

**STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON ROAD
SAFFRON WALDEN at 10.00 am on 29 AUGUST 2013**

Present:- Councillors R Lemon – Chairman
Councillors K Eden and J Menell.
Mrs G Butcher-Doulton (Independent Member).

Officers in attendance:- M Cox (Democratic Services Officer).
C Olivia (Solicitor) and M Perry (Assistant Chief Executive –
Legal and Monitoring Officer).

SC17 APOLOGIES AND DECLARATIONS OF INTEREST

There were no apologies for absence.

Councillors Lemon, Eden and Menell declared non-pecuniary interests as fellow district councillors to Councillor Perry. Councillors Eden and Menell also served on the Planning Committee with Councillor Perry.

SC18 HEARING INTO AN ALLEGATION OF A BREACH OF THE CODE OF CONDUCT

The hearing had been called to determine an allegation that Councillor Doug Perry had breached the Code of Conduct of Uttlesford District Council. The complaint was as follows:-

- Cllr Perry failed to observe the council's protocols contrary to paragraph 3.2 of the Code of Conduct in that he failed to consult Cllr Knight as ward member regarding a planning application relating to her ward prior to calling the application in for determination by the planning committee
- Cllr Perry brought the council or his office as councillor into disrepute by agreeing another member (Cllr Davey) that he would call in a planning application in respect of which Cllr Davey had a pecuniary interest contrary to paragraph 3.3.7 of the Code of Conduct.
- The Monitoring Officer also investigated whether Cllr Perry breached clause 3.3.8 of the Code of Conduct by using his position improperly to secure for another person an advantage by virtue of his calling in a planning application for determination by the planning committee.

The Monitoring Officer presented his report and explained the facts surrounding this case, which concerned the call-in of a planning application

Findings of Fact

The following facts were not disputed

- i) Uttlesford District Council adopted a Code of Conduct to be effective from 1 July 2012 and adopted a Code of Good Practice: Probity in Planning. Cllr Perry was bound by the Code of Conduct.
- ii) In January 2007 Mr and Mrs Evers were granted planning permission on appeal for a change of use of land at Wimbish from recreational grazing to a stud farm. They were also granted temporary planning permission for a temporary dwelling for 6 years to enable them to prove the financial viability of the stud farm. If this was established it would justify a departure from planning policy to erect a permanent dwelling in connection with the business.
- iii) In February 2013 Mr and Mrs Evers applied for planning permission to erect a dwelling on the site and to extend the planning permission for the caravan for 2 years whilst the permanent dwelling was being constructed.
- iv) Information was submitted by Mr and Mrs Evers which they said demonstrated that the stud farm was financially viable. The planning case officer did not accept the submission and instructed an independent consultant. The report concluded that the stud farm was not financially viable and that it was unlikely to become so.
- v) The case officer's view was that the application should be refused, which could be done under delegated power. Planning permission, contrary to policy, could only be granted by the Planning Committee.
- vi) The council has a policy whereby a Councillor can request that an application for planning permission, which would normally be dealt with under delegated powers should be referred to the planning committee.
- vii) On 12 March 2013 the Evers sent an e-mail to Cllr Davey asking him to call-in the application for determination by the planning committee. He replied that he would need to speak with someone as it was not a matter within his parish. As the Evers did not get on with their local councillor, Cllr Davey said that he would get some advice from another councillor.
- viii) Cllr Davey then spoke with Cllr Perry with regard to the application. Cllr Perry called in the application and the matter came before the planning committee on 10 April 2013.

The following facts were in dispute

- i) Whether or not Cllr Davey asked Cllr Perry to call-in the application for consideration by the planning committee.

Cllr Perry's position was that Cllr Davey explained the situation and that the ward member had refused to call the application in. He further said that Cllr Davey asked him if he would call the application in.

Cllr Davey's position was that he explained to Cllr Perry that he had previously had dealings with Mr & Mrs Eyers and that he was not sure how to deal with their request. Cllr Perry said he would look into it. Cllr Davey said he then forwarded the e-mail he had received from Mr and Mrs Eyers. Cllr Perry had acknowledged the e-mail a short time after and stated that he had called in the application if officers were minded to refuse.

The Monitoring Officer concluded that it was not necessary to make a finding of fact of the issue for the purpose of this report. It was not disputed that Cllr Perry called the planning application in. The issue was whether he acted properly in doing so, not whether he was acting on his own initiative or at the request of a colleague.

