish Council meeting on 19 July.
- 4.5 It does not appear from the minute that Cllr Freeman declared an interest at this meeting. When asked why he had not done so he explained he did not feel that an interest needed to be declared as a planning application had not been lodged at that stage.
- 4.6 The next reference to the proposal in the minutes of the Parish Council is at a meeting of the council in committee held on 20 February 2008. The minutes show that Cllr Freeman tabled plans he had been given for a proposal for a respite care centre which it was proposed to be built behind the Hastoe Housing site in Walden Road. Cllr Freeman informed me that these were not plans merely a

sketch. The minutes do not indicate that any member declared an interest. Cllr Freeman repeated that he had not declared an interest as no planning application had been submitted at that stage.

- 4.7 At a meeting on the 17 April 2008 the minutes disclose that Cllr Freeman reported that Chris Askew had asked for permission to put flyers out advertising the proposed ResCU development. It was agreed that this was acceptable. The minute does not indicate that Cllr Freeman declared an interest. Cllr Freeman said no planning application had appeared at that time.
- 4.8 Dr MacPherson had produced a letter on Parish Council note paper from Cllr Freeman to ResCU dated 26 November 2008 which supported the planning application. Dr MacPherson obtained a copy of that letter from the Uttlesford District Council planning file the same having been lodged by ResCU to support its application for planning permission. The minutes I had obtained of Parish Council meetings from the parish clerk did not disclose that this letter was written with the authority of the Parish Council. However, Cllr Freeman subsequently produced to me a copy of the minutes of the meeting on 20 November 2008 which recorded under the heading of correspondence 'ResCU dated 4 November – letter of support for proposed respite care centre. The chairman to write a letter of support.' The minutes show that Cllr Freeman declared an interest in connection with another item on the agenda but not with regard to this item.
- 4.9 On 5 February 2009 the minutes show that a resident (Dr MacPherson) was concerned about the proposals for a community centre possibly on land opposite the Recreation Ground. He was informed that the field had not been earmarked for development and was outside the village development limits. The minutes do not record Cllr Freeman declaring an interest.
- 4.10 A planning application was received by Uttlesford District Council as local planning authority on 9 March 2009. In accordance with the usual practice the Parish Council and local residents were asked for their views. Prior to the matter appearing on the Council's agenda the matter was raised by Dr MacPherson at the Council meeting on 19 March 2009. The minutes state that a standing order was suspended to enable two members of the public to speak with regard to the application. The minutes say "As stated at the Parish Council meeting on 5 February, the site had not been earmarked for development and was outside the village development limit. A change in the planning rules would be required in order to permit the development of the site." Although the minutes do not record who said this Dr MacPherson attributes the words to Cllr Freeman. The minutes do not indicate that Cllr Freeman declared an interest. Cllr Freeman did not explain why he did not do so.

- 4.11 The meeting which the application was formally considered by the Parish Council was on the 2 April 2009.
- 4.12 The minutes show that at the meeting resident (1) of Clare Court (Dr MacPherson informs me this was him) commented that at the last council meeting a lot of time was devoted to trivial matters but important items such as the proposed respite centre near Clare Court, were discussed in committee. Dr MacPherson stated to the council that in his opinion this was wrong as the council is elected to represent the public and it should be transparent. Dr MacPherson commented that the proposed centre had been on the agenda for two years. Cllr Freeman pointed out that it had not previously appeared as a planning application. A second resident from Clare Court commented that the Parish Council had indicated a commitment to openness and clarity but that this had not been upheld because the council had previously stated that the proposed site of the respite centre was not earmarked for development and the council was not aware of any proposals. This resident asked whether the council maintained it had no knowledge of the proposal even though an approach from the charity was recorded in previous council minutes. Cllr Freeman stated the current site was previously one of many being considered and until the recent planning application had been made, only a sketch had been submitted. This is not in accordance with the letter sent by Cllr Freeman on 26 November 2008.
- 4.13 When the Parish Council came to consider the planning application, the minute records that Cllr Frostick took the chair as Cllr Freeman had declared an interest in the item. Cllr Hingston declared a prejudicial interest in the item and left the room. By a majority decision, the Parish Council had no objection to the application but recommended it should be sited further away from Clare Court. The minutes reveal that Cllr Freeman did declare an interest in this item but did not declare what the interest was. Cllr Freeman told me that it was not the practice for Parish Councillors to declare the nature of the interest. I explained to him that the Code of Conduct required the existence and the nature of the interest to be declared. Cllr Freeman said he was not aware of this. I also drew it to Cllr Freeman's attention that as a matter of law if he was present at a meeting of the council he was required to chair it. Cllr Freeman told me it was his understanding that he should not chair the meeting if he had declared an interest.
- 4.14 ResCU submitted revised plans for the planning application which were placed before the Parish Council for consideration on the 7 May 2009. The minutes reveal that Cllr Freeman declared an interest in another item on the agenda but not with regard to this particular item.

