

Standards Committee

Minutes of a Meeting of the Standards Committee held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **12th December 2008**

Present:

Mrs C Vant (Chairman);

Mr R Butcher, Mr D Lyward – Parish Council Representatives
Mr J Dowsey – Independent Member

Apologies:

Cllrs. Mrs Blanford, Mrs Hawes; Honey, Mrs Laughton, Wood

Ms J Adams, Mr M Sharpe

Also present:

Mr Barham
Mr Burville, Mr Mortimer (Head of Legal and Democratic Services) - Witnesses
Mrs S Foster – Solicitor – External Investigator

Deputy Monitoring Officer, Senior Legal Assistant, Member Services and Scrutiny Support Officer.

317 Minutes

Resolved:

That the Minutes of the meeting of this Committee held on the 28th November 2008 be approved and confirmed as a correct record.

318 Local Investigation and Determination Hearing - Reference SBE 17755.07 – Former Councillor Edward Barham of Rolvenden Parish Council

The Chairman welcomed everyone to the meeting. She introduced those present, to whom, Mr Barham raised no objections. The Deputy Monitoring Officer confirmed that the meeting was quorate after which the Chairman invited the parties to say if they wished the press and public to be excluded from the hearing. All parties were content for them to remain present and the Chairman then confirmed that the hearing would be held in public and described the process for the hearing.

It was clarified that the Hearing was under the old Code of Conduct which had been in effect prior to May 2007 and reference to the new Code could not be taken into account.

When asked if he concurred with the accusations against him, Mr Barham said he did not and that he would be calling two witnesses to support his case. The witnesses would be the Ashford Borough Council Head of Legal and Democratic Services and Mr Burville, who had chaired the Parish Council meeting on the 16th January 2007.

The Deputy Monitoring Officer introduced the report of the Monitoring Officer. He then summarised the allegations of the complainant relating to ex-Councillor Mr Barham's failure to declare interests and to withdraw from the Parish Council meeting on the 20th February 2007 and that he sought improperly to influence the outcome of decisions of the Parish Council Meeting of the 16th January 2007, in breach of the Council's adopted Code of Conduct. The allegations were in relation to discussions and decisions at Parish Council Meetings where the planning application for a new site for the complainant's sausage factory was being considered. It was alleged that Mr Barham had used his influence to encourage the Parish Council to reconsider their support for the planning application and, at the meeting at which it was reconsidered, he failed to declare an interest and used his casting vote to rescind the decision to support the application.

The report detailed that Mr Barham had originally returned his Pre-Hearing Enquiries Forms blank with the exception of Form D in which Mr Barham had confirmed that he did not intend to attend the hearing. In an accompanying letter he had explained that he had not completed the forms as he considered it almost inevitable that the Committee would find him guilty of breaching the "very tightly drawn Code of Conduct". However, one working day before the hearing, Mr Barham returned a second set of forms which had been extensively completed and this had resulted in the 16th June 2008 hearing being cancelled and a new date being arranged. The Deputy Monitoring Officer gave details of the additional information that had been received and explained that in the light of the fact that the Monitoring Officer may be called as a witness, the administration and procedural management of the case had been handed to the Deputy Monitoring Officer.

In general, Mr Barham was not disputing the facts, but was critical of a couple of points in the Investigating Officer's report. It was agreed that these points did not form part of the report findings and as such the Investigating Officer agreed not to use them as part of her case. Mr Barham agreed with this approach but reiterated that he did not agree with the allegation that he had breached the Code of Conduct. Mr Barham also disagreed with the Deputy Monitoring Officer's use of the word "rescind" in relation to the relevant minute of the 16th January 2007. He considered that the word implied that he had engineered the change in decision, when, he argued, he had merely sought for the Parish Council to reconsider. It was confirmed that regardless of the intention merely to "review" the decision, the Parish Council Summons for the meeting to be held on the 29th January 2007 had actually contained a proposal to rescind the minute.

