

Committee: STANDARDS

Agenda Item

Date: 20 May 2013

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Title: ALLEGATION OF A BREACH OF THE CODE OF CONDUCT OF UTTLESFORD DISTRICT COUNCIL

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Item for decision

Summary

1. This report is to inform members of the outcome of an investigation into an allegation that Cllr John Freeman of Thaxted Parish Council and Uttlesford District Council has breached the Codes of Conduct of those councils.

Recommendations

2. That members determine whether to accept the findings of the Monitoring Officer and if not to determine whether or not they consider Cllr Freeman has breached the Codes of Conduct of either Thaxted Parish Council and/or Uttlesford District Council and in the event of a breach of either of the Codes being found, what sanction (if any) should be imposed.

Financial Implications

3. None

Background Papers

4. The following papers were referred to by the author in the preparation of this report:
 - Complaint form from the complainant
 - Email 15 April 2013 from the Monitoring Officer to the complainant with replies appended.
 - Email 15 April 2013 from the Monitoring Officer to the parish clerk of Thaxted Parish Council.
 - Email of the 19 April 2013 from the Clerk to Thaxted Parish Council to the Monitoring Officer with attachments thereto comprising minutes of the council meeting on 4 April 2013, exchange of emails between the parish council and a member of the public and an exchange of emails between the Clerk to the Parish Council and Alun Design.
 - Email of the 15 April 2013 from the Monitoring Officer to Alun Design. Email of 23 April 2013 from Alun Design to the Monitoring Officer.
 - E-mail 19 April 2013 from the Monitoring Officer to the complainant with replies appended

- Application for planning permission in respect of land at the rear of Bolford Street, Thaxted design access and heritage statement submitted in support of the planning application.

Impact

5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	The investigation has been carried out in accordance with procedures adopted by the council pursuant to the Localism Act 2011.
Sustainability	None.
Ward-specific impacts	Thaxted.
Workforce/Workplace	None.

Situation

6. On 5 April 2013 the council received a complaint from Mrs Allen that Cllr John Freeman of Thaxted Parish Council and Uttlesford District Council had breached those councils' Codes of Conduct. The full text of the complaint is available as a background paper but in summary are as follows:
- Cllr Freeman is a friend of the father of an applicant for planning permission within the parish of Thaxted and as such had an interest which should have been declared.
 - Cllr Freeman projected the views of the parish council without the council having had sight of the application.
 - Cllr Freeman breached clause 3.2 of the Code of Conduct in that he failed to observe protocols or the Code of Practice.
 - Cllr Freeman conducted himself in a manner which could reasonably be regarded as bringing the councils into disrepute arising from the content of the design statement submitted in support of a planning application.

- Cllr Freeman used or attempted to use his position as a member improperly to confer or secure for another an advantage.
7. For the purpose of this investigation I have raised questions of the complainant, the parish clerk and planning agents who submitted the application for planning permission which gave rise to this complaint. I have also interviewed Cllr Freeman in connection with the allegations.

8. The facts not in dispute

- 8.1 Uttlesford District Council adopted a Code of Conduct to be effective from 1 July 2012 pursuant to the Localism Act 2011. Thaxted Parish Council subsequently resolved to adopt the Code of Conduct of Uttlesford District Council as permitted by that Act.
- 8.2 Uttlesford District Council has also adopted a Code of Good Practice: Probity in Planning.
- 8.3 As a councillor of both councils, Cllr Freeman is bound by the Codes of Conduct.
- 8.4 In March 2013 Alun Design Consultancy (“Alun Design”) submitted an application for planning permission for 13 residential units on land to the rear of Bolford Street, Thaxted on behalf of a Mr C. Latham. The application was accompanied by a design, access and heritage statement and was verified by Uttlesford District Council’s local planning authority on the 20 March 2013.
- 8.5 Neither Mr Latham nor Alun Design engaged in any pre-application consultation with the parish council or any parish councillors. Mr Latham’s father, Mr S. Latham, did have some discussions regarding the applications prior to submission with Cllr Freeman.
- 8.6 On 25 March 2013 Cllr Freeman sent an e-mail to all members of the parish council in which he said “I had seen the proposed planning application prior to it being submitted to Uttlesford. I was asked by the applicants father in my capacity as a District/Parish Councillor and also as a friend This is, I believe to be acceptable and I am not aware of any reasons why I should not have done so.
- 8.7 The parish council were consulted with regard to the application post submission by the local planning authority and considered the application at a meeting of the parish council on 4 April 2013.
- 8.8 At that meeting Cllr Freeman declared a pecuniary interest as he was a friend of the applicant. He read a pre-prepared statement and then withdrew from the meeting until after the vote on the issue had been taken.

