

Standards Committee

Date: Thursday, 19th July, 2018

Time: 6.15 pm

Venue: Council Chamber - Guildhall, Bath

To: All Members of the Standards Committee

Independent Members: Susan Toland (Chair), Deborah Russell and Dr Cyril Davies

Parish/Town Councillors: Tony Crouch and Veronica Packham

Bath and North East Somerset Councillors: Councillor Sally Davis, Councillor Sarah Bevan, Councillor Nigel Roberts, Councillor Geoff Ward and Councillor Brian Simmons

Chief Executive and other appropriate officers

Press and Public



Enfys Hughes

Democratic Services

Lewis House, Manvers Street, Bath, BA1 1JG

Telephone: 01225 394410

Web-site - <http://www.bathnes.gov.uk>

E-mail: Democratic_Services@bathnes.gov.uk

1. Inspection of Papers: Papers are available for inspection as follows:
Council's website: <https://democracy.bathnes.gov.uk/ieDocHome.aspx?bcr=1>

Paper copies are available for inspection at the **Public Access points:-** Reception: Civic Centre - Keynsham, Guildhall - Bath, The Hollies - Midsomer Norton. Bath Central and Midsomer Norton public libraries.

2. Details of decisions taken at this meeting can be found in the minutes which will be circulated with the agenda for the next meeting. In the meantime, details can be obtained by contacting as above.

3. Recording at Meetings:-

The Openness of Local Government Bodies Regulations 2014 now allows filming and recording by anyone attending a meeting. This is not within the Council's control.

Some of our meetings are webcast. At the start of the meeting, the Chair will confirm if all or part of the meeting is to be filmed. If you would prefer not to be filmed for the webcast, please make yourself known to the camera operators.

To comply with the Data Protection Act 1998, we require the consent of parents or guardians before filming children or young people. For more information, please speak to the camera operator.

The Council will broadcast the images and sound live via the internet www.bathnes.gov.uk/webcast The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

4. Public Speaking at Meetings

The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group. They may also ask a question to which a written answer will be given. **Advance notice is required not less than two full working days before the meeting. This means that for meetings held on Thursdays notice must be received in Democratic Services by 5.00pm the previous Monday.** Further details of the scheme:

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=12942>

5. Emergency Evacuation Procedure

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are signposted. Arrangements are in place for the safe evacuation of disabled people.

6. Supplementary information for meetings

Additional information and Protocols and procedures relating to meetings

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13505>

Standards Committee - Thursday, 19th July, 2018
at 6.15 pm in the Council Chamber - Guildhall, Bath

A G E N D A

1. WELCOME AND INTRODUCTIONS

2. EMERGENCY EVACUATION PROCEDURE

The Chair will draw attention to the emergency evacuation procedure as set out on the Agenda.

3. APOLOGIES FOR ABSENCE AND SUBSTITUTION

4. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

(a) The agenda item number in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is **a disclosable pecuniary interest** *or* an **other interest**, (as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer or a member of his staff before the meeting to expedite dealing with the item during the meeting.

5. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

The Chair will announce any items of urgent business accepted since the agenda was prepared under the Access to Information provisions.

6. ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS (COMPLAINTS MUST GO THROUGH THE STANDARDS COMPLAINTS PROCEDURE)

7. ITEMS FROM COUNCILLORS AND CO-OPTED AND ADDED MEMBERS RELATING TO THE GENERAL BUSINESS OF THE COMMITTEE

8. MINUTES OF THE MEETING OF 8TH MARCH 2018

To be confirmed as a correct record and signed by the Chair.

9. LOCAL HEARING ON INVESTIGATION INTO COMPLAINT 1.18A AND B HINTON BLEWETT PARISH COUNCIL (Pages 5 - 170)

The Committee will consider the report of the Investigating Officer and is asked to agree the facts of the complaint, decide whether there has been any breach of the Code and make any recommendations arising from their conclusions.

The Committee Administrator for this meeting is Enfys Hughes who can be contacted on 01225 394410.

| Bath & North East Somerset Council | | |
|---|---|--|
| MEETING: | Standards Committee | |
| MEETING DATE: | 19 th July 2018 | |
| | | |
| TITLE: | Local Hearing on Investigation into Complaint 1.18a and b Hinton Blewett Parish Council | |
| WARD: | All | |
| LIKELY TO BE TAKEN IN EXEMPT SESSION | | |
| <p>List of attachments to this report:</p> <p>Appendix 1 - Hearing Procedure (Open)</p> <p>Appendix 2 - Public Interest Test (Open)</p> <p>Appendix 3 - Report of Investigation Officer (Exempt)</p> <p>Appendix 4 – Proposed Local Resolution with the complainants and subject member’s comments.</p> <p>Appendix 5 – Note on issued raised outside Investigating Officer’s report (Exempt as legally privileged)</p> | | |

1 THE ISSUE

- 1.1 The Committee is asked to consider the report of the Investigating Officer; agree the facts of the complaint; decide whether there has been any breach of the Code and make any recommendations arising from their conclusions.

