

**Committee: STANDARDS**

**Agenda Item**

**Date: 29 August 2013**

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

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Item for decision

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### **Summary**

1. This report is to inform members of the outcome of an investigation into an allegation that Cllr Doug Perry of Uttlesford District Council has breached the Code of Conduct of the council.

### **Recommendations**

2. That members determine whether to accept the findings of the Monitoring Officer and if so what sanction (if any) to impose.

### **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
  - Correspondence with Mr and Mrs Evers
  - Witness statement prepared by Mr and Mrs Evers
  - E-mails passing between Mr and Mrs Evers and Cllr Davey and between Cllr Davey and Cllr Perry
  - Call in by Cllr Perry
  - Notes of meeting with Cllr Davey
  - Notes of meeting with Cllr Perry
  - Process for call in of planning applications

### **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 30 May 2013 the council received a complaint from Cllr Tina Knight that Cllr Doug Perry of Uttlesford District Council had breached the council's Codes of Conduct. The full text of the complaint is attached but in summary is 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.
- Although not specifically cited by Cllr Knight I also considered with the independent person who vetted the complaint with me that I should investigate 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.

7. For the purpose of this investigation I contacted Mr and Mrs Evers whose planning application gave rise to the circumstances leading to the complaint. Mr and Mrs Evers were unwilling to be interviewed by me either in person or on the telephone. They did provide me with a witness statement. However that statement was partial and covered none of the ground which I wanted to deal with as part of my investigation. I therefore sent them a list of questions which I considered to be pertinent to the investigation which they refused to answer. I would mention that Mr and Mrs Evers have some history with this council and have an extremely suspicious attitude towards the council in general and officers in particular. Their attitude towards my investigation is not helpful nor in my view justified but is not surprising. I have interviewed Cllr Perry. I have also interviewed Cllr Davey who has helpfully provided me with e-mails passing between him and the Evers and Cllr Perry. I have not interviewed Cllr

Knight as complainant as it appears from her complaint that she has no first-hand knowledge of any matters which are not contained in her complaint.

## **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. .
- 8.2 Uttlesford District Council has also adopted a Code of Good Practice: Probity in Planning.
- 8.3 Cllr Perry is bound by the Code of Conduct.
- 8.4 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. The appeal decision also granted temporary planning permission for a temporary dwelling (stated to be a caravan) for a period of 6 years to enable the Evers to prove the financial viability of the stud farm. It was envisaged that if the financial viability of the stud could be established then this would justify a departure from planning policy to permit the erection of a permanent dwelling in connection with the business.
- 8.5 In or about February 2013 Mr and Mrs Evers applied for planning permission to erect a dwelling on the site and for an extension of planning permission for the caravan for a period of 2 years whilst the permanent dwelling was being constructed.
- 8.6 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 that submission. However rather than relying upon his own judgement he instructed consultants to advise. The consultant's view was that Mr and Mrs Evers had come nowhere near demonstrating that the stud farm was financially viable and indeed the business was not viable and unlikely to become so.
- 8.7 The view of the case officer was therefore that the application should be refused. As the application was contrary to policy officers could refuse the application under delegated powers. Planning permission can only be granted contrary to policy by the planning committee.
- 8.8 The council has a policy whereby any member of the council can request that an application for planning permission which would normally be dealt with under delegated powers should be referred to the planning committee.
- 8.9 On 12 March 2013 the Evers sent an e-mail to Cllr Davey asking him to recommend that the application was called in for determination by the planning committee. Cllr Davey spoke with either Mr or Mrs Evers and said that he would need to speak with someone as it was not a matter within his parish. The Evers explained that they did not get on with Tina

Knight. Cllr Davey said that he would get some advice from another councillor.

8.10 Cllr Davey then spoke with Cllr Perry with regard to the application.

8.11 Cllr Perry called in the application. The matter came before the planning committee on 10 April 2013.

## **9. Facts in dispute**

9.1 It is disputed whether or not Cllr Davey asked Cllr Perry to call the application in for consideration by the Planning Committee.

9.2 Cllr Perry's position is that Cllr Davey explained about the application to him. Cllr Davey said that the ward member had refused to call the application in. (When given Cllr Davey's version of events he said that Cllr Davey may have said something along the lines that the ward member would not call it in if asked to do so). He further said that Cllr Davey asked him if he would call the application in.

9.3 When interviewed Cllr Davey said that he explained to Cllr Perry that he had had dealings with Mr & Mrs Evers and that they had sent him an email. Cllr Davey told Cllr Perry that he was not sure how to deal with their request. Cllr Perry said he would look into it. Cllr Davey then forwarded the e-mail he had received from Mr and Mrs Evers to Cllr Perry. Cllr Perry acknowledged that e-mail a short time after and stated that he had called it in if officers were minded to refuse.