The Investigating Officer then introduced her report and highlighted the background to the complaint. At the time of the alleged breach, Mr Barham had been a Rolvenden Parish Councillor and Chairman, but he had not been re-elected in May 2007. The Complainant had alleged that there had been three breaches, specifically in relation to two meetings of the Parish Council. He had claimed that Mr Barham: -

- (i) having declared an interest at the meeting of 16th January 2007 and having removed himself from the room during consideration of the item, he then improperly used his influence and misused his position to ensure that the decision made on the 16th January 2007 was reconsidered on the 29th January 2007; and that
- (ii) he failed to declare a prejudicial interest at the meeting on the 20th February 2007
- (iii) he failed to leave the meeting of the 20th February 2007 and voted on the planning application despite having a Personal and Prejudicial Interest.

The Investigating Officer confirmed that the relevant Code of Conduct for Rolvenden Parish Council at the time of the allegation, was the Model Code of Conduct for Parish Councils and this had been attached to the report. The report had outlined the relevant parts of the Code for the purposes of the complaint which included the test for a personal interest and when such an interest would be prejudicial.

The Investigator's report had detailed the general support for the planning application within the village and the fact that it was accepted that the complainant and Mr Barham and their families did not get on. She had interviewed all of the relevant parties, but had not interviewed Mr Burville, (Vice-Chairman of Rolvenden Parish Council at the time of the alleged breach) who had now been called by Mr Barham as a Witness.

Some points for consideration were:

- There had been discussions between the complainant and Mr Barham regarding the appropriate piece of land for the application site. Mr Barham had promoted his land as an option, but the applicant had chosen not to pursue that option. The evidence compiled did suggest that Mr Barham considered the village would only tolerate one development and was keen to develop his land at Windmill Farm.
- The Minutes of the Rolvenden Parish Council Meeting of the 16th January 2007 implied that there had been a lengthy, detailed debate regarding the application and that Members had given it full consideration before voting by a majority to support the planning application.
- The decision to reconsider the application had been reached within a couple of days of the meeting of the 16th January 2007 despite the Parish Clerk writing to the Planning Department giving support for the application. This appeared to coincide with a statement which Mr Barham had circulated to Members of Rolvenden Parish Council confirming that he had suggested to the Vice-Chairman to reconvene the Parish Council to consider again the complainant's application.

- There was clear evidence that the “relationship” between Mr Barham and the applicant was strained.

At the meeting on the 20th February 2007, Mr Barham had Chaired the meeting and declared that he had been advised that he no longer had an interest as he could not commercially gain from the planning application. However, the Investigator’s report highlighted that Mr Barham had sent a statement encouraging a review of the Parish Council’s support for the planning application. One of the grounds he had suggested, was that alternative sites had not been fully explored. A prejudicial interest did not need to be for financial gain, but was based on how an outsider might view the situation. It was probable that they may have concluded that Mr Barham’s plans to develop his land would affect his subjectivity. In addition, it was unlikely that that Mr Barham could have considered the application without applying some commercial consideration.

The Investigating Officer concluded that at the time of the alleged breach, Mr Barham was actively promoting his Windmill site. His undue influence over other Parish Councillors was clear and the use of his casting vote was critical in influencing the decision. In addition the relationship with the complainant was strained and on-going and would have affected his impartialness.

Mr Barham was then invited to reply to the Investigating Officer’s report and comments. He challenged all three breaches that he had been alleged to have made. He did not consider that he was commercially promoting his land, it was widely accepted that Windmill Farm was the best site for the factory and therefore the best for the village and that this opinion had been shared with several others including Councillor Mrs Hutchinson. In addition, he had considered the application to be for a poorly designed building and had the design been better, some of his other objections may have been overcome. His concerns regarding the application were not driven by a personal agenda.

The statement that he had circulated after the meeting of the 16th January 2007 had merely been to equip the Parish Council with the information he had, which was in response to Ashford Borough Council Officers seeking a clear steer from the Parish Council as to development within Rolvenden. As he had expected to be Chairing the meeting on the 16th January 2007, but had not remained present, he had not had time to brief the Vice-Chairman, as such, important information had not been circulated at the meeting as part of the discussion.

Mr Barham called Mr Burville as a witness. Mr Burville had taken the Chair at the meeting on the 16th January 2007 when Mr Barham had declared a prejudicial interest and left the meeting. Mr Burville said that the meeting had been short on Members but there was a large public audience. He had not been comfortable with the way the vote had gone, and had spoken with the Clerk and the Head of Legal and Democratic Services the following day to determine if anything could be done. He considered the Parish Council had insufficient information to reach an informed decision on the application. He explained that he could not see a legitimate reason to defer the decision at the time, so it was only afterwards that he found the grounds to call an extraordinary meeting, once he had spoken to the Clerk, the Monitoring Officer, Mr Barham and Mr Wilkins (another Parish Councillor at the time). A

Member of the Committee questioned how, if there were no grounds to defer the decision on the day, a reason could be found the next day. Mr Burville said he was pressured by the meeting.

