

Committee: STANDARDS

Agenda Item

Date: 14 November 2011

Title: FIRST TIER TRIBUNAL UPDATE

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Item for information

1 Summary

1. This report is to inform Members of the decisions of the First Tier Tribunal Local Government Standards in England in cases published since the last meeting of this Committee. The report will indicate in each case whether the matter was a hearing or an appeal.

2 Recommendations

Members note this report

Background Papers

First Tier Tribunal - Local Government Standards in England's website
www.adjudicationpanel@tribunals.gov.uk.

Impact

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	An aggrieved party may apply to the First Tier Tribunal for a review of its decision or may appeal to the Upper Tier Tribunal with permission of the First Tier Judge or a Judge of the Upper Tier Tribunal.
Ward-specific impacts	None
Workforce/Workplace	None

Situation

Since the last meeting of this Committee there have been 2 cases published on the First tier Tribunal's website which are summarised below:-

2. Cllr A Healey

- (a) On 14 July 2011 the tribunal considered an appeal of Cllr Healey of Hart District Council against a decision of the Standards Committee of that council that he had breached the council's Code of Conduct by attempting to improperly influence a decision of the planning committee in respect of a matter in which he had a prejudicial interest. The Standards Committee had considered the breach to be technical only and decided to take no further action. Permission to appeal was granted on 2 grounds, whether it was permissible for a member to make representations in respect of a matter in which he had a prejudicial interest and whether the hearing of the Standards Committee was valid as it was held more than 3 months after the receipt of the investigating officer's report.
- (b) An application for planning permission had been received by the council in respect of a site opposite Cllr Healey's home. Although the application would normally have been dealt with under delegated powers because of the proximity of the councillor's home to the site it was referred to the planning committee pursuant to the council's procedures. The officer's recommendation was for approval
- (c) Cllr Healey and his neighbours were opposed to the application. Cllr Healey gave his neighbours advice as to how they should object to the proposal and he and his wife wrote a letter of objection to the council. It was accepted by the Standards Committee and the tribunal that this letter was sent in Cllr Healey's private capacity and the Code of Conduct was not therefore engaged.
- (d) Cllr Healey sought advice from the council's monitoring officer as to whether he could speak at the meeting of the planning committee when it considered the application. He was advised that it was open to members with prejudicial interests to make written representations. While this is correct the advice appears to ignore the fact that, providing the public have a right to speak, the Code of Conduct allows members with prejudicial interest to make representations as long as they withdraw from the room once they have done so. The monitoring officer's advice would only be wholly accurate if Hart DC does not permit public speaking at meetings of its planning committee.
- (e) Cllr Healey liaised with other objectors and produced a detailed letter of objection which was sent to all members of the planning committee but not to planning officers. The letter was signed by Cllr Healey but gave his private (not council) contact details. When signing the letter he did not use the title of "councillor". The letter was addressed to members of the planning committee at their council address and they were addressed as "councillors". In the letter Cllr Healey referred to his position as councillor and declared that he had a personal and prejudicial interest in the application.

- (f) The Standards Committee found that (as Cllr Healey admitted) the letter was not sent in Cllr Healey's personal capacity but as a councillor on behalf of the local community and held this to be a breach of the Code for trying to improperly influence the decision. In its submissions to the tribunal the Standards Committee said that its decision was not that the contents of the letter were a breach of the Code but that the breach was in the manner in which it was communicated to members of the planning committee, it not having been copied to planning officers or the applicant for planning permission. In common with Uttlesford's Code of Good Practice for Probity in Planning Hart DC's guidance requires representations to be sent to planning officers.
- (g) In its decision the tribunal disapproved of the use of the expression "technical breach" of the Code. It said that there is either a breach of the Code or there is not. It found that Hart DC's guidance on planning was just that, it was not binding and was a factor to be taken into account in determining whether the Code had been breached. The tribunal held that as the contents of the letter were not improper the fact that it was addressed to members rather than officers was not a breach of the Code of Conduct. The decision of the Standards Committee was therefore breached.
- (h) It cannot be certain if the same result would have resulted under Uttlesford's Code of Conduct as unlike Hart the council's Code of Good Practice – Probity in Planning is incorporated into our Code of Conduct by reference and is therefore binding upon members.
- (i) Although this made the remainder of the appeal redundant the tribunal went on to consider the effect of the delay in dealing with the hearing which took place 5¹/₂ months after the receipt of the investigating officer's report. The regulations require a hearing to take place within 3 months.
- (j) The tribunal referred to the case of Dawkins -v- Bolsover District Council and the Standards Board for England [2004] EWHC 2998 in which, Hughes J held that the three month timescale was a fixed, not flexible, deadline. There must be substantial compliance to prevent a hearing from becoming a nullity.
- (k) However that case was decided under old regulations. The current regulations provide for a hearing to take place within 3 months but if the hearing is not held within that period it is to be held as soon as reasonably practicable thereafter. On the facts the tribunal accepted that the hearing had been held as soon as reasonably practicable and was therefore valid.
- (l) This case underlines the importance that councillors attach to findings that they have breached the Code of Conduct. Not only did the Standards Committee impose no sanction but it also stated "The Panel consider that, in the circumstances, this technical breach of the Code should not be held to affect the Cllr Healey's good character". Notwithstanding this Cllr Healey pursued his appeal.

3. Cllr A. Neal

- (a) On 14 July 2011 the tribunal considered an appeal by Cllr Neal of St Ives Parish Council against a decision of the Standards Committee of Cornwall

- Council that he had breached his parish council's Code of Conduct. The Standards Committee had found that Cllr Neal had failed to declare an interest and leave the room when a matter in which he had a prejudicial interest was discussed (the matter was a planning application in respect of a property adjoining his own). The Standards Committee partially suspended Cllr Neal for 3 months, the nature of the suspension being that he should take no part in planning matters (including attending the planning committee).
- (b) Cllr Neal owned what appears to be a large plot of land on which his home and one other property stand. It had a common boundary with a number of other sites including a short common boundary with the application site. Cllr Neal's property and the application site fronted different roads.
 - (c) Due to an oversight the local planning authority failed to consult Cllr Neal with regard to the application notwithstanding its policy to consult adjoining land owners. It did however consult with the parish council. The application was on the agenda for the parish council meeting in July 2009. The minutes indicate that Cllr Neal did not declare an interest but do not record any decision or discussion on the application.
 - (d) Cllr Neal attended a meeting of the planning committee of the parish council in November 2009 and proposed that the committee recommend to full council that it should object to the application. Later that month he attended a meeting of the parish council which considered that recommendation but the minutes of that meeting do not indicate if the recommendation was accepted. Cllr Neal did not declare an interest at either meeting.
 - (e) The decision of the Standards Committee that Cllr Neal had a personal and prejudicial interest was based upon the proximity of his land to the application site. The Tribunal did not accept that an interest in land would in itself and without more give rise to a personal and/or prejudicial interest in business before the Council simply because of a common boundary with a property which was the subject of consideration. This must be correct. It is the impact of a proposal on a councillor which has to be considered. In this case the tribunal were satisfied that there was no potential impact of the proposal upon Cllr Neal's property and therefore upon his financial position or wellbeing. For that reason Cllr Neal did not have a personal or prejudicial interest in the application and the appeal was therefore allowed.

Risk Analysis

4. There are no risks associated with this report.