9.4 I accept that both Cllr Perry and Cllr Davey gave me their honest recollection of what transpired between them. I do not find it necessary to make a finding of fact for the purpose of this report on this issue. It is not disputed that Cllr Perry called the planning application in. The issue is whether he acted properly in doing so, not whether he was acting on his own initiative or at the request of a colleague.

## **10. Findings of Fact**

10.1 There is nothing in the council's protocol for Probity in Planning which requires a councillor to consult a ward member prior to calling in a planning application in another member's ward. Whilst it may be courteous to notify the ward member of such intentions and whilst it may also be an "unwritten rule" (to use Cllr Knight's expression) that members will do so, failure to notify a ward member of an intention to call in a planning application does not breach any protocols adopted by the council.

10.2 For reasons set out in a report dealing with similar complaints against Cllr Davey relating to the same planning application I found as a fact that Cllr Davey did not have a pecuniary interest in the Evers planning application. That report has been circulated to members and there is no need for me to repeat the analysis of the evidence in that respect here.

As Cllr Davey did not have a pecuniary interest I do not consider that what occurred between Cllr Perry and Cllr Davey was capable of bringing the council or the office of councillor into disrepute. Discussions between members regarding a possible call in of a planning application where no conflict of interest arises would not lessen the confidence of the public in the ability of members or the council to perform their functions.

- 10.3 With regard to the issue as to whether Cllr Perry used his position to improperly secure an advantage for Mr and Mrs Evers it is right to say that as members of the public cannot ask for their applications to be referred to the planning committee there is an advantage in an application being called in. When officers are intending to refuse an application as being contrary to policy under delegated powers the only prospect an applicant has of getting planning permission without the trouble and expense of an appeal is if the matter is referred to the committee.
- 10.4 I asked Cllr Perry why he had called in the application. Cllr Perry said that when Cllr Davey asked him to call the application in Cllr Perry had asked for the planning reference number and said that he would look at it and reach a decision. He looked up the planning history on the website and did some work on it. He decided to call the application in as he wanted the matter to be dealt with by the committee rather than to grow and fester. He considered it was better for all concerned to give it an airing before the committee and give the applicants an opportunity to speak. He took a view that as far as the Evers were concerned they were being denied the right of putting their case forward which he thought was out of order. Given the history of the case, Cllr Perry felt it was right to give the applicants the opportunity of going before the committee.
- 10.5 The council has a process for calling in planning applications a copy of which is routinely sent to councillors at the start of each council year. The process requires members to provide a planning reason for a call in. It also states 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 ...”.
- 10.6 Cllr Perry’s request for the call in was in the following terms “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”. I asked Cllr Perry what he meant by this as if the property proposed by the application was not built (because permission was refused) there would be no impact. Cllr Perry agreed that this was not a valid reason for calling in the application. I suggested to him that the reason that he had called the application in was that he felt that in the light of the history of the application site the Evers should be given a hearing. Cllr Perry agreed with this suggestion and acknowledged that he should not have called the application in in the circumstances.

However Cllr Perry stated that he was not consciously seeking to gain an advantage for the Eyers. He was trying to diffuse a situation which existed between them and the council. When calling the application in Cllr Perry appreciated that the application should stand or fall on the question of financial viability of the Eyers' business and if that was not established the application would be refused. 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.

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

- 11.1 I have found that there is no protocol adopted by the council which requires members to consult ward members before calling in planning applications and there is therefore no breach of the Code of Conduct for failing to observe a protocol.
- 11.2 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.
- 11.3 I accept that Cllr Perry acted innocently and that he did not give consideration to the process for call ins before calling in this application. However because Cllr Perry called in the application when there were no planning grounds to do so he improperly used his position to secure an advantage for Mr and Mrs Eyers in that their application was considered (albeit refused) by members as opposed to being determined by officers under delegated powers.

## **12. Conclusion**

- 12.1 I find that Cllr Perry has 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 (pecuniary or otherwise). His motives were genuine albeit misguided. As a result of my investigation I believe he now fully understands the call in process. I do not consider it likely that Cllr Perry will commit any further breach of the Code.

## **Risk Analysis**

12. There are no risks associated with this report.

## **Councillor Doug Perry – Code of Conduct complaint.**

I am bringing a Code of Conduct complaint against Cllr. Doug Perry because I believe that he breached 3.2 (requirement to observe protocols) and 3.3.7 (not to bring the council or the office of councillor into disrepute)

### **3.2 - Requirement to observe protocols**

Cllr. Perry, a member of the planning committee, called in an application not in his Ward. It subsequently came to light that he had called it in on behalf of another member of the planning committee, Cllr. Davey, who subsequently declared a pecuniary interest in the application when it came to committee.