Monitoring officer findings on the fact

- i) There was nothing in the council's protocol for Probitiy in Planning which required a councillor to consult a ward member prior to calling in a planning application in another member's ward.
- ii) Councillor Davey did not have a pecuniary interest in the Eyers planning application.
- ii) In relation to the question of whether Cllr Perry used his position to improperly secure an advantage for Mr and Mrs Eyers, the Monitoring Officer found the following

Members of the public could not ask for their application to be called in when officers were intending to refuse an application under delegated powers as being contrary to policy. The only prospect an applicant had of getting planning permission (without an appeal) was if the matter was referred to the committee. A referral to Committee would secure an advantage.

The council had a process for calling in planning applications, a copy of which was sent to councillors at the start of each council year. The process required members to provide a planning reason for a call in. It also stated that "You may be approached by applicants or the Parish/Town Council asking you to call in a specific application. However it is your decision."

Cllr Perry had said that when Cllr Davey contacted him he had looked up the planning history on the website and decided to call the application in. He wanted the matter to be dealt with by the committee rather than have to grow and fester. Given the history of the case, Cllr Perry felt it was right to give the applicants the opportunity of going before the committee.

Cllr Perry's request for the call -in was on the grounds that "If this application is considered for refusal as it has a long history I would request that it be referred to the Committee on the Impact to the Community". At interview Cllr Perry conceded that this was not a valid reason for calling in the application, as the application should stand or fall on the question of the financial viability of the Eyers' business. He agreed that he had called in the application because the planning history was such that the Eyers should be given a hearing and now understood that he should not have called it in under these circumstances. He had explained that he was not consciously seeking to gain an advantage for the Eyers, but trying to diffuse a situation which existed between them and the council. His view was that given the history a refusal by the committee would be easier for the Eyers to bear than a refusal by officers under delegated powers.

Conclusion

- i) The Monitoring Officer found that there was no protocol adopted by the council which required members to consult ward members before calling in planning applications and there was therefore no breach of the Code of Conduct for failing to observe a protocol.
- ii) It was found that Cllr Davey did not have a pecuniary interest in the application. In those circumstances what occurred between Cllr Perry and Cllr Davey cannot be said to have brought the council or Cllr Perry's office as councillor into disrepute.
- iii) Cllr Perry, although acting innocently, had not given consideration to the process for call in before calling in this application. However because Cllr Perry called in the application when there were no planning grounds to do so he had improperly used his position to secure an advantage for Mr and Mrs Eyers in that their application was considered by members as opposed to being determined by officers under delegated powers.

It was found that Cllr Perry had breached clause 3.3.8 of the Code of Conduct in that he improperly used his position to secure an advantage for another. Cllr Perry had no interest in the planning application he called in. .

The Monitoring Officer believed that as a result of the investigation, Councillor Perry now fully understood the call in process and it was not likely that Cllr Perry would commit any further breach of the Code.

Questions by the Committee

In answer to members' questions, it was confirmed that Councillor Perry had been a councillor for around 6 years and had sat on the planning committee during that time. He had attended training sessions on the code and how to interpret it. However this training did not specifically deal with the issues of call-in. There was no protocol on this matter, although in the last couple of

years annual guidance had been sent to all councillors by the Assistant Director Planning and Building Control. All Members should be aware that they were required to provide planning reasons for the call-in. However, there was no procedure for vetting the reasons or for rejecting a member's request.

It was suggested that the Standards Committee should look to develop a protocol for call-in for approval by the Council.

The Monitoring Officer confirmed that it was clear from his interview with Councillor Perry that he had been ignorant of the procedures for call-in.

Mrs Butcher-Doulton asked about the relationship between Councillors Perry and Davey and why they had been involved with the call-in when they were not the ward member. She was advised this was a working relationship, as they both sat on the Planning Committee. There was a long and complex planning history behind this application and although it was unusual for a non-ward member to call in an application, there was no protocol against it. Councillor Eden elaborated that the nature of the application meant that it was an emotive issue in the location.

Mrs Butcher – Doulton was concerned that the call-in of this application had resulted in a waste of time and money for the council. In reply the Monitoring Officer said that Councillor Perry had felt that because of history and controversy of the application it should be aired before the committee. Although this was not a planning reason this was not an unusual course of action for members.

