



STANDARDS COMMITTEE

Notice of a Meeting to be held in Committee Room 2 (Bad Münstereifel Room), Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL on TUESDAY, the 4TH DECEMBER 2007 at 6.00 pm

The Members of this Committee are:-

Mrs C A Vant (Chairman)
Cllr. Packham (Vice-Chairman)

Cllrs. Mrs Blanford, Honey, Mrs Laughton, Wood

Parish Council Representative: – Mr D Lyward (Mr A P Mobbs – Substitute)
Independent Members: Mr J Dowsey, Mr M V T Sharpe

Please Note the Starting Time

A G E N D A

**Page
Nos.**

1. **Apologies**
2. **Declarations of Interest** – Declarations of Interest under the Code of Conduct adopted by the Council on the 24th May 2007 relating to items on this Agenda should be made here. The nature as well as the existence of any such interest must be declared
3. **Minutes** – To approve the Minutes of the Meeting of this Committee held on the 3rd October 2007

PART I – FOR DECISION

4. Matters Referred for Local Investigation – Case Reference SBE 17220-07 Orlestone Parish Council
5. Local Filtering of Code of Conduct Complaints – Local Government Etc Act 2007

PART II – MONITORING/INFORMATION ITEMS

NONE

DJS/EB
26th November 2007

Queries concerning this agenda? Please contact Diana Sawyer 330499
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STANDARDS COMMITTEE

MINUTES of a **MEETING** of the **STANDARDS COMMITTEE** held in Committee Room No. 2 (Bad Münstereifel Room), Civic Centre, Tannery Lane, Ashford on the **3RD OCTOBER 2007**

- PRESENT:** Mrs C A Vant (Chairman);
Cllr Packham (Vice-Chairman);
- Cllrs. Mrs Laughton, Wood
Mr A P Mobbs – Substitute Parish Council Representative
Mr M V T Sharpe – Independent Member
- APOLOGIES:** Cllrs Mrs Blanford, Honey, Mr J Dowsey, Mr D Lyward.
- ALSO PRESENT:** Monitoring Officer, Deputy Monitoring Officer, Senior Member Services and Scrutiny Support Officer.

262 MINUTES

Resolved:

That the Minutes of the meeting of this Committee held on the 12th July 2007 be approved and confirmed as a correct record.

263 WITTERSHAM PARISH COUNCIL – APPLICATIONS FOR DISPENSATIONS UNDER CODE OF CONDUCT IN RELATION TO PLANNING APPLICATION FOR PROPOSED NEW VILLAGE HALL AT CORONATION FIELD, WITTERSHAM.

The Chairman introduced the item and said that she appreciated this was a controversial issue in the village of Wittersham. She clarified that this meeting was not concerned with the merits of the proposals for a new village hall or where it should be sited. Three Parish Councillors with Personal and Prejudicial Interests had applied for dispensations related to the village hall matter and the Committee would purely consider these applications. She said that she would allow members of the public present to speak for three minutes should they so wish and one person indicated that they would like to speak.

A pack of correspondence received since the publication of the agenda was tabled. The Chairman gave everybody present an opportunity to read the papers and the Monitoring Officer explained that he would go through them with Members if they so wished. It was his view that Members should be aware of all the relevant facts. Members considered it procedurally unfortunate that they had been given the papers at the last moment but agreed to continue with the meeting if the Monitoring Officer explained the nature of each item of correspondence. The Monitoring Officer outlined: - an email from Mr Chesson including a series of attachments; letters from Mrs Bracher; and emails from Mr Carroll, Mr Willcocks and Mrs Deackes. The general tone of the correspondence was concern and opposition to the recommendation of the Monitoring Officer to grant the dispensations and one questioned the accuracy of the letter from Public Law Solicitors on behalf of Mr Lewis. The Monitoring Officer took Members through each item of correspondence, summarising the main points. He expressed the view that insofar as the letters raised issues of bias and predetermination on the part of the three Parish Councillors this was a separate matter and not a factor that should be given weight in the current context.

The Parish Council representative on the Committee asked why the issue of bias was not relevant for this Committee. He did not believe the issue could proceed fairly if dispensations were granted. If the Members in question were allowed to speak or vote at the meeting with such a clear prejudicial interest, as Chairman of the Kent Association of Parish Councils for the Ashford Area Committee, he would report them to the Standards Board for England. The Monitoring Officer clarified that under the new Code of Conduct the Members would in any event be allowed to make representations and answer questions at the meeting regardless of prejudicial interests or the granting of dispensations. The issue of granting the dispensations would be to allow the Members to remain in the meeting, take

a full part in the meeting and vote. The regulations allowed for this in cases such as this where the number of Members of the Authority who would be prohibited from participating in the business of the Authority exceeded 50% of the total number of Members entitled to participate.

Mrs Bracher, a resident of Wittersham and a former Parish Councillor, then spoke. She explained that she did not understand why the Monitoring Officer had recommended the granting of the dispensations and why the question of bias was not an important one for this Committee when there were such clear prejudicial interests such as this one. She also believed that the Monitoring Officer had made light of points raised in her letter of the 25th September which had highlighted some inaccuracies in the correspondence of Public Law Solicitors. They had stated that the Parish Council had initiated the building of a new village hall and had prepared the plans, but this was not true. This had been done by the Village Hall Management Committee and she considered this was an important point that should not be dismissed. She also believed the view that the three Members had been voted on to the Parish Council because the village needed a change was not true. Three existing Members had not stood for re-election so there was a vacuum and there had only been a few votes either way. She concluded by stating that the Monitoring Officer must know that the three Members were both biased and had prejudicial interests and this had to be taken into consideration.

