

## **Case Reference: SC3**

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 Richard Hingston.

**DATE: 20 October 2009**

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## **1 Executive summary**

- 1.1 An allegation was made by Dr David MacPherson that Cllr Hingston failed to declare a personal and prejudicial interest in matters before the Parish Council at which such an interest should have been declared and that he failed to leave the Chamber when such matters were under consideration.
- 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 Hingston. I also examined minutes of various meetings of the Parish Council obtained from the Parish Clerk and examined on line.

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

- 2.1 Cllr Hingston was co-opted onto Thaxted Parish Council in or about May 2007 after the last Parish Council elections as there were insufficient candidates to fill all seats. He is not a member of any other relevant authority.
- 2.2 Cllr Hingston gave a written undertaking to observe the Code of Conduct on 14 May 2007.
- 2.3 Cllr Hingston has not received any training on the Code of Conduct and does not know whether he was given a copy of the Code.

## **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 on prejudicial interest on participation)
- 3.2 The Parish Council did not resolve to adopt paragraph 12.2 of the Model Code of Conduct. As a consequence there are no circumstances whereby a Member with a prejudicial interest may remain in the room when a matter relating to such an interest is under consideration.

## 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. Cllr Hingston is a one third owner of that land together with two other members of his family.
- 4.2 Christopher Askew, a trustee of ResCU, approached Mr Hingston (who was not at that time a councillor) sometime after Hastoe Housing had commenced developing adjoining land which had been in the same ownership. He wished to know if Mr Hingston and his family would consider selling the land to ResCU if planning permission was obtained. Mr Hingston indicated that his family would consider dealing with ResCU on the same basis that they had dealt with Hastoe but that he doubted ResCU would obtain planning permission as the land was not zoned for development.
- 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 minute 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 Hingston was present. Cllr Hingston has no recollection of being present but did not dispute the accuracy of the minutes. 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 Cllr Hingston declared an interest. The minute does not however show that he left the room. It was agreed that they [ResCU] would be invited to attend the Parish Council meeting on 19 July. ResCU did not attend that meeting however.
- 4.5 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. The minutes do not indicate that any member declared an interest or left the room. Cllr Hingston could not recall whether he declared an interest or left the room but did not dispute the accuracy of the minutes.

- 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 Hingston declared an interest or left the room. Cllr Hingston could not recall whether he declared an interest or left the room but did not dispute the accuracy of the minutes.
- 4.8 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 Hingston declaring an interest or leaving the room.
- 4.9 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." The minutes do not record Cllr Hingston declaring an interest or leaving the room.
- 4.10 The meeting at which the application was formally considered was on the 2 April 2009. The minutes show that Cllr Hingston declared a prejudicial interest and left the room for the consideration of the item.
- 4.10 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 Hingston declared an interest but took no part in the discussions nor commented thereon. At the meeting on 21 May 2009 when the accuracy of the minutes was discussed under "Declarations of Interests" there is a reference to Cllr Hingston declaring a prejudicial interest and against the particular planning item there is reference to him declaring a prejudicial interest and leaving the room while the matter was

discussed. Cllr Hingston was adamant that he was not present at that meeting. However when it was drawn to his attention that he was named in the minutes as being present and having declared an interest he accepted that he must have been there but that he was not in the room when the discussion took place.

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

- 5.1 Cllr Hingston has had no training in the Code of Conduct and is not sure if his understanding of a personal interest (if there was any financial gain for himself or if he could have any influence as to what was going on which may benefit him that would be a personal interest) was correct. He does not understand the difference between a personal and a prejudicial interest.
- 5.2 He believed he had behaved properly within the Code and had left the room if prompted to do so. If he was not prompted to leave he would assume it was permissible for him to remain and he would do so.
- 5.3 Members of the Council were aware of his interest in the land.
- 5.4 He says that he has acted in good faith throughout.
- 5.5 He does not derive any personal advantage by being a Parish Councillor and is on the Parish Council as a volunteer.
- 5.6 The land in question has not yet been sold to ResCU although Uttlesford District Council did grant the planning application. If the land is sold Cllr Hingston will not receive a significant benefit. The proceeds of sale have to be split three ways and will be further divided among other family members.