9. Facts in dispute

- 9.1 It is alleged by the complainant that Cllr Freeman was consulted in his capacity as a parish councillor and district councillor. In his interview with me Cllr Freeman said he was consulted as a parish councillor only. In the e-mail sent to all parish councillors Cllr Freeman had said he was consulted as a friend and as a parish and district councillor. When subsequently questioned on this Cllr Freeman said he was not sure of the capacity in which he was consulted.
- 9.2 The complainant alleges that Cllr Freeman represented his views as the views of the council as a whole. Cllr Freeman states that he made it clear that the views he expressed were his alone and that he suggested that the applicant should seek pre-application discussions with the parish council.
- 9.3 The complainant maintains that Cllr Freeman has breached the protocols and Codes of Practice. I take this as a reference to Uttlesford District Council's Code of Good Practice: Probity in Planning. At paragraph 3.1.2 of that Protocol it states "councillors should not seek to advise applicants or agents about the likely acceptability of planning proposals". At paragraph 3.1.3 it states that "councillors should not meet applicants or agents or third parties in connection with a current or proposed application". Cllr Freeman acknowledged that he was bound by that Protocol in his capacity as a district councillor but queried whether it applied to him in his capacity as a parish councillor.
- 9.4 The complainant alleges that Cllr Freeman has brought his authority into disrepute by giving the impression that the parish council supports the application without giving residents the opportunity to comment. Cllr Freeman states he had no input into the content of the design and access statement.
- 9.5 The complainant alleges that Cllr Freeman attempted to use his position improperly to secure for another an advantage. Cllr Freeman does not accept this allegation.

10. Findings of Fact

- 10.1 I find that Cllr Freeman was consulted by Mr S. Latham because of Cllr Freeman's status as a parish councillor. There is no evidence to suggest that Mr S. Latham consulted Cllr Freeman because he was a district councillor. I come to that conclusion for two reasons. Firstly, Cllr Freeman is not a member of the planning committee of Uttlesford District Council. Secondly, there is no evidence to suggest the approach to Cllr Freeman was made for any purpose other than to try gauge the likely views of the parish council to the proposed application. The procedure for the district council in dealing

with planning applications is that officers prepare a report and recommend approval of refusal with conditions and/or reasons. Members of the planning committee then consider the application. Cllr Freeman could not be in a position to know what the views of the district council may be. He did however, have some knowledge of the views of his colleagues on the parish council and clearly Mr S. Latham would have hoped that when the application was submitted, the parish council's response to the district council's consultation would be sympathetic. Although in his e-mail of 25 March 2013 Cllr Freeman said he was consulted as a parish and district councillor I find no evidence to support any suggestion that there was any discussion between Cllr Freeman and Mr S. Latham as to the reason why Cllr Freeman had been consulted. On the balance of probabilities I find that Mr S. Latham consulted Cllr Freeman because he was a friend and a parish councillor. The fact that at one stage Cllr Freeman suggested that he may have been consulted as a friend and a parish/district councillor is not relevant. It is the capacity in which a member acts that is important, not the capacity in which they believe they were acting. This is supported by a number of cases before the Adjudication Panel where councillors accepted that they were acting in an official capacity (which was necessary to engage the previous Code of Conduct) only for the Panel to find on appeal that they were not and hence there had been no breach of the Code.