Mr Burville could not recall whether he had called the Extraordinary meeting before or after receiving Mr Barham's circulated statement, but that it was his decision to call the meeting following advice. He explained that he had not considered it a breach of the Code of Conduct when Mr Barham returned to the chair on the 20th February 2007 as the applicant had made it clear that he had no interest in Mr Barham's land. This point had been clarified several times by the complainant.

Mr Barham also called the Head of Legal and Democratic Services and Monitoring Officer as a witness. Mr Barham referred to advice he believed Mr Mortimer had given him a few years prior relating to Local Needs Housing. The advice had been most helpful and Mr Barham had followed it closely. He suggested therefore, that the advice he had received from Mr Mortimer with regard to resuming the Chair at the Parish Council would have been equally closely adhered to. Mr Mortimer however, was unable to recall either conversation, nor did his written telephone records include any record of a conversation with Mr Barham. It was not impossible that a conversation took place, but highly unlikely in the Monitoring Officers opinion, in the absence of any record. Further questioning confirmed that there were entries for the time period in question, indicating Mr Mortimer had been available and not away from the office.

In support of his decision to return to the Chair for the meeting of the 20th February 2007 and indeed use his casting vote to rescind the Parish Council's previous decision to support the planning application, Mr Barham explained that he had sought advice from Mr Powell of the KAPC and the Monitoring Officer at Ashford Borough Council and considered that he had no interest to declare as the applicant had no interest in his proposed site. Unfortunately, he had no written evidence of the advice he had received.

Mr Barham considered that the statement he had circulated had been sent in good faith and was simply giving the other Members of the Parish Council information which he had, that they did not, and that this did not unduly influence them. There were many alternative sites that had not been considered and the reference in his statement to other sites did not include his own. He was keen to develop his site, but this was a long term plan.

With regards to his relationship with the complainant, he agreed that they "would never be friends" but he was not at war with him and was still able to make informed, subjective, choices and decisions.

Mr Barham concluded that he had acted in good faith on the advice he had received and, in his opinion, he had been fully and frankly advised. He had taken the actions he had, for the good of the village to ensure that the Parish Council made an informed decision. He considered as he could not gain commercially, he had no interest to declare. He had been honoured to serve as a Parish Councillor for 8 years and always worked to the best of his ability. He had never told a lie in his life and did not want this potential slur on his good character.

The Committee questioned Mr Barham further regarding his land and his commercial interests in developing it. They were concerned that any plans, no matter how long term, would affect his ability to make subjective decisions on other sites within the village.

The Committee retired to consider the alleged breaches and returned with the decision that there had been failures to comply with the relevant Code of Conduct. As Mr Barham was no longer a Parish Councillor, the only sanction that could be applied was a letter of censure. However, the Committee, after retiring, decided not to issue a letter of censure as they considered that in the circumstances their decision was censure itself.

Resolved:

That (i) the Ashford Borough Council Standards Committee, having considered the Investigator's report and the representations of Mr Barham and evidence of all witnesses, concluded that there had been failures to comply with the relevant Code of Conduct in the following respects and for the reasons set out in the Investigator's Report:

Paragraph 8 of the Code of Conduct in the failure to declare a personal interest at the Parish Council meeting of 20th February 2007

Paragraph 10 (a) of the Code of Conduct in failing to withdraw from the room at the meeting of 20th February 2007 during consideration of a matter in which he had a prejudicial interest

Paragraph 10 (b) of the Code of Conduct by seeking to improperly influence a decision about a matter in which he had a prejudicial interest immediately following the meeting of the Parish Council on 16th January 2007.

(ii) the Standards Committee determined that no sanction should apply in this matter.

(iii) rights of appeal were to the Adjudication Panel for England within 21 days of the formal written notification of the decision.

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Queries concerning these minutes? Please contact Hayley Curd:
Telephone: 01233 330565 Email: hayley.curd@ashford.gov.uk
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