It was explained that in this case there was no planning reason for the call –in. This was a straightforward mathematical exercise, either the use was viable or it wasn't. If it had been viable it would have been contrary to policy and would have gone to the planning committee for approval. Calling in the application without a valid reason had secured the applicant an advantage.

The Committee said that it would have been helpful if Councillor Perry had attended the meeting to answer members' questions.

The Monitoring Officer explained that the role of the Committee was to decide

- 1 whether the committee agreed with finding in the report that there had been a breach of the Code of Conduct
- 2 If so, should a sanction be applied, and if so what.

He suggested that if the Committee did wish to impose a sanction it should adjourn to allow Councillor Perry to make representations to the committee prior to a decision being taken.

The Monitoring Officer then left the meeting and the Committee considered its decision.

Decision

The Committee found that Councillor Perry had breached the Code of Conduct of Uttlesford District (clause 3.3.8) in that he improperly used his position to secure an advantage for another.

The Committee was minded to impose a sanction but wished to allow Councillor Perry to make representations before a decision was made by the committee.

The meeting was adjourned until a date to be agreed, when the Committee would decide on the sanction to be imposed.

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The meeting was re-convened on Monday 23 September 2013 at 11.00am

The Chairman welcomed Councillor Perry to the meeting. He said the meeting had been adjourned because the Members wished to give Councillor Perry the opportunity to explain his version of events before deciding on the sanction to be imposed.

Councillor Perry read the following statement to the Committee

'I have two apologies to make to the Committee.

The first is in connection with your last meeting in that I took advice from one of your number, and was informed that my attendance was not required on a first hearing date. So having taken the advice I did not attend but wish I had. I therefore apologise that you have had to meet again.

The second more importantly is the matter in hand and I confirm that I agree with the facts as presented.

I do champion a person's right to free speech and the right to be heard. When I did background checks on this application, it was obvious that it had been going on for years and feelings in the community were running very high which had a detrimental effect on the council.

As the matter had been allowed to fester and grow for so long my ulterior motive was to bring the matter to a close and to enable everybody to move on and to get the council out of the mire. By calling it in, the applicant had his hearing and put his case to the committee and the committee rejected it.

I then received communications from both sides thanking me for calling it in (one side for being able to put his case and the other for its rejection).

I did not anticipate the backlash that followed and I agree that upon scrutiny my reason(s) for calling it in did not stand up, and that no member of the

public has a right to request to have an application called in, only a councillor can do this, no matter what circumstances.

I therefore wish to apologise for any inconvenience caused. I can assure the committee that I have learnt from this and that I shall be more careful in future.'

Mr Butcher Dalton questioned Councillor Perry's reason for calling in the application, given that he was not the ward councillor for that area. The reason he cited was concerns in the community, and she questioned at what stage he had formed this view.

Councillor Perry said that after he was contacted by Councillor Davey he had carried out research on the web and realised the controversial nature of the application. He also made enquires of Councillors Davey and Ketteridge. He said he did not speak to the local member because he knew that she was vehemently opposed to the application. He also confirmed that he did not speak with the applicant or the community about this case. His motive was to allow everyone to have their say and bring the matter to a close.

In answer to a question, Councillor Perry said that he had been a member of the Planning Committee for 6 years. The call-in procedure had not been documented until an email was circulated from the Assistant Director Planning and Building Control in May 2013.

On questioning he confirmed that he would not act in the same way again. If he was contacted by a fellow councillor he would advise them of the correct procedure and that they should call in the application themselves.

Councillor Menell said that the local councillor and the parish council were known to be opposed to the application and she suspected that Councillor Perry was simply seeking fair play.

In answer to a question from Councillor Lemon, Councillor Perry said that the only training he had received in respect of the call-in procedure had been via the email from the Assistant Director of Planning.

The Monitoring Officer clarified that he had found that Councillor Perry, at the time, had not been aware of the correct procedure, but he was fully aware of it now. It was not necessary therefore for him to undertake further training in this area. He also reported that the next meeting of the Standards Committee would consider a protocol for Member call-in of planning applications, which should help to clarify this issue for council members.

At 11.20am Councillor Perry and the Monitoring Officer left the meeting whilst the Committee discussed the sanction to be imposed

Decision

The Committee decided that no further action was required.