- 10.2 I find as a fact that in his discussions with Mr S. Latham, Cllr Freeman did not purport to express the views of the parish council. There is no evidence to suggest that he gave anything other than a personal opinion. Indeed on two occasions (at the meeting with Mr S. Latham when the proposed layouts were discussed and subsequently after his discussions with the parish chairman and parish clerk) Cllr Freeman suggested it would be sensible for Mr S. Latham to seek pre-application discussions with the parish council. Whilst it may be regrettable that Mr S. Latham did not take advantage of that opportunity, nevertheless Cllr Freeman cannot be held to blame for that.
- 10.3 With regard to the allegation concerning the Code of Conduct: Probity in Planning I find that this does not apply automatically to members of town or parish councils. That Code was adopted by Uttlesford District Council. There is no evidence that that Code or anything similar to it has been adopted by Thaxted Parish Council. Paragraph 3.2 of the Code of Conduct provides that "you must observe any protocols or codes or practice adopted by your authority". As Thaxted Parish Council has not adopted the Code of Good Practice: Probity in Planning it does not apply to Cllr Freeman acting in his capacity as a parish councillor. Whilst the guidance in that code makes eminent sense and observance of its principles by town and parish councillors should be encouraged, nevertheless it is

important to recognise the significant differences between town and parish councils and the district council in dealing with planning matters. The district council in connection with planning applications is the determining authority. In contrast, town and parish councils are consultees. They can express views which may or may not carry weight with the district council but the decision is not theirs. To that extent town and parish councillors have greater liberty to project the views of local residents.

10.4 I acknowledge that the content of the design and access statement is unfortunate in that it implies that the proposal has the wholehearted support of the parish council when that was not in fact the case. Indeed the parish council voted to object to the application. However, I am satisfied as a result of my enquiries that Cllr Freeman had no input either direct or indirect into the content of the design and access statement and he has no responsibility for its contents.

10.5 Whilst the complainant alleges that Cllr Freeman has attempted to use his position improperly to confer an advantage for an applicant for planning permission, she has failed to demonstrate how she says he has done so. I find that meeting with an applicant for planning permission would not be likely to secure for that person any advantage. In the context of Cllr Freeman being a parish councillor he is not bound by the Code of Good Practice: Probity in Planning and therefore it is not a breach of the Code of Conduct for him to express personal views. It is not alleged by the complainant (possibly because she was not aware of this) that his suggestions that the applicant sought pre-submission discussions with the parish council was in any way improper but in the event I find as a fact it was not.

11. Reasons as to whether the facts as found constitute a breach of the Code of Conduct.

11.1 As I have found that Cllr Freeman was only acting as a member of Thaxted Parish Council he was not bound by the Code of Good Practice: Probity in Planning. There is therefore no breach of that Code.

11.2 Whilst acknowledging that the design and access statement suggests that Cllr Freeman had purported to express the views of the whole parish council, I have found as a fact this is not the case. The decision not seek pre-application discussions with the parish council prior to a submission to Uttlesford District Council was a decision taken by the applicant alone and contrary to suggestions by Cllr Freeman. I do not therefore consider that Cllr Freeman has brought his authority into disrepute.

11.3 As a member with pecuniary interest, Cllr Freeman is entitled to address the council before withdrawing for consideration of the item. Cllr Freeman exercised this right. He quite properly declared his pecuniary interest and the statement he read was couched purely in planning terms. I find therefore that he had not attempted to use the position as a member to try and secure an advantage for the applicant for planning permission.

12. Conclusion

12.1 I find there has been no breach of the Code of Conduct of Thaxted Parish Council. I find that the Code of Conduct of Uttlesford District Council was not in any event engaged and there has therefore been no breach of that Code also.

Risk Analysis

13. There are no risks associated with this report.