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

- 6.1 Cllr Hingston is a joint owner of land which was the subject of a proposed development. The co-owners were his brother and sister. Brothers and sisters fall within the definition of family member given in guidance issued by Standards for England and they therefore are within the definition of "relevant person" within the Code.
- 6.2 If a decision in relation to a matter could be reasonably regarded as affecting the well being or financial position of a Member or of a relevant person then that interest is a personal one within the Code. The existence and nature of such interest must be declared at the commencement of the consideration or when the interest becomes apparent.

- 6.3 If planning permission could be obtained for development of the land then Cllr Hingston and his family stood to benefit financially from the disposal of the land.
- 6.4 ResCU were clearly seeking the support of the Parish Council to 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 were opposed to the application it would have little prospect of success. It was therefore incumbent upon Cllr Hingston to declare his personal interest as joint landowner with his brother and sister at every meeting of the Council when the proposal came up for consideration.

## **7 Finding**

- 7.1 I find that Cllr Hingston 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 and 19 March 2009 in that on each occasion he was present at a meeting of the council when development proposals were being discussed. He failed to declare the nature and existence of his personal interest arising from his joint ownership of the land in question with his brother and sister.
- 7.2 I further find that the grant of planning permission would have brought a financial benefit to Cllr Hingston and his family as ResCU would be likely to wish to purchase the land if permission was granted. I therefore conclude that a member of the public with knowledge of the relevant facts would form the view that Cllr Hingston's interest was so significant as to be likely to prejudice his judgement of the public interest. On that basis the interest was personal and prejudicial.
- 7.3 Thaxted Parish Council had not at the relevant time adopted paragraph 12.2 of the Model Code of Conduct. Accordingly there were no circumstances in which Cllr Hingston could have remained in the room whilst matters which gave rise to a prejudicial interest on his behalf were under consideration. Accordingly I find his presence during the meetings referred to in paragraph 7.1 above to be a breach of paragraph 12.1 of the Code which requires members to withdraw in those circumstances.

- 7.4 The guidance issued by the Standards Board is that failing to leave the room when a Member should do so may be viewed as an attempt to improperly influence the meeting in breach of paragraph 12.1.c of the Code. The Widdicombe report (which pre-dates the original Code of Conduct) said “By staying in the room, even though he or she may not speak or vote, a councillor may still influence the decision or might gather information which would help in the furtherance of his or her interest .... We propose that there should be a statutory requirement for councillors in all such instances to withdraw. Withdrawal should be from the room, not just to the space set aside for the public. There should be no option to invite councillors to stay, which could place their colleagues in an invidious position.” The recommendation was accepted in the first version of the Code of Conduct and carried through to the current code by virtue of the requirement that Members must leave the room if they do not wish to speak or (if they are permitted to speak under the Code) immediately after they have spoken. Although there is no evidence that Cllr Hingston spoke at any of the meetings I find that on the balance of probabilities Cllr Hingston did seek to improperly influence the decisions of the Council by his presence at the meetings referred to in paragraph 7.1 above in breach of paragraph 12.1.c of the Code.
- 7.5 I further find that by his conduct in being present at meetings of the Council held in the absence of the press and public where a matter in which he had a clear prejudicial interest was discussed; by failing to declare the existence and nature of the interest and by seeking improperly to influence the decision Cllr Hingston brought his authority into disrepute in breach of paragraph 5 of the Code of Conduct.
- 7.6 Insofar as Cllr Hingston’s failure to declare interests and failure to withdraw from the room is concerned I note he has not had training on the Code of Conduct. Indeed he is not even sure if he has a copy. However 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 Hingston has signed a declaration that he will be bound by the Code and it was therefore incumbent upon him to establish exactly what he was undertaking to be bound by. I also note that on the first occasion the matter was considered by the Parish Council in Committee Cllr Hingston declared an interest and on the two occasions the planning application was formally considered by the Parish Council Cllr Hingston declared an interest and left the room.
- 7.7 Although Cllr Hingston said he was not sure if his understanding of a personal interest was correct and that he did not know the difference between a personal and prejudicial interest, in our interview he

described a personal interest as follows; - "if there was any financial gain for my or if I could have any influence as to what was going on which may benefit me that would be a personal interest". When I asked him if he knew under what circumstances he should leave the room he said he had to do so when he had an interest which would give him a personal or financial gain or would help anyone else he was going to support.