The Monitoring Officer acknowledged that there were discrepancies between the different accounts of how the planning application had been put together but that this was not important to the decision to be made at this meeting. Additionally whilst possible bias may be a relevant issue at a future meeting of the Parish Council it was not a matter to which weight should be given now at this Committee. The Standards Committee did not need to, indeed it was not in a position to, make any findings as to bias on the part of any Parish Councillor. That may be relevant when the Parish Council came to decide how to proceed with the planning application.

In response to a question about quorum, the Monitoring Officer explained that four of the seven Parish Councillors had a prejudicial interest, but the quorum was three, so even if the dispensations were not granted the three remaining Members could make a decision. There was, therefore, no legal imperative to grant dispensations in the sense that lawful decisions could still be made. In his view proper political and democratic process was at the heart of these applications. For whatever reason these three Members had been elected to the Parish Council in May and Standards Board guidance stated that Standards Committees, when considering dispensations, needed to balance the public interest in avoiding Members with prejudicial interests taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of Members of the Authority. Under paragraph 12.2 of the Code of Conduct the three Members could speak and make representations on this item without dispensations and then leave the meeting without taking part in the debate or the vote. If this Committee believed that this was a satisfactory level of representation for the views of this part of the Parish Council membership, then there was no need to grant the dispensations. However, if the Committee considered that the public interest and opinion in the context of such a key planning proposal was more likely to be better represented by the granting of dispensations they should be granted. The issue of bias would need to be separately considered on all sides in due course.

An Independent Member of the Committee asked if the Committee should grant or deny each application for dispensation individually. The Monitoring Officer explained he would be concerned if the Committee pursued a route of distinguishing between the three applications in this case as they were essentially made from three very similar factual backgrounds (i.e. that their dwelling houses were extremely close to the site of the village hall proposal). Therefore, it would be difficult to justify different decisions for the different cases. He accepted, however, that one of the three Parish Councillors was also a Member of the Village Hall Management Committee.

The Parish Council representative asked if the Monitoring Officer had responded to Public Law Solicitors' letter of the 12th June seeking "advice". The Monitoring Officer explained that he had responded to clarify the procedure for applying for dispensations but it was not his role to provide them with "advice" in the sense of legal advice.

Members of the Committee raised the issue of precedent and referred to applications for dispensations heard by this Committee in January 2005 relating to a planning application in High

Halden. Some Members considered that this case was very different and the two could be distinguished. The planning application in High Halden was made by a third party and was nothing to do with the Parish Council. Four of the Parish Councillors in that instance had just happened to live in the locality and their inability to participate would have left the meeting inquorate.

The Parish Council representative on the Committee said that in his view the individuals were attempting to abuse the political and democratic process for their own gains and dispensations should not be given when there were such clear prejudicial interests. He considered that the Committee had to take into account common sense, honesty and fairness and also consider that none of the Members in question polled more than 20% of the electorate at the recent Parish Elections. He considered the grant of dispensations should be refused. This was also the view of another Member who said that his interpretation of the regulations was that dispensations were appropriate only if the business of a meeting was impeded. However, in this case even without the dispensations the meeting could deal with the business and reach a quorate decision. In response the Monitoring Officer acknowledged that whilst this was a possible interpretation of the regulations, his own view, after having taken advice, was that business would in effect be deemed to be "impeded" if less than 50% of Members could take part and that there was not a separate requirement to establish the absence of a quorum.

Resolved:

That (i) each of the Wittersham Parish Councillors referred to below be granted a dispensation to enable them to speak and vote at meetings of the Parish Council and/or its Committees in relation to whether the Parish Council should pursue, withdraw or amend its current planning application 06/00924/AS, notwithstanding that they each have prejudicial interests therein by virtue of proximity of their private dwellings (and membership of the Village Hall Management Committee in the case of Mr Pennyfather), such dispensations to expire when the said planning application is determined, withdrawn or otherwise finally disposed of:

**Mr David Charles Lewis
Mr Paul Lyon
Mr David Leonard Pennyfather.**

- (ii) the dispensations be noted in the Register of Interests in accordance with the Dispensation Regulations.**
- (iii) the Monitoring Officer, when writing to the Parish Councillors about the dispensations, advise that the Standards Committee's expectation would be that the relevant Parish Councillors would express views based on the wider public interest and also advise each of them to carefully consider their individual positions in relation to the rule on bias (and if necessary take independent advice on the matter) prior to taking part in any future meeting of the Parish Council which considers the matter of the village hall planning application.**

STANDARDS COMMITTEE
4TH DECEMBER 2007
REPORT OF THE MONITORING OFFICER

MATTER REFERRED FOR LOCAL INVESTIGATION
CASE 172200.07 - MR ANDREW MACBEAN
FORMER MEMBER OF ORLESTONE PARISH COUNCIL

1. Under the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004, Ethical Standards Officers of the Standards Board for England (SBE) may refer complaints of Councillor misconduct to the Council's Monitoring Officer for local investigation.
2. The above case was referred to me for local investigation and in July I appointed an external solicitor to conduct the investigation. At the time of the events referred to in the complaint, Mr MacBean was a parish councillor although he has subsequently resigned.
3. The Investigator's Final Report is attached to this report although I have not appended to it the investigator's notes of the various interviews undertaken. These will be available at the meeting should any member wish to see them. In relation to each of the allegations the findings of the investigator are that there was no failure to comply with the relevant Code of Conduct.
4. Since the Investigator's findings are that there has been no breach of the Code, there is no requirement to hold a formal hearing of the matter unless the Committee decide they are not prepared to accept the findings at this stage. Attached to this report is an extract from the agreed procedure (paragraph 5, The Final Report) which outlines the purpose of the current meeting and the options open to members. The full procedure note on local investigations is contained within the Constitution.
5. Members of the Standards Committee are requested to determine whether it accepts the Investigator's findings that there has been no failure to comply with the relevant Code of Conduct or whether the matter should be considered at a hearing of the Standards Committee.