2 RECOMMENDATION

- 2.1 The Committee is asked to consider the report and recommendations of the Investigating Officer’s report.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 None.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 Following receipt of the complaint and consideration by the Monitoring Officer and Independent Person, an Investigating Officer was appointed to report on the concerns raised.

- 4.2 The Investigating Officer has completed their enquiries and their report is attached at Appendix 3 as an exempt item.
- 4.3 The Committee is asked to consider the report under the procedure attached at Appendix 1.
- 4.4 The Committee will note that the Monitoring Officer has suggested Local Resolution of these complaints and a copy of the suggested Local Resolution is attached at Appendix 3 with the complainants and subject member's comments on this.
- 4.5 The complainants have raised issues outside the scope of the investigation. These matters have already been formally considered by the Council and therefore a confidential note in relation to these issues is included at Appendix 5 for the Standards Committee's information.

5 THE REPORT

- 5.1 An Equality Impact Assessment has been completed.

6 RATIONALE

- 6.1 Where, in the opinion of the Monitoring Officer, Local Resolution is not appropriate, the Monitoring Officer will report on the complaint to the Standards Committee, which will conduct a Local Hearing before deciding whether the Member has failed to comply with the Code of Conduct, and, if so, whether to take any action in respect of the Member.

7 OTHER OPTIONS CONSIDERED

- 7.1 Local Resolution was not accepted by the complainants so the Monitoring Officer has referred the matter to the Standards Committee.

8 CONSULTATION

- 8.1 The Independent Person and Chair of the Standards' Committee have been consulted.

| | |
|--|---|
| Contact person | <i>Maria Lucas, Monitoring Officer & Head of Legal & Democratic Services (01225) 395171</i> |
| Background papers | <i>None.</i> |
| Please contact the report author if you need to access this report in an alternative format | |

Appendix 1

BATH AND NORTH EAST SOMERSET COUNCIL STANDARDS COMMITTEE HEARING PROCEDURE

Members should bear in mind that a Standards Committee Hearing is a formal meeting of the Authority and is not a Court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The Standards Committee should work at all times in a fair, independent and politically impartial way. This helps to ensure that members of the public and Members of the Authority have confidence in its procedures and findings. The Chair and the Committee have the ability to amend the procedures as necessary from time to time as circumstances of individual cases to ensure the procedures fair and independent

The Committee will follow the following stages:-

- (1) Formal introductions
- (2) Making Findings of Fact
- (3) Did the Subject Member fail to follow the Code of Conduct?
- (4) Any sanctions if the Subject Member has been found to have breached the Code of Conduct
- (5) Decision.

Stage 1 Formal introductions.

The Chair will outline how the Committee will be run and deal with any preliminary procedural issues. For example, determine whether the matter should be held in private and the reasons for this.

Stage 2 Making Findings of Fact

The Committee will consider whether there are any significant disputed facts contained within the Investigation Report.

If there are no disputed facts, the Committee will move onto the next stage.

If there is a dispute, the Investigator will be invited to make representations to support the relevant findings of fact in the Report.

The Investigator may call any necessary supporting witnesses to give evidence.

The Subject Member will then have an opportunity to challenge any evidence put forward.

The Subject Member will make representations to support their version of facts and call evidence as necessary.

The Investigator will be given the opportunity to challenge any evidence put forward by the Member.

The Committee can at any time ask any questions or seek clarification from either party via the Chair.

The Committee will retire, along with the Monitoring Officer, to deliberate on the representations and evidence.

On their return, the Chair will announce the Committee's findings of fact.

Stage 3 Did the Subject Member fail to follow the Code of Conduct?

The Subject Member will be invited to make representations why the Committee should decide that they have not breached the Code of Conduct.

The Committee will invite the Investigator to make any verbal or written representations.

The Committee will raise /clarify issues. The views of the Independent Person will be sought.

The Subject Member should be invited to make any final, relevant points as to whether there has been a breach of the Code of Conduct.

The Committee will retire, along with the Monitoring Officer, to determine whether there has been a breach of the Code of Conduct.

On their return, the Chair will announce the Committee's decision as to whether the Subject Member has failed to follow the Code.

If the Committee decides that the Subject Member has not failed to follow the Code, the Committee can move onto consider whether it should make any recommendations to the Authority or the Monitoring Officer following the investigation, to promote high standards of behaviour.

Stage 4 If the Subject Member has been found to have breached the Code of Conduct

The Committee will consider any verbal or written representations from the Investigator and the Subject Member as to:-

- Whether the Committee should apply a sanction;
- What form any sanction should take.

