

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **H29**

TO: STANDARDS COMMITTEE

DATE OF MEETING 15 May 2008

MEMBERS CODE OF CONDUCT CASE REPORTS

1. **SUMMARY**

This report updates members on recent decisions of the Adjudication Panel Appeals Tribunal (against decisions of Standards Committees). A section has been added on recent findings of the Local Government Ombudsman which have touched upon ethical issues. The report is produced for information and training purposes.

2. **RECOMMENDATIONS**

That the content of this report be noted.

The Committee is able to resolve this matter.

3. **FINANCIAL IMPLICATIONS**

None.

4. **RISK MANAGEMENT**

Not relevant to this report

5. **KEY INFORMATION**

SELECTED APPEALS TRIBUNAL DECISIONS

5.1 **CLLR C (Case no. APE 0395) – prejudicial interest in non-agenda item**

5.1.1 Parish Councillor C had declared a personal and prejudicial interest in an item of parish council business concerning allocation of rural affordable housing in the parish because one of the potential sites was adjacent to his own property. He left the room for the item and returned after its conclusion.

5.1.2 Later in the same meeting under the public speaking part of the agenda, a member of the public expressed dissatisfaction at the lack of progress in reaching a decision on the issue of rural housing. There followed a brief exchange between the member of the public and some parish councillors.

5.1.3 The Appeals Tribunal dismissed the decision of the Standards Committee that the exchange amounted to a further consideration of the matter in which Cllr C had a prejudicial interest. Two reasons were given; firstly the issue raised concerned the lack of progress rather than the actual allocation of sites and secondly, the exchange did not constitute a “consideration” for the purposes of the Code. There had been no intention for there to be a further discussion on the item, give thought to it, to examine its merits and reach a conclusion other than for the item to be placed on the agenda for the next meeting. The case demonstrates that “consideration” must be given its ordinary meaning.

5.2 **CLLR M (Case no. APE 0396)- prejudicial interest**

5.2.1 Town Councillor M was managing director of an industrial company whose premises bordered land occupied by the complainant as a residence from where he ran a motor repair business. Since 1999 there had been a number of disputes (including a physical confrontation) between Cllr M and the complainant over the use of the lane in which both premises were located. The complainant had also reported Cllr M’s business to the Health and Safety Executive on three occasions in the year prior to his complaint.

5.2.2 The complainant had applied to the District Council for planning permission to erect a bungalow in the grounds of his property. Cllr M’s daughter, who was also employed by Cllr M’s company, objected to the planning application. When the application was considered by the Town Council’s planning committee, Cllr M declared a personal interest in the item.

5.2.3 Cllr M told the committee that the lane was a private road used primarily for industrial and business purposes and was not fit for use by any additional residential properties. The lane was in fact a public footpath wide enough to accommodate most vehicles. Cllr M used his casting vote to ensure that the Town Council objected to the application.

5.2.4 The Standards Committee determined that Cllr M had a prejudicial interest and that he was in breach of paragraphs 10(a) and 10(b) of the Code of Conduct in failing to withdraw from the meeting during consideration of the item and by seeking to improperly influence the decision. Cllr M appealed the decision of the Committee to suspend him from being a member of the Town Council for three months. The President of the Adjudication Panel refused permission to appeal against the finding of breach.

5.2.5 The grounds of appeal were that the suspension was harsh bearing in mind it was a first offence, he had been a councillor for five years and not been in trouble before, he had apologised and taken advice from the clerk. In evidence, the clerk stated that whilst she had advised Cllr M that he had a personal interest she would have advised that the interest was prejudicial had Cllr M provided her with all the information.

5.2.6 In upholding the sanction, the Appeals Tribunal found that Cllr M had a clear prejudicial interest which he should have known or taken care to obtain proper advice. It was the responsibility of Cllr M to provide all the information required to secure proper advice, but it was fundamentally the councillor’s responsibility as to what interests to declare. The Tribunal noted that Cllr M had made it clear that the grant of planning permission to the complainant could be damaging to Cllr M’s business. It further noted that Cllr M had received training on the Code. The Tribunal took into account that Cllr M was a committed councillor trying to do his best for the community, his good character and that it was a “first offence”.

LOCAL GOVERNMENT OMBUDSMAN DECISIONS

5.3 CARADON COUNCIL – misdirection in approving planning permission

- 5.3.1 Complaint was made to the Local Government Ombudsman about the way the Council granted planning permission for a house on land outside the area approved for development in the Local Plan and next to a field used by the complainants as a caravan site.
- 5.3.2 The applicant was a mobile mechanic. Although the land was located centrally to his business operations, he already owned a house in a nearby village. The application was refused because it was contrary to Local Plan policy and Government guidance, which stated that dwellings could only be allowed in such locations if it was essential for an agricultural worker to live there.
- 5.3.3 A second application was made by which time Government guidance had been relaxed so as to allow dwellings for those engaged in agriculture-related businesses. However, the functional test remained so that the applicant had to demonstrate that it was essential for him to live there. This application was approved by 16 votes to 15.
- 5.3.4 The Ombudsman found that councillors misdirected themselves when considering the second application. There was no particular need for the applicant to live on that site, and he was already housed within the area his business served. If members had given proper consideration to the functional test they would have refused the application. Further, some members took other irrelevant factors into account when reaching their decision. If the application had been considered properly the Ombudsman considered that it would have been refused.
- 5.3.5 The Ombudsman therefore found maladministration causing injustice. He recommended that the Council ask the District Valuer to carry out a valuation of the complainant's property as it is and as it would be with the new dwelling and business activity in place, taking into account the potential impact on their caravan site business. The difference between the two valuations should be paid to the complainants, plus £250 for their time and trouble in bringing the complaint.

6. APPENDICES

None

7. BACKGROUND PAPERS

None

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