5 The Final Report

- (a) After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his/her draft report in the light of any comments received, and produce and send to the Monitoring Officer his final report. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the Standards Committee, and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions, such as background documents of telephone conversations, letters, and notes of interviews with witnesses;
- (b) The Monitoring Officer shall then send a copy of the final report to the Councillor, advising that:
- (i) where the final **report concludes that there has not been a failure to comply** with the Code of Conduct, he/she will refer the report to the Standards Committee for their consideration, and
 - (ii) where the final **report concludes that there has been a failure by** the Councillor to comply with the Code of Conduct, he/she will refer the report to the Standards Committee for a formal hearing.
- (c) The Monitoring Officer shall ensure that, when the agenda for the Standards Committee is sent out to members of the Standards Committee, including the final report, the agenda and the report are also sent to:
- (i) The person who made the complaint;
 - (ii) The Clerk to the Parish (if any); and
 - (iii) The Ethical Standards Officer
- together with a note explaining the circumstances under which the Standards Committee may conduct a hearing into the allegations, and the procedure for these events.
- (d) Where the Standards Committee considers the report in accordance with Paragraph 5(b)(i) above, it shall make one of the following findings:
- (i) That it accepts the Investigating Officer's finding that the Councillor has not failed to comply with the relevant Code of Conduct as set out in the allegation;
 - (ii) That the matter should be considered at a hearing of the Standards Committee, conducted in accordance with the authority's adopted Procedure for Local Determination Hearings.

NB: This is not a finding that there has been a failure to comply with the Code of Conduct, but simply that, on the basis of the Investigating Officer's report, the Standards Committee is not at this stage prepared to come to a final conclusion that there has been no such failure to comply, and that the matter merits consideration at a full hearing.

- (e) Where the Standards Committee finds as set out in Paragraph 5(d)(i) above (no failure to comply with the Code of Conduct), the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that finding and the reasons on which it was based, together with a copy of the Investigating Officer's report to
- (i) The Councillor;
 - (ii) The Ethical Standards Officer;
 - (iii) The Standards Committee, if the finding was made by a Sub-Committee of the Standards Committee;
 - (iv) The Standards Committee of any other local authority (other than a Parish Council) of which the Councillor is also a member
 - (v) The Parish Council, if the Councillor was also a member of a Parish Council, and
 - (vi) The person who made the allegation.

And shall ask the Councillor whether he objects to the publication of a notice of the finding in at least one local newspaper, and arrange for the publication of such a notice unless the Councillor so objects.

- (f) Where the Standards Committee finds as set out in Paragraph 5(d)(ii) above (that the matter should be considered at a full hearing) or the Investigating Officer's report contains a finding that the Councillor did fail to comply with the Code of Conduct, the Monitoring Officer shall arrange for the matter to be considered at such a hearing in accordance with the authority's adopted Procedure for Local Determination Hearings, subject to the following variations:
- (i) The hearing shall be conducted no sooner than 14 days from, and no later than 3 months from the date on which the Monitoring Officer received the final report of the Investigating Officer;
 - (ii) the report of the Investigating Officer shall be treated as if it constituted the report of the Ethical Standards Officer; and
 - (iii) the Investigating Officer shall be responsible for presenting the report to the Standards Committee and introducing any witnesses whom he considers that the Standards Committee should hear in order to be able to give the matter proper consideration.

SBE 172200.07

REPORT OF THE INVESTIGATOR

Complaint against Andrew MacBean

1. Background and Legislation

The Standards Board for England (“the Standards Board”) received a complaint from Martin Hollowday concerning the conduct of Andrew MacBean who was Chairman of Orlestone Parish Council at the time of the conduct complained of. The Standards Board rejected part of the complaint because it did not disclose a potential breach of the Code of Conduct and did not therefore fall within the jurisdiction of the Standards Board as set out in the Local Government Act 2000.

The Standards Board referred the remaining part of the complaint to Ashford Borough Council’s Monitoring Officer for local determination. The Monitoring Officer engaged the author to investigate the complaint and report back.

The matters for investigation fall into two parts:

- i) that at a planning meeting of the Parish Council on 1 February 2006 and at two undated planning meetings one prior to the meeting of 1 February 2006 and one afterwards he failed to declare a prejudicial interest in the matter under discussion which was a planning application made to Ashford Borough Council for development at the Hamstreet Surgery and;
- ii) that at the meeting of 1 February 2006 and the planning meeting prior to it he acted aggressively towards other members of the Council and specifically it is alleged that he shouted at two female Councillors two inches away from their faces, and on one occasion displayed body language that was intimidating as he jabbed his fingers on the application and acted in a generally hostile manner.

2. The Code of Conduct

The relevant Code of Conduct for the Orlestone Parish Council at the time of the allegations was the Model Code of Conduct for Parish Councils contained in the Parish Councils (Model Code of Conduct) Order 2001 (attached as appendix 1 to this report). It was adopted by the Parish Council. The relevant parts of the Code for the purposes of this complaint are;

“ **General obligations**

- 2. A member must –**
(b) treat others with respect; “

and,

“ 7- (1) A member must regard himself as having a personal interest in any matter..... if a decision upon it might reasonably be regarded as affecting to a greater extent than any other council tax payers, ratepayers or inhabitants of the authority’s area, the well-being or financial position of himself, a relative or a friend or –

- (a) any employment or business carried on by such persons;**
- (b) any person who employs or has appointed such person, any firm in they are a partner, or any company of which they are directors;**
- (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or**
- (d) any body listed in sub-paragraphs (a) to (e) of paragraph 13 below in which such a person holds a position of general control or management**

