

EXTRAORDINARY STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10.00 am on 5 NOVEMBER 2014

Present:- Councillors C Cant, J Loughlin and J Menell (Uttlesford Members)
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).

Also present: Councillor Richard Broad (Hatfield Broad Oak Parish Council).

SC17 ELECTION OF CHAIRMAN

RESOLVED that Councillor C Cant be elected Chairman for the meeting.

SC18 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

SC19 HEARING INTO AN ALLEGATION OF A BREACH OF THE CODE OF CONDUCT

The hearing had been called to determine an allegation that Councillor Richard Broad had breached the Code of Conduct of Hatfield Broad Oak Parish I Parish Council.

Report of the Monitoring Officer

The Monitoring Officer presented his report. He explained that Cllr Keith Artus of Hatfield Parish Council had made a number of complaints that Cllr Richard Broad, the Chairman of the parish council had breached the Code of Conduct.

The independent member and the Monitoring Officer having considered the complaints found that four of them did merit investigation, all of which concerned the proposals for a new sports pavilion on the village green in the parish. The complaints passed for investigation alleged that Cllr Broad:-

1. Repeatedly failed to record a non-pecuniary interest in that he holidays with a member of the cricket club executive and is friends with other cricket club executive members.

2. Advised councillors that the working group established to progress the development of the pavilion would not prepare any agendas, or produce meeting minutes or notes, and that the meetings will not be scheduled or announced (effectively in secret, even to parish councillors).
3. Authorised correspondence to third parties (grant funders) in the name of or on behalf of the parish council without authority or approval from the council and not providing copies to councillors.
4. Wrote reports for the village magazine in the name of the council without authority or approval from the council.

Facts not in dispute

The report explained the background to the report and the facts which were not in dispute.

The plans and proposals for the establishment of a village green and sports pavilion in Hatfield Broad Oak had been controversial within the parish. Cllr Broad was a member of Hatfield Broad Oak Parish Council and bound by its code of conduct.

The complainant was Cllr Artus, who was a trustee of Hatfield Broad Oak Village Green Company (“HBOVGC”) a registered charity which had promoted and raised funds for a scheme, which was not now being supported by the parish council as it was considering a smaller scale proposal.

At the meeting on 13 November 2013 the parish council had resolved to dissolve the existing development group and set up a new project management group to fund, design and build the new pavilion. The Council’s long-term policy was to minimise costs to the public, to let the pavilion to a body representing sports organisations in the village, but to retain ultimate responsibility for the pavilion under the terms of the head lease. Cllr Broad had declared a non-pecuniary interest at this meeting as he knew some people who might be interested in being appointed to the new project group.

At the next meeting, on 11 December 2013, Cllr Artus put forward a number of motions regarding the pavilion, its funding and future use, which were defeated. Cllr Broad did not declare an interest at this meeting.

On 29 January 2014, the parish council appointed a Pavilion Working Group (“PWG”). Cllr Broad declared a non-pecuniary interest at this meeting to the extent that he knew some of the candidates. There was no evidence that the parish council had approved the working group’s

remit and terms of reference at that meeting or at any subsequent meeting.

At the parish council meeting on 9 April 2014, the council resolved that the village green and any buildings or structures would remain in the control of the parish council and a sub-lease or rental agreement would not be granted to the Village Green Company. Cllr Broad did not declare an interest in this item at the meeting.

After the meeting Cllr Broad wrote and sent various letters and emails. The minutes do not indicate that these letters were approved or requested by the council.

At the parish council meeting on 14 May 2014 there were further discussions regarding the proposed pavilion and subsequently Cllr Broad submitted an explanatory article to the parish magazine. The minutes did not indicate that the article was approved or requested by the Council.

Cllr Broad acknowledged that he was a friend of a member of the cricket club and had been on holiday with him. He also knew other members of the cricket club.

Facts in dispute

There was a dispute as to whether the revised proposals for the pavilion would make it suitable for use by a variety of sporting clubs or fit for use by the cricket club only. No findings were made on this issue but it was highlighted as a background factor to the complaint.

Legal issues

The Monitoring Officer explained that under s.101 Local Government Act 1972 a council could only discharge its functions by itself, through a committee or sub-committee, by an officer of the council or by another local authority. For a parish council there could be no delegation to or performance of a function by an individual member. The minimum number of members which could be appointed as a committee was 3.