## **5 Cllr Freeman's additional submissions**

- 5.1 Cllr Freeman has received no training with regard to the Code of Conduct.
- 5.2 He was not aware of the need to resolve that the press and public should be excluded from the meeting when the Council moved into committee
- 5.3 It was Cllr Freeman's understanding that a personal interest arose in connection with a planning application if a Member knew the applicant but that there was no need to declare an interest unless a formal application for planning permission had been made.
- 5.4 He was also not aware of the requirement to declare the nature of a personal interest as well as its existence.

## **6 Reasoning as to whether there have been failures to comply with the Code of Conduct**

- 6.1 Cllr Freeman is a friend of Mr Askew. Under the Standards Board guidance a friend would fall within the description of a person with whom a member has a close association. It follows therefore that where a decision in relation to council business might reasonably be regarded as affecting the well-being of a friend to a greater extent than the majority of other council tax payers, rate payers or inhabitants of the authority's area this would be a personal interest. In the case of Cllr Hallett of Bardney Group Parish Council (on an appeal from a decision from the Standards Committee of West Lindsey District Council (APE0450)) the Adjudication Panel for England quoted the judgement of Keith J in the case of Murphy v the Ethical Standards Officer in which he endorsed the following definition of 'well-being': 'Well-being can be described as a condition of contentedness, healthiness and happiness. Anything that could said to affect the person's quality of life, either positively or negatively is likely to affect their well-being. It is not restricted to matters affecting a person's financial position.' The judge added 'someone can have a sense of well-being without having benefited in a material or financial way'. In Cllr Hallett's case he was a member and treasurer of a voluntary organisation. The Adjudication Panel held that matters relating to that organisation would affect his contentedness and therefore his well-being. Whilst Mr Askew would not have benefited personally if ResCU secured planning permission, it would undoubtedly have affected his contentedness to a greater extent than other council tax payers, rate payers or inhabitants of Thaxted. Cllr Freeman's friendship with Cllr Askew therefore gave rise to a personal interest.

- 6.2 The Code of Conduct requires a member with a personal interest in business of the authority to disclose to the meeting the existence and nature of the interest at the commencement of the consideration or when the interest becomes apparent.
- 6.3 The fact that on the four occasions when the proposal was first discussed a planning application had not been submitted to the local planning authority is irrelevant. The evidence is clear that ResCU was seeking the support of the Parish Council for its proposals. This is apparent from the request by ResCU to meet with the Parish (although such a meeting did not in the event take place), the provision by ResCU of a sketch or plans showing the proposed development, the request to circulate promotional literature and the early letter of support from the Parish Council to ResCU prior to the submission of the planning application. Without such support it is possible that ResCU would not have made the planning application. The land is within an area not zoned for development. ResCU may have taken a view that if the Parish was opposed to the application it would have little prospect of success. It was therefore incumbent upon Cllr Freeman to declare his personal interest as a friend of Mr Askew at every meeting of the Council when the proposal came up for consideration.
- 6.4 As a matter of good governance as much as possible of any council meeting should be held in public. Parish councils are not bound by the same access to information rules as district councils but they are subject to the Public Bodies (Admission to Meetings) Act 1960. Section 1 of that Act provides that
- i) 'Subject to sub-section (ii) below any meeting of a body exercising public functions being a body to which this Act applies shall be open to the public.'
  - (ii) A body may by resolution exclude the public from a meeting (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings; and where such a resolution is passed, this Act shall not require the meeting to be open to the public during proceedings to which the resolution applies'.
  - (iii) A body may under sub-section (ii) above treat the need to receive or consider recommendations or advice from the sources other than the members, committees or sub committees of the body as a special reason why publicity would be prejudicial to the public interest, without regard to the subject or purport to the recommendations or advice; but

the making by this sub-section of express provision for that case shall not be taken to restrict the generality of sub-section (ii) above in relation to other cases (including in particular cases where the report of a committee or sub-committee is of a confidential nature).