(2) in this paragraph –

- (a) “relative” means spouse, partner, parent. parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece or the spouse or partner of any of the preceding persons; and**
- (b) “partner”above means a member of a couple living together “**

and

(9)- (1) ...a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest”

3. History and allegations

Orlestone Parish Council was consulted by Ashford Borough Council in late 2005 on the planning application relating to the extension at the Hamstreet Surgery , Ruckinge Road, Hamstreet . The members of the Parish Council at that time were Andrew MacBean (Chairman), George Sparks (Vice Chairman), Sebastian Barrow, Mandy Mount, Anita Hollowday (the wife of the complainant), Ian Kirkland, Keith Taylor, Paul Settle and David White. The Clerk at the time was Emily Neighbour. Andrew MacBean was re-elected in the Parish elections of May

2007 but resigned as a councillor after the elections. He is therefore no longer a Councillor.

In the course of my investigation I interviewed Martin Hollowday, Anita Hollowday, Andrew Mac Bean, Emily Neighbour, George Sparks, Sebastian Barrow, Mandy Mount and Ian Kirkland.

The allegations refer specifically to the meeting of 1 February 2006 and other undated meetings. Most of those interviewed could not remember the specific dates of the meetings but all were clear that they had attended a site visit and then a meeting indoors about the planning application. The records contained in minutes show that the site visit took place on 15 October 2005 and the meeting on 1 February 2006 in the Church Hall. I have confined my investigation to these two meetings as all those interviewed could remember what happened at these meetings. The minutes of both meetings are attached as appendix 2.

The records show that the councillors who attended both meetings were Andrew MacBean, George Sparks, Sebastian Barrow, Mandy Mount, Anita Hollowday, Ian Kirkland and Keith Taylor. Both meetings were clerked by Emily Neighbour. The record also shows that Andrew MacBean declared a personal interest at the meetings because he was Chair of the patient's users group at the surgery.

4. Evidence

Everybody I spoke to told me that the Surgery planning application was one of the most controversial matters that the Parish Council had dealt with and that feelings were running very high both by those who were in favour of the surgery extension and those who were against it. All Councillors (except for one) were patients at the surgery and some lived close to the site.

Martin Hollowday did not attend either of the meetings. Anita Hollowday said that at both meetings Andrew MacBean shouted two inches away from her face and also Mandy Mount's face. She said he was "prowling around" behind herself and Mandy Mount to intimidate them. She also says she feels he should have declared a prejudicial interest because he is friends with the Doctors at the surgery. She says this because they attended his wedding. Mandy Mount says that he shouted in her face but cannot remember what he shouted. Nobody intervened when this happened. She also says he acted aggressively at other meetings. She said she felt intimidated at the time and angry afterwards. She also felt he should have declared a prejudicial interest as he was friends with one of the doctors at the surgery. She says he did not declare an interest at all. She said that Councillors should not treat each other like that but did not put in a complaint herself because the planning application was an exceptionally touchy subject.

George Sparks, Sebastian Barrow and Ian Kirkland say that Andrew MacBean did not shout in the face of the two female councillors. They all said that the meetings became very heated and in particular feelings were running high at the site visit. They all say that Andrew MacBean's behaviour was not inappropriate. They said that he has an assertive style that members of the Council were used to and that his conduct was no more aggressive than one might expect in debate over an exceptionally emotive issue. There was, they said, nothing personal in it. George Sparks said that the whole thing had been blown out of all proportion and that whilst Anita Hollowday and Mandy Mount were clearly unhappy they were not that bothered.

Andrew MacBean says that he can recall events at the site meetings but not other specific meetings. He declared a personal interest at all meetings when the matter was discussed. He says the application was highly controversial and that discussions were lively and became impassioned. He says he had strong views in favour of the application and expressed them. He denies shouting in the face of the two female councillors and also denies jabbing his fingers and acting aggressively. He says that he is not friends with the doctors. His wife worked at the surgery for 30 years and was now retired. His relationship with the doctors is one of patient/ doctor and they are acquaintances. He knows many people in the village and the doctors (as well as all Parish Councillors) were invited because of his wife's past connection. He says he does not see any of the doctors socially.

Emily Neighbour says that things got very heated at the site meeting on 15 October 2005. She had been clerk to the Parish Council for three years and had seen many meetings but that this matter was especially controversial. Mandy Mount and Anita Hollowday opposed the application. She said that Andrew MacBean would shout people down but that that was his style. She says that at the site meeting a councillor did shout very loudly at one of the two female councillors but that it was not Andrew MacBean. She said she does not know if Andrew MacBean was a friend of any of the doctors and pointed out that all the councillors except one used the surgery and many lived in "spitting distance of the application site". The site meeting did get very heated which is why it was reconvened to the 1 February. She said that Andrew MacBean's behaviour was not so aggressive that anybody leapt to their feet to intervene.

5. Findings

I find that the atmosphere at Parish Council meetings relating to the application was exceptionally highly charged and that members of the Council that attended the meeting had strongly held views on the proposals. Andrew MacBean was strongly in favour of the extension and Anita Hollowday and Mandy Mount were strongly opposed.

It is clear from all the people interviewed that debate became very heated but there is a conflict of evidence about whether or not he shouted 2 inches away from the faces of the two female councillors. Most of the people interviewed say that this did not happen.

I find that Andrew MacBean did raise his voice but did not shout 2 inches from the face of the female Councillors. I also find that whilst he raised his voice at the meetings this was no more than his usual style and that his behaviour was no more than one would expect in heated debate on such an emotive matter. I make this finding because the majority of those interviewed said that this was the case and also because nobody intervened. The majority of those interviewed said that his behaviour was not inappropriate given the circumstances.