The Committee will raise /clarify issues. The views of the Independent Person will be sought.

The Committee will retire, along with the Monitoring Officer, to determine whether to impose a sanction and if so, what it should be.

Stage 5 Decision

On their return, the Chair will announce the Committee's decision.

After considering any verbal or written representations from the Investigator, the Committee will decide whether it should make any recommendations to the relevant Authority with a view to promoting high standards of conduct.

A full written decision will be provided to all parties as soon as reasonably practicable after the Hearing.

There is no formal right of appeal.

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Access to Information Arrangements

Exclusion of access by the public to Council meetings

Information Compliance Ref: **LGA 1164/18**

Meeting: **Standards Committee Meeting**

Date: **Thursday 19th July 2018**

Author: **Maria Lucas**

Report Title: Standards Committee – Report relating to Complaint 09-17 BANES

List of attachments to this report:

Appendix 1 – Hearing Procedure (Open)

Appendix 2 – Public Interest Test (Open)

Appendix 3 – Report of Investigation Officer (Exempt)

Appendix 4 – Proposed Local Resolution with Complainant and subject member's comments (Open)

Appendix 5 – Note on issues raised outside the Investigating Officers report (Exempt)

The Report contains exempt information, according to the categories set out in the Local Government Act 1972 (amended Schedule 12A). The relevant exemption is set out below.

Stating the exemption:

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.

The public interest test has been applied, and it is concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure at this time. It is therefore recommended that the Report be withheld from publication on the Council website. The paragraphs below set out the relevant public interest issues in this case.

PUBLIC INTEREST TEST

If the Committee wishes to consider a matter with press and public excluded, it must be satisfied on two matters:

Firstly, it must be satisfied that the information likely to be disclosed falls within one of the accepted categories of exempt information under the Local Government Act 10972.

The Officer responsible for this item believes that this information falls within the following exemptions and this has been confirmed by the Council's Information Compliance Manager.

The following exemptions are engaged in respect to this report:

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.

Exemptions 1 and 2 above must be considered in conjunction with the Principles of the Data Protection Act 1998 (DPA). It is considered that disclosure of the information in this report would breach the first principle of the DPA, which requires personal data to be fairly and lawfully processed.

Secondly, it is necessary to weigh up the arguments for and against disclosure on public interest grounds. It is considered that there is a public interest in decisions relating to councillor behaviour.

Other factors in favour of disclosure include:

- Furthering public understanding of the issues involved;
- Furthering public participation in the public debate of issues, in that disclosure would allow a more informed debate;
- Promoting accountability and transparency by the Council for the decisions it takes;
- Allowing individuals and companies to understand decisions made by the Council and assist individuals to challenge these decisions.

However there is a real risk that the first Principle of the DPA will be breached by this disclosure, and that the individual/s identified within the exempt appendix could bring a successful action against the Council if the disclosure occurred. Therefore it is recommended that exemptions 1 and 2 in Schedule 12A stand, and that the exempt information be discussed in exempt session and that any reporting on the meeting is prevented in accordance with Section 100A(5A)

By virtue of paragraph(s) 1, 2, 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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By virtue of paragraph(s) 1, 2, 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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Appendix 4

LOCAL RESOLUTION DECISION NOTICE

BATH AND NORTH EAST SOMERSET COUNCIL

Complaint ref: 1a and b 18 Hinton Blewett Parish Council

DECISION: 1a.18 HBPC – BREACH / NO FURTHER ACTION

1b.18 HBPC – BREACH / NO FURTHER ACTION

1. Complaint

On 7th and 27th February 2018 the Monitoring Officer received two separate complaints (both complainants requesting their identities to be withheld) concerning the conduct of Councillor David Elliot. As the complaints relate the same facts at a meeting on 23rd January 2018, the Monitoring Officer has dealt with both complaints together. A general summary of the complaint is set out below:

Complaint summary

It is alleged that Councillor Elliott failed to declare a personal interest in that he owned 20 acres of the application under consideration at that meeting; that he is a friend of the applicant and that the applicant's daughter (the focus of the application) is his daughter-in-law. By not declaring these interests, Councillor Elliot breached the Code of Conduct bringing Hinton Blewett Parish Council into disrepute.

The remedy requested is that Councillor Elliott be told he has contravened the Parish Council's Code of Conduct and that the Parish Council's response to the planning application is nullified.

2. Reasons for the Decision

The Monitoring Officer has informed the complainants that, even if the breach is proved, this will not invalidate the decision, therefore it is not possible to nullify the Parish Council's comments. This can only be done by the Parish itself.