It was somewhat surprising that it was called in without following the normal convention of speaking to the representative of the Ward concerned. It has long been an unwritten rule that, if another Councillor has reason to become involved in another Councillor's Ward, they have normally discussed it with the Ward Councillor concerned, or, at the very least, copied them in on any correspondence appertaining to their Ward. e.g. with recent applications for Travellers Sites this has sometimes crossed boundary lines and involved a number of Wards, and Councillors have been copying their fellow Councillors in on all communications.

All Councillors have been asked recently, in an attempt to save wasting Officer's time and tax payers money, not to 'call in' applications where it looks as if the Case Officer's conclusion concurs with the majority view. It was, therefore, rather a shock to find out that someone had 'called in' an application that an independent expert and also the Case Officer were going to refuse, which also supported the views of the District Councillor, the Parish Council and local populace. Particularly as this case had been heard at a previous hearing and the Inspector's decision was a clear cut directive 'after 6 years was this a viable business or not'..

On 2nd April, I received an email from Gemma Head from the planning department informing me of the call in. I emailed Wimbish Parish Council for further information as I had not called it in. I then received an email from both the Parish Clerk and Chairman of the Parish Council questioning this, I confirmed that I had not called it in and would make further enquiries. I then spoke to Clive Theobald, the case Officer, who did not know why it was called in. I continued to make further enquires to a number of people at UDC and eventually found out it was Cllr Doug Perry.

On 3rd April, I told both Michael Perry and Jim Ketteridge that I was puzzled to find that it had been 'called in' by a Councillor from another Ward who had not even had the courtesy to discuss the matter with me, particularly in view of the fact that there was not a sound basis for doing so. I informed them that I would contact Cllr. D. Perry to enquire why he had taken this unusual step.

On 4th April. – 9.45am. I telephoned Cllr. Perry and asked him why he had called in an application in my Ward without discussing it first, this was not the way things were done. He asked which case I was talking about. I said the stud farm in Wimbish. He said he was entitled to do so in a manner that was both defensive

and arrogant, I stated that I was not questioning his entitlement to do so I was questioning if he thought that it was the right way to behave. He repeated he was entitled to, I said did he think that was courteous or ethical and what did he know about the case to enable him to make that decision, he said 'very little' Had he apologised and been friendly as one colleague to another, I might not have pressed the matter further, it was, however, his hostile manner and evasiveness that made me suspicious, so I asked on what basis he felt he had the right to call in a case that he knew very little about and he replied that he had been asked to do so by another Councillor, I considered this more than unusual as another Councillor would have been able to call in the procedure themselves I, therefore, asked him who this was. He refused to say, and when questioned again about calling it in with no knowledge of the case, he then admitted he did have some knowledge and the Councillor concerned had given his reasons why he had been asked to call it in rather than do so himself. Further conversation (I have a full transcript of the conversation should it be needed) caused me to feel uncomfortable about the situation and I felt, therefore, further investigation needed to be made. (I was unaware at this stage that Cllr Perry was a member of the planning committee). I did ask him once more if he was really going to continue to refuse to disclose the name of the Cllr, particularly as it would have to be declared at some stage, he said he would not disclose the information so I told him I had no option but to report the matter to Council.

10.a.m. I telephoned Cllr Ketteridge and made a complaint and insisted that it was disclosed who the other Councillor was as I felt that this appeared rather underhand and suspect behaviour contrary to the UDC's policy of transparency. Cllr Ketteridge said he was very disappointed by this behaviour and would speak to Cllr 'Perry.

This, action of "calling in" without reference to me would, in itself and in isolation, possibly, seem a minor breach of protocol and, whilst showing a lack of respect to another 'Councillor, would seem harsh to raise a code of conduct complaint against him. However, when viewing the incident in its entirety, another picture emerges which causes some concern about lack of judgement and ethics

I feel that Cllr Perry, by not only not informing me of his actions in My Ward,, but by doing so at the bequest of another Cllr.,(who could of course have "called it in" himself) and the manner in which he spoke to me on the telephone, showed a lack of respect and, in my opinion, was not a courteous or ethical way to behave to a fellow Councillor.

3.37 When the full background of his decision to call in the planning application became known, I felt that this had brought his position as a Councillor in to disrepute. It has certainly left the Council open to criticism or worse. It would not be surprising if constituents, looking at this incident, would consider that two members of the planning committee were acting suspiciously in a covert manner in favour of one's apparent pecuniary interest. I, therefore, feel the 'worse' should be investigated further to ensure that the Council's policy of transparency is fully supported.