Andrew MacBean declared a personal interest at all meetings where the planning application was considered. The Code of Conduct applicable at the time does not define the word friend. I accept from him what he says and that the doctors were not friends of his and I do not think therefore that he had to declare a prejudicial interest.

I find therefore that there was no breach of the code of conduct.

Sarah Foster

Investigator

5 November 2007

STATUTORY INSTRUMENTS

2001 No. 3576

LOCAL GOVERNMENT, ENGLAND

The Parish Councils (Model Code of Conduct) Order 2001

<i>Made</i>	<i>5th November 2001</i>
<i>Laid before Parliament</i>	<i>6th November 2001</i>
<i>Coming into force</i>	<i>27th November 2001</i>

The Secretary of State for Transport, Local Government and the Regions, in exercise of the powers conferred upon him by sections 50(1) and (4), 81(2) and (3), and 105(2), (3) and (4) of the Local Government Act 2000[1], and of all other powers enabling him in that behalf, having carried out such consultation as is required by virtue of section 49 of that Act, and being satisfied that this Order is consistent with the principles for the time being specified in an order[2] under section 49 (1) of that Act, hereby makes the following Order:

Citation, commencement and application

1. - (1) This Order may be cited as the Parish Councils (Model Code of Conduct) Order 2001 and shall come into force on 27th November 2001

(2) This Order applies in relation to parish councils[3], and references to "authority" shall be construed accordingly.

Model code of conduct - parish councils

2. - (1) The Secretary of State hereby issues a model code as regards the conduct which is expected of members and co-opted members[4] of authorities and that code is set out in the Schedule to this Order

(2) All the provisions of the model code in the Schedule to this Order are mandatory[5].

Transitional provision

3. - (1) On the day an authority's code of conduct is adopted or applied[6] to it, the following shall, where applicable to the authority, be disapplied as respects that authority until 27th July 2002 -

(a) sections 94 to 98 and 105 of the Local Government Act 1972[7];

(b) any order made under section 83 of the Local Government Act 1972[8];

(c) any regulations made or code issued under sections 19 and 31 of the Local Government and Housing Act 1989[9];

(d) in section 17 of the Audit Commission Act 1998, subsections (1)(b), (3), (5)(b), (7) and (8) and in subsection (2), the words "subject to subsection (3)" and paragraphs (a) and (b) [10];

(e) section 18 of the Audit Commission Act 1998[11];

(2) Section 16(1) of the Interpretation Act 1978[12] shall apply to a disapplication under paragraph (1) above as if it were a repeal, by an Act, of an enactment.

Signed by authority of the Secretary of State for Transport, Local Government and the Regions

Nick Raynsford

Minister of State Department for Transport, Local Government and the Regions

5th November 2001

SCHEDULE

Article 2

THE MODEL CODE OF CONDUCT - PARISH COUNCILS

PART 1

GENERAL PROVISIONS

Scope

1. - (1) A member must observe the authority's code of conduct whenever he -

- (a) conducts the business of the authority;
- (b) conducts the business of the office to which he has been elected or appointed; or
- (c) acts as a representative of the authority,

and references to a member's official capacity shall be construed accordingly.

(2) An authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.

(3) Where a member acts as a representative of the authority -

- (a) on another relevant authority[13], he must, when acting for that other authority, comply with that other authority's code of conduct; or
- (b) on any other body, he must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject

(4) In this code -

(a) "member" includes a co-opted member of an authority; and

(b) "responsible authority" means a district council or a unitary county council which has functions in relation to the parish councils for which it is responsible under section 55(12) of the Local Government Act 2000.

General Obligations

2. A member must -

(a) promote equality by not discriminating unlawfully against any person;

(b) treat others with respect; and

(c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

3. A member must not -

(a) disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; nor

(b) prevent another person from gaining access to information to which that person is entitled by law.

4. A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

5. A member -

(a) must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of the authority -

(i) act in accordance with the authority's requirements; and

(ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed

6. A member must, if he becomes aware of any conduct by another member which he reasonably believes involves a failure to comply with the authority's code of conduct, make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him to do so.

PART 2

INTERESTS

Personal Interests

7. - (1) A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 12 and 13 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend or -

- (a) any employment or business carried on by such persons;
- (b) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
- (d) any body listed in sub-paragraphs (a) to (e) of paragraph 13 below in which such persons hold a position of general control or management

(2) In this paragraph -

- (a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
- (b) "partner" in sub-paragraph (2)(a) above means a member of a couple who live together

Disclosure of Personal Interests

8. A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent

Prejudicial Interests

9. - (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

(2) A member may regard himself as not having a prejudicial interest in a matter if that matter relates to -

- (a) another relevant authority of which he is a member;
- (b) another public authority in which he holds a position of general control or management;
- (c) a body to which he has been appointed or nominated by the authority as its representative;
- (d) any functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992[14], where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and

(e) any functions of the authority in respect of an allowance or payment made under sections 173 to 173A and 175 to 176 of the Local Government Act 1972[15] or section 18 of the Local Government and Housing Act 1989[16].

Participation in Relation to Disclosed Interests

10. A member with a prejudicial interest in any matter must -

(a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation[17] from the standards committee of the responsible authority[18]; and

(b) not seek improperly to influence a decision about that matter.

11. For the purposes of this Part, "meeting" means any meeting of -

(a) the authority; or

(b) any of the authority's committees, sub-committees, joint committees or joint sub-committees.