- 6.5 ResCU may have had a legitimate interest in requesting initial discussions regarding the project to be in private as it may not have wished to alert other potential developers to the prospect of development on the site (although it is to be noted that on 17 April 2008 it was prepared for fliers to be distributed promoting the proposal) . However it was not a requirement that the Council acceded to that request. The council could have indicated to ResCU that it would either deal with the matter in public session or not at all pending receipt of a planning application. It is also clear that no motion was proposed to exclude the public under the provisions of section 1 Public Bodies (Admission to Meetings) Act 1960.

## **7 Finding**

- 7.1 I find that Cllr Freeman has breached paragraph 9 of Thaxted Parish Council's Code of Conduct on the 21 June 2007, 20 February 2008, 17 April 2008, 5 February 2009, 19 March 2009, 2 April 2009 and 7 May 2009 in that on each occasion he was present at a meeting of the council when ResCU's proposals were being discussed. He failed to declare the nature and existence of his personal interest arising from his friendship with Mr Askew.
- 7.2 I find that Cllr Freeman breached paragraph 9 of the Code of Conduct of Thaxted Parish Council at the meeting on the 2 April 2009 in that whilst he declared an interest in the item he did not declare the nature of that interest.
- 7.3 Dr MacPherson did not allege that the interest was prejudicial but in referring the allegation for investigation the Assessment Sub-Committee asked that I should consider whether the interest was prejudicial. The planning application was made on the part of a charity of which Cllr Freeman's friend was a trustee. His friend did not stand to make any personal gain. I therefore conclude that a member of the public with knowledge of the relevant facts would not form the view that Cllr Freeman's interest was so significant as to be likely to prejudice his judgement of the public interest. On that basis the interest was personal but not prejudicial.
- 7.4 With regard to the allegation that Cllr Freeman improperly used his position to secure an advantage for another I do not find that this is supported by the evidence and I accept the evidence of Cllr Freeman and the letter of Mr Askew that this was not in fact the case.



- 7.5 I also find that the letter sent by Cllr Freeman on behalf of the Parish Council was sent after discussion at the Parish Council and with the Parish Council's authority. I do not therefore find Cllr Freeman to be in breach of the Code of Conduct in this respect as he was carrying out the wishes of the Parish Council and not acting improperly to try and secure an advantage for another.
- 7.6 In so far as, as chairman Cllr Freeman permitted discussions to take place on what was clearly a sensitive issue in private I do not find this to be a breach of paragraph 6A of the Code (not to use a member's position improperly to confer for any other person an advantage). The Parish Council clearly had an interest in what ResCU's proposals may be and from the minutes it appears that no decisions were taken at those meetings. However, I do find that as chairman, by permitting the council to discuss what are clearly sensitive proposals in the absence of the public, particularly in circumstances where the meeting in committee was not convened in accordance with the legislation, he brought his authority into disrepute in breach of paragraph 5 of the Code of Conduct. By failing to follow the appropriate procedures the early discussions regarding the proposal were cloaked in unnecessary secrecy. My view in this respect is reinforced by the reaction of both the complainant and another resident of Clare Court to the secrecy surrounding the proposal as set out in the minutes of the 2 April 2009.
- 7.7 Insofar as Cllr Freeman's failure to declare interests is concerned I note he has not had training on the Code of Conduct. Members of this Sub-Committee will be aware that training was offered to Parish Councillors by me at the time the new code came into effect. Further Cllr Freeman stated that he has a copy of the Code of Conduct and has read the same. He did declare a personal interest (albeit not the nature of the interest) at the Parish Council meeting where the planning application was first formally discussed. I am of the opinion that his failure to declare interests on the other occasions was a result of a lack of understanding of the Code of Conduct rather than any deliberate attempt to mislead.
- 7.8 With regard to conducting matters in committee without regard to the legislation I understand that the practice of the Parish Council in that respect has now changed and that the appropriate motions are moved when matters are discussed in private session. I believe this change of practice came about at the instigation of a parish clerk. At the relevant time Cllr Freeman was acting in accordance with established practice which, unfortunately, was wrong.