He explained that working groups could include persons who were not members of the council but they were governed by the standing orders of the appointing council. Hatfield Broad Oak Parish Council's standing orders stated that any appointed advisory committees and working groups could comprise councillors and non-councillors. They stated that council and committee meetings should normally be held in public but did not mention the application of this to sub-committees and working groups.

Findings as to whether the facts (which are not disputed) amount to a breach of the Code of Conduct

The Monitoring Officer explained his findings as to whether the four complaints had breached the Code of Conduct

1) Failure to declare a non-pecuniary interest

Cllr Broad accepted that his friendship with a member of the cricket club constituted a close association. It was not alleged that there was a pecuniary interest in this instance but if the matters being considered would impact upon his friend's wellbeing to a greater extent than the majority of other persons living or carrying on business in the ward affected by the decision, this would constitute a non-pecuniary interest. At the meetings in November and December 2013, Councillor Broad declared non-pecuniary interests on the basis that his friend was interested in becoming a member of the Pavilion Working Group. However, at other meetings held in 2014 he failed to declare an interest

It was considered that Councillor Broad did have a non-pecuniary interest because the downsizing of the proposed pavilion would have the effect of reducing costs. This would reduce the amount of money the parish council would have to raise in order to build the pavilion, which made it likely that the building would be completed and ready for use by the cricket club at an earlier date. This would affect Cllr Broad's friend's wellbeing to a greater extent than the majority of people living in the ward most of whom would not take part in sports activities.

It was found that Cllr Broad failed to declare a non-pecuniary interest and had therefore breached the Code of Conduct.

Cllr Broad had failed to appreciate that the interest extended beyond the appointments to the pavilion working group. The Monitoring Officer believed that if he had been aware of this he would have declared the interest and expected that he would do so if the situation arose in future.

2) The process to establish the Pavilion Working Group.

It was explained that if a decision was made by the council as a whole it could not be the subject of a complaint against the Chairman. It could only be a breach of the code of conduct if the Chairman was acting alone.

The minutes of the meeting on 29 January 2014 showed that the PWG had been appointed by the council. The terms of reference of the group should have been determined by the council either at that time or at a later meeting. The parish council had instead agreed that the Chairman and Vice-Chairman should discuss the remit with the working group.

This was a flawed decision but as it was made by the parish council, it was not relevant for the code of conduct.

There were no standing orders set up to govern the operation of the PWG. On 14th May a motion was put to the parish council that meetings of the PWG should be open for councillors to attend and that the group should publish agendas and minutes. This motion was defeated. This decision was also a resolution of the parish council and could therefore not form the basis of a complaint against the chairman.

The Monitoring Officer concluded that there had been no breach of the code of conduct on the issue of the conduct of the PWG.

3) & 4) Publication without the authority or approval of the council.

The investigation had found examples of e-mails or letters from Cllr Broad which might be considered to have been written on behalf of the parish council.

The Code only applied when a councillor was conducting the business of his authority, acting or giving the impression of acting on behalf of his authority. It was found that in relation to the correspondence Cllr Broad was holding himself out as acting on behalf of the council when he sent them and was subject to the Code of Conduct at the time.

There was no evidence that the parish council requested, authorised or approved any of the correspondence or the articles. As individual members should not undertake actions on behalf of the council the correspondence ought to have come from the parish clerk and not from Cllr Broad.

In relation to this issue, the relevant section of the Code were as follows

Section 3.3.7 - To require a councillor not to do anything that might bring his authority or his office into disrepute

This was interpreted as action which would lessen the public's confidence in the ability of that member to perform the functions of his office.

In relation to the correspondence, it was considered that the information in the letter would be helpful to the council in its deliberations and the questions were reasonable. The other items of correspondence merely reported factually what the council had resolved to do. The parties had a legitimate interest in receiving this information.

With regard to the article, it appeared to be a regular occurrence for the chairman to issue such articles. Although not strictly in accordance with S101 the public would not be aware of this. They would expect the parish chairman to write letters on behalf of the council and publish

articles on its behalf. There had been no complaints prior to this one and there appeared to be a culture of failing to adhere rigidly to the provisions of s.101 of the Act.