PART 3

THE REGISTER OF MEMBERS' INTERESTS

Registration of Financial and Other Interests

12. Within 28 days of the provisions of an authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his financial interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the monitoring officer of the responsible authority[19] of -

(a) any employment or business carried on by him;

(b) the name of the person who employs or has appointed him, the name of any firm in which he is a partner, and the name of any company for which he is a remunerated director;

(c) the name of any person, other than a relevant authority, who has made a payment to him in respect of his election or any expenses incurred by him in carrying out his duties;

(d) the name of any corporate body which has a place of business or land in the authority's area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;

(e) a description of any contract for goods, services or works made between the authority and himself or a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above;

(f) the address or other description (sufficient to identify the location) of any land in which he has a beneficial interest and which is in the area of the authority;

(g) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above; and

(h) the address or other description (sufficient to identify the location) of any land in the authority's area in which he has a licence (alone or jointly with others) to occupy for 28 days or longer.

13. Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his other interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the monitoring officer of the responsible authority of his membership of or position of general control or management in any -

(a) body to which he has been appointed or nominated by the authority as its representative;

(b) public authority or body exercising functions of a public nature;

(c) company, industrial and provident society^[20], charity, or body directed to charitable purposes;

(d) body whose principal purposes include the influence of public opinion or policy; and

(e) trade union^[21] or professional association.

14. A member must within 28 days of becoming aware of any change to the interests specified under paragraphs 12 and 13 above, provide written notification to the monitoring officer of the responsible authority of that change

Registration of Gifts and Hospitality

15. A member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the monitoring officer of the responsible authority of the existence and nature of that gift or hospitality.

ORLESTONE PARISH COUNCIL

Planning Site Meeting of the Council held on 15th October 2005 at 10am

Present: George Sparks (in the Chair), Mandy Mount, Anita Hollowday, Ian Kirkland, Sebastian Barrow, Keith Taylor and Andrew MacBean, and the Clerk

Apologies for absence: Cllrs Paul Settle and David White.

Application No. 05/01495/AS Hamstreet Surgery, Ruckinge Road. Construction of a 2-storey extension to provide space for additional medical facilities and additional staff car parking.

Councillors met to look at plans for the proposed building in daylight.

After discussion and inspection of the plans it was agreed that the design of the proposed building was not suitable as it was not appropriate for the location. The bulk of the extension would abut directly against the Ruckinge Road which is one of the entrances to the village and would be overbearing, and take green space.

Cllr MacBean suggested that an extension using the roof-space on the existing building which currently has five different roof heights would tidy it up and provide almost as much space as would be provided by the proposed extension. Any more space if deemed necessary could perhaps be provided by a small single storey extension out the back. This new roof extension would allow the building to be made more sympathetic to the village and could include elements which comply with the Village Design Statement such as dormer windows and tile hanging to match other buildings in the area of the Village Green.

It was also agreed that the parking provision made in the plan of an additional three spaces did not seem to be adequate for the doubling of the floor-space planned. Concern was expressed about where space for additional parking would be found. If the rear of the surgery was not used for the extension there would be room for some spaces there, but access might be difficult.

There was not agreement about whether the principle of expansion of the surgery was supported. It appeared inevitable that on this matter the council would not be unanimously in favour.

It was agreed to hold a further planning meeting on this subject before the next full council meeting to ensure maximum attendance, and to allow members of the public to attend. The Clerk would draft a response to the consultation in three sections to be circulated before the meeting and it was hoped that support of at least two of these sections would be unanimous.

Meeting Closed 11am

Date of next meeting: Planning Meeting Friday 21st October at 7 30pm, Church Hall

Meeting Closed 8.40 pm

Date of next meeting: Monday 24th October at 7.30pm, Victory Hall

ORLESTONE PARISH COUNCIL

Planning Meeting of the Council held on 1st February 2006 at 7.30pm in the Church Hall

Present: George Sparks (in the Chair), Sebastian Barrow, Mandy Mount, Anita Hollowday, Ian Kirkland, Keith Taylor, Andrew MacBean and the Clerk.

Apologies for absence: Paul Settle and David White

Councillors' Interests

Cllr Kirkland declared a personal non-prejudicial interest as a non-voting member of the Ashford Primary Care Trust Executive Committee and its Health Centre Group, on both of which he represented Ashford Borough Council. He considered these interests to be non-prejudicial as this application was being made by the Hamstreet Surgery Practice and not by the Ashford Primary Care Trust.

Cllr MacBean declared a personal non-prejudicial interest as the Chair of the Hamstreet Surgery Patients Group

Amendments to Application No. 05/01495/AS Hamstreet Surgery, Ruckinge Road.
Construction of a 2-storey extension to provide space for additional medical facilities and additional staff car parking.

The Chairman explained that the meeting was to inspect the revised plans for the surgery extension, and also included a letter from the architect, which he read out to the meeting. It was referring to the concern raised by OPC and Highways about the existing parking capacity of the surgery and whether it would be sufficient for a surgery with double the floor area. He said in the letter that the surgery had held a clinic on a Saturday morning recently which 546 people attended, with no problems parking. Cllr Hollowday reported that she had heard quite the opposite from someone who had attended the clinic and described the traffic and car parking situation when she was there as "complete chaos".

The Chairman reminded councillors that OPC had objected to the original application on the grounds of the design, its proximity to Ruckinge Road, its overbearing nature, the loss of green space and a mature hedge; and that no attempt had been made to blend in or enhance the area in accordance with the Village Design Statement. It also had supported Highways' concerns about the adequacy of the parking provision.

It was noted that there had been no response from the surgery with regards to OPC's request for information about the planned uses for the new building.

Cllr Mount commented that she considered the new design was even more unacceptable than the original, the greater roof heights increasing its overbearing nature. As the size of the extension had remained the same she considered it as still too large for the site, and it would inevitably require more parking provision in the long term and greatly increase the

traffic in the area. She expressed her concern and sadness that it seemed inevitable that the extension would be allowed to the detriment of the village.