The Monitoring Officer considered whether the subject member had a disclosable pecuniary interest as land owned by Councillor Elliot was included on a plan submitted with the planning application. This is a potential criminal offence and would have to be investigated by the police. Councillor Elliot's response was that it was a genuine mistake that his land was included, as this was not referred to in the planning application. The Monitoring Officer accepts this appears to be an error on behalf of the applicant and therefore is not referring this matter to the Police. As it appeared however that there was a personal interest in relation to the application, which was not disclosed, the Initial Assessment was that this complaint should be investigated.

The conclusion of the report is that Parish Councillor Elliott was in breach of the Code as he did not declare a personal interest and withdraw in relation to the planning application, and I agree with this finding. It does appear however that there was some general misunderstanding in the Parish about interests and the effect of a personal interest. In the light of this, it would appear disproportionate to deal with this matter at Standards Committee, this matter should therefore be dealt with by local resolution. The decision is that there should be no further action in relation to Parish Councillor Elliott but that the Parish Council is recommended to obtain training on their

Code of Conduct to ensure all councillors understand what an interest is, when it should be declared and what action they should take.

3. Consultation with the Independent Person and Chair of Standards Committee

The Chair of the Standards Committee and Independent Person have been consulted and are in agreement with this decision.

4. Notification of Decision

The Decision Notice will be sent to the Complainants and the Member against whom the complaint was made.

5. What happens next

Under the Arrangements, the acceptance of complainants and subject member is required for a local resolution, so this will require the agreement of the complainants and the subject member. If they do not accept, then the matter will be considered by the Standards Committee.

If the local resolution is agreed, under Appendix 6, arrangements for dealing with breaches of the Code of Conduct, there is no further right of appeal to the Council. Members of the public are able to write to the Local Government Ombudsman;

PO Box 4771

Coventry

CV4 0EH

6. Terms of Reference

Sections 26 to 34 of the Localism Act 2011 set out the requirements in relation to standards and the arrangements for dealing with complaints. On 19th July 2012 the Council approved the arrangements for dealing with complaints, which is set out in the Constitution.

Signed: Maria Lucas

Maria Lucas

Monitoring Officer

Dated: 25th June 2018

Comments of anonymous complainants on the proposed local resolution

Complainant 1

I do not accept your report and recommendations for the following reasons:

1. You provide no explanation of 'general misunderstandings' nor how you came to this conclusion.
2. You provide no explanation, record of interview, or any other evidence as to why the gross misrepresentation of land ownership in the planning application on his land by Mr Elliott's daughter's friend has been accepted as an 'error'. The applicant, submitting an application on Mr Elliott's land, was required by statute to serve notice on Mr Elliot, but failed to do so. Instead, he drew a red line around an area of Mr Elliott's the size of more than 15 football fields and submitted it as his, and persuaded you that this was in 'error'.
3. You have not considered whether the exclusion of the 20 acres included in 'error' might have led to a different recommendation by planning case officer in accepting a justification for a rural worker's dwelling. My view is that the justification for a rural worker's dwelling would not have been accepted without the applicant's business controlling this land inalienably. This is a material issue that has been ignored.
4. Having found that Mr Elliott breached the Code, no sanction is imposed on him whatsoever. He may choose with absolute impunity not to apologise, not to acknowledge his breach, and not to participate in additional training. In his view, he may have 'got away with' what he will see as a breach by the parish council, all members of which is now required to be subjected to additional training, much like a school class in detention for the misdemeanours of a single pupil.

Local government may have no motivation to aspire to private sector standards of performance, rigour and delivery, but I am nevertheless dismayed at the handling of this matter, the unexplained delays, failed deadlines and unsupported conclusions plucked from thin air, and above all the carelessness of your 'careful' consideration. Mr Elliott will be unsanctioned and absolved. Why should he not in future breach the Code, again and again?

Complainant 2

In any event I would still like to put on record that I cannot agree with the decision you proposed in your message of 26th June. To do so would mean that no blame would fall on Cllr Elliott and that he would certainly deem it that the Parish Council, and particularly me, were to blame. You appear to have accepted his excuse that he was guided by me on how to respond to a Personal Interest on the basis of hearsay and without supporting evidence. The Parish Council has had no such opportunity to put its position. You have assumed that the Parish Council is at fault without supporting evidence. By removing the blame from Cllr Elliott would mean that the burden I have carried over the last four months since I submitted my complaint, including the loss of my anonymity, will have been a complete waste of time, produced an absolutely zero result, other than Cllr Elliott's bullying behaviour in response to identifying me. I cannot accept that.

This complaint is NOT about judging Hinton Blewett Parish Council for any failings it may or may not have as perceived by the subject member. It's about whether Cllr Elliott had a personal interest in respect of a planning application, and you say very clearly that he did have. I think this complaint should be decided on the basis of the conduct of the subject member. I would be grateful if the Standards Committee could be made aware of these comments.

The issue of whether the Parish Council should consider any training is an entirely separate matter, not related to the above complaint.

By virtue of paragraph(s) 1, 2, 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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