The Monitoring Officer believed that the public would judge the actions of Cllr Broad in the light of the culture of the council rather than a strict interpretation of the legislation and found that he had not breached the Code in this respect

Section 3.3.8- not to use a member's position to confer or secure an advantage or disadvantage,

The Monitoring Officer referred to a First Tier Tribunal Case - Cllr Myers of Walford Parish Council – when the councillor had written to developers complaining about a development within his parish, signed as vice-chairman of the parish council, but with no authority from the council. Even though he stated that the parish council would have agreed to the letter being sent, the First Tier Tribunal held that sending the letter in such a way as to give the clear impression that he was writing with the authority of the parish council did amount to using his position improperly to secure a disadvantage for another person.

The Monitoring Officer concluded that it was highly probable that the offer of grant funding to the Village Green Committee would have been withdrawn but this would have been as a consequence of the council's decision not to grant a lease of the village green and not as a result of Cllr Broad's actions. It was not considered that Cllr Broad was using his position improperly to secure the benefit of the grant funding for the project.

Questions to the Monitoring Officer

Mrs Butcher-Doulton asked for further clarification about the reference to the culture of the organisation. The Monitoring Officer explained that instead of being channelled through the clerk, individual councillors were charged with carrying out tasks contrary to s.101 but this would not seem unusual to the public. As none of the complaints concerned actions that were outside the culture of HBO, it was considered that Cllr Broad's actions were not likely to reduce public confidence in the parish council or in Councillor Broad as a Chairman and councillor.

In answer to a question it was pointed out that although the parish council had habitually ignored s.101 since 2010 there had been no complaints from the public.

Councillor Cant asked about the relevance of the Myers Case in relation to this complaint. It was explained that in this case Cllr Broad appeared only to be conveying information and not trying to obtain advantage or disadvantage when sending the correspondence.

It was confirmed that in law the Chairman had no greater authority than other members but this was different to the public's perception who would expect letters to be sent from the Chairman.

In answer to a question from Mrs Butcher-Doulton the Monitoring Officer explained that there was nothing unusual about the leasing arrangements of the proposed village green and pavilion to a third party organisation.

Statement by Councillor Broad

Councillor Broad acknowledged that he hadn't declared a non – pecuniary interest at meetings where he was required to do so. However he said this was an oversight and he had not intended to mislead. He apologised to the committee.

He said that Hatfield Broad Oak Parish Council was a fractured council. There were two factions, each with different views and strong personalities on either side. The majority of parish councillors were trying to do the best for the community and not intending to mislead and if mistakes were made this was partly down to lack of training and knowledge.

He confirmed that 90% of problems had been caused by the village green and the pavilion and this conflict had spilt over to other areas. He said this was a difficult time and he was aware that the parish council might not always be operating in the proper way. Up to 40/50 people attended some council meetings and the atmosphere could be unpleasant at times. He agreed that there was a culture of individual councillors taking on roles from very basic jobs right up to large decisions.

In answer to a question, he said that the parish clerk was snowed under with work, which was one reason why she didn't deal with all the correspondence. The clerk had been with the parish council for 14 months and was still undertaking training.

Councillor Broad was asked why he hadn't declared an interest on all occasions. He explained that the clerk had advised him of his need to declare an interest before the appointment of the working group as he was close friends with one of the applicants. He had done this but hadn't realised he should also declare an interest when other related matters were being discussed. He now understood this and assured the committee that this wouldn't happen again.

Councillor Loughlin said there appeared to be a 'them and us' situation in the parish council and asked if it was possible to arrange mediation. The Monitoring Officer said this was not available but he would write to the parish clerk about parish council's governance arrangements.

Councillor Broad and the Monitoring Officer left the room at 3.30 pm and returned at 3.50 pm and announced the following decision

Decision

The Committee agreed with the conclusions of the Monitoring Officer's report and found that Councillor Broad of Hatfield Broad Oak Parish Council had breached the code of conduct by failing to declare a non-pecuniary interest at meetings of the parish council when matters relating to the village green were discussed, but there had been no other breaches of the code.

Councillor Broad realised his mistake and apologised to the committee, so the committee therefore felt that no further action should be taken.

The meeting ended at 4.00pm.