The Chairman answered her by pointing out that the government had said that "super-surgeries" were the answer and it was a choice for the village between this and potentially no surgery. He also reminded councillors that OPC had agreed at the monthly council meeting on 28th November 2005 that Andrew MacBean should write a letter to the Primary Care trust on behalf of OPC supporting the surgery and its plans in general terms. Cllrs Mount and Hollowday pointed out that they were not present at the meeting when that decision was taken.

Cllr Hollowday expressed her disappointment that the amended drawings showed no reduction in the size of the surgery. It still increased the footprint of the building, using green space right on the road very visibly at the entrance to the village. She would have preferred to see an extension, which made the whole building into two storeys and would not require the use of green space, and could have been used as an opportunity to improve the appearance of the existing building.

Cllr Kirkland said that he was not impressed by the amended plans, although the architect had obviously made some effort to blend the new extension with the village style. However, this resulted in the old surgery not matching the new extension.

AH said the extension on the back was too big.

Cllr Barrow said the new building would be much higher than the existing.

AH asked whether OPC would support this extension if it had been part of a private house.

MM said the only reason OPC were not totally opposed to the application was that they had been told that if it were turned down the existing surgery would be closed.

GS agreed that the proposed extension was still tight in the site but could not be considered as cramming.

IK said that from some angles the new building looked good but not when approached from Ruckinge. He believed the surgery wanted to maximise their ground floor space.

GS said that the roof-lights were not desirable and referred to the VDS.

AH asked would OPC be setting a dangerous precedent if they approved this extension?

GS said that it could be seen to be setting a precedent for other buildings of this nature in the village.

AH said the proposed extension was overbearing and involved the removal of green space and mature trees and a hedge.

Cllr Taylor said he thought the view coming down Ruckinge Hill was very ugly as it looked like the back of a building. Also, no information had been provided by the architect, of materials to be used in the construction.

GS commented that the drawings were an improvement on the previous set, but could be better. The extension did not blend in with the existing building. The whole effect could be more aesthetically pleasing.

SB said that he thought OPC could be criticized if it did not comment on this large, ugly building being built in such a prominent position in the village.

The Clerk pointed out that the original application for the extension to the surgery car park had been turned down partially on the basis of the removal of green space from an entrance to the village.

It was generally agreed that the planned extension would make the surgery too big for its plot and the effect of the presence of a surgery double the size of the existing one could be detrimental to the village in terms of visual impact (as detailed in the current proposal) and in terms of increased need for parking and traffic movements in the area.

It was agreed by four votes to two to make the following comments to Ashford Borough Council in response to the consultation on the amended plans:

Whilst the design of the new elements has improved in the amended drawings of the proposed extension OPC remains extremely concerned that the building is overlarge for the plot and the village.

However, if ABC is minded to approve the application OPC would strongly urge the following:

- 1/ That all the existing trees and the mature hedge are retained,*
- 2/ That the appearance of the gable end (east view, seen on entering the village from Ruckinge) is improved in accordance with the Village Design Statement. OPC would like to see any revised plans before ABC approves them;*
- 3/ That the roof lights are omitted in line with the Village Design Statement;*
- 4/ That the comments on parking are reiterated as in the previous response of OPC.*
- 5/ OPC request the opportunity to approve any materials, particularly colours of tiles and bricks, before any works commence.*
- 6/ OPC would like to remind ABC of their second reason for refusing the extension to the staff car park in their previous application (04/02117/AS) in January 2005: that "the loss of the grassed area would have a detrimental impact on the character of the area and would neither conserve nor enhance the entrance to the village and its special character". This reason still holds for the extension of the staff car park, which is part of*

this application, and OPC would like to point out that this statement (substituting green for grassed) could be equally applied to the extension in this application.

OPC makes these comments in the light of the fact that neither OPC nor apparently the local planning authorities have been given an explanation of the reasons why the extra space is required by the practice

It was agreed to send copies of this response to both borough councillors should they wish to attend any planning meetings.

Councillors Mandy Mount and Anita Hollowday asked that it be minuted that whilst they agreed with the comments made in the response to ABC they could not support the motion to approve them because OPC would not be stating in this response that it was objecting to the proposal. They both stated that they wished this to be kept in the version of the minutes printed in the parish magazine. Cllr Mount said she understood that parish councils were required to state whether they supported or objected to an application, and she would be taking advice on the matter.

Meeting Closed 8.50 pm

Date of next meeting: Monday 27th February at 7 30pm, Victory Hall

STANDARDS COMMITTEE
LOCAL FILTERING OF CODE OF CONDUCT COMPLAINTS
LOCAL GOVERNMENT ETC ACT 2007
REPORT OF THE MONITORING OFFICER

Background

1. In my Annual report to the Council in July, I informed members of the provisions of the Local Government and Public Involvement in Health Bill which proposed substantial changes to the current system of handling code of conduct complaints against councillors. The Bill has now received Royal Assent.
2. The 6th Annual Assembly of the Standards Board for England held recently in Birmingham focused largely on the need for the Board and local authorities to prepare for the new regime of complaint handling. A number of useful presentations were given, even though the continuing absence of government regulations and guidance hampered the event considerably.
3. The purpose of this report is to update members on the current position regarding the proposed new system and make some initial recommendations about the structure and composition of the Standards Committee.

Capacity to implement of the new complaints handling regime

4. As members will know, all complaints are currently made centrally to the Standards Board for England who filter them to decide whether or not there is a matter of substance to be referred either to an Ethical Standards Officer or to a Monitoring Officer for investigation. As from 1 April 2008 this local filter will be carried out by Standards Committees against an expectation that the great majority of subsequent investigations and hearings will also be carried out locally. The needs of natural justice require that to some extent the tasks of carrying out the initial assessment and exercise of the local filter, any appeal from that decision and the substantive hearing into the case should be carried out by different members. The initial view of the Board that three entirely separate sets of members had to be available to carry out each of those tasks now seems to have been modified. The advice now is that the same group of members could carry out the local filter decision and the substantive hearing in many cases but a separate panel would still be needed to deal with any appeal against the filter decision. The minimum size of a panel (or sub-committee) to carry out any one of these tasks is three with an independent member essential and a parish member essential if the Panel is dealing with a parish matter.
5. There is clearly a need to build increased capacity within the existing Standards Committee structure in order to accommodate this increased and diverse workload. One of the ways to increase capacity is some form of joint working. The options range from a joint committee between two or more authorities to carry out the local filter up to a joint committee between a number of authorities carrying out all standards functions. However in the

absence of even drafts of the proposed legislation the scope of what may or may not be permitted or indeed sensible is not yet clear. Some authorities have already taken the view that joint working on such a sensitive topic is not for them and have therefore looked to the size of their Standards Committees. As can be seen above, the bare minimum size for a Standards Committee for these new functions alone would be six i.e. two district councillors, two parish members and two independent members, remembering also that a minimum of 25% of members of a Standards Committee must be independent. However clearly this minimum size would provide no resilience or spare capacity and as it is unlikely that joint working could be satisfactorily adopted at the outset then the size and composition of the Standards Committee should be reviewed now to ensure it is capable of fulfilling its new role.

6. The Monitoring Officer of Newark and Sherwood District Council who is a past president of the Association of Council Secretaries and Solicitors has increased the size of her Standards Committee to 15 being four independents, four parish members and seven district councillors to make absolutely sure that illness and other absence does not undermine the ability of the Committee to fulfil its functions with panels of five members rather than three. In my view whilst final decisions on individual panel sizes and functions can be taken later making the minimum likely adjustment to the composition of Ashford's Standards Committee is prudent now in order to ensure it is properly resourced to deliver well in advance of the April deadline even though it is possible that we may need to revisit the matter before April, depending on the content and timing of new guidance and regulations.
7. The current composition of the Standards Committee is 5 borough councillors, 3 independent members (one of whom is Chairman) and one parish council representative, with one parish "substitute." I recommend that the parish council representation should increase to three in order to provide resilience in all three areas of representation. I make this recommendation now in order to ensure training can be given in advance of the new regime and irrespective of whether some form of joint working with neighbouring Councils eventually proves to be feasible. It would, however, enable the Committee to function on its own in the meantime. I intend to report further on the detailed arrangements for complaint handling once the regulations and guidance have been produced by government and the Board. It may be sensible for example, to establish different panels of three for filtering/appeal decisions but perhaps larger panels of five to deal with investigation/determination hearings.
8. 38 pilot authorities have carried out exercises on how the local filter might work in practice. Interestingly they all showed that considerably more cases would be referred for investigation by local Committees than by the Standards Board for England's own referral unit. The Standards Board referral unit has grown increasingly robust over the years on which cases to refer for investigation and which not to refer. However it is hoped that the regulatory regime will allow Standards Committees to impose directions rather than necessarily referring a matter for investigation eg: requiring a member to apologise or to receive training and only if the member fails to comply with the direction would the matter than be referred for investigation. This may assist in ensuring a proportionate input of resources.

9. These pilots demonstrated that the unfamiliarity with the process and the nuances of the Code meant that Standards Committees tended to err on the side of caution and refer matters for investigation. One exercise in Hampshire however showed that after a third round of training exercises, the increasingly proficient members were referring rather less matters for hypothetical investigation, being much more confident in their judgements.
10. Therefore I recommend that in the coming months all members of the Committee and relevant officers undergo some training in the operation of the local filter and generally on familiarity with the Code. I will seek to ensure that wherever practical training is carried out jointly with neighbouring authorities to spread the cost and benefit. This is likely to be an externally facilitated daytime, all-day event in order to ensure coverage of all the required issues. Subject to availability, it is likely to be held in early February at Ashford or perhaps at a neighbouring authority.

Resources

11. A consistent theme at the recent Annual Conference was concern amongst local authorities about resources to carry out the new functions of filtering and increased local investigation and determination. Indeed Kent Secretaries has been pressing hard at national level for recognition of the additional burden by way of additional grant. Regrettably, it seems unlikely that any significant additional resource will be forthcoming at this stage. The Parliamentary Under Secretary of State spoke at the Conference and his position was that ethical standards should be at the forefront of how local authorities operate and they should recognise and plan for that.

Ethical Standards and Governance

12. At a joint presentation at the conference between the Centre for Public Scrutiny, BMG Research (for the Standards Board) and the Audit Commission the wider role of standards as part of ethical governance was promoted. It is now clear that the Audit Commission are revising the assessment system of local authorities and under what are described as the “key lines of enquiry” ethical standards will now feature much more strongly. The intention is that local authorities should be able to demonstrate that they have high ethical standards and a proactive Standards Committee which promotes ethical standards and ensures these standards are championed at the highest political and officer level. To this end I have arranged for meetings between the Leader, Chief Executive, the Chairman of Standards Committee and myself to take place at least on a regular 6 monthly basis to discuss relevant ethical framework issues.

Recommendations

I recommend that:-

- A. Members note the current position regarding the proposed introduction of local complaints handling and ask the Monitoring Officer to report further when regulations and guidance become available.

- B. The Committee recommends to the Council that its composition be revised to include three parish council representatives and that the KAPC be invited to nominate one additional representative alongside the two existing nominations.
- C. The Monitoring Officer arrange further training for relevant officers and members including all members of the Standards Committee such training to be undertaken in early 2008 jointly with neighbouring authorities if practicable.