



Epping Forest District Council

STANDARDS COMMITTEE **Tuesday, 14th April, 2009**

Place: Civic Offices, High Street, Epping
Room: Committee Room 1
Time: 7.30 pm
Committee Secretary: G Lunnun - The Office of the Chief Executive
Tel: 01992 564244 Email: glunnun@eppingforestdc.gov.uk

Members:

Ms M Marshall (Independent Member)(Chairman), Councillor S Murray (District Council Representative), Councillor B Rolfe (District Council Representative), Councillor Mrs P Smith (District Council Representative), G Weltch (Independent Member)and M Wright (Independent Member)

Parish/Town Council Deputy Representative(s):

Councillor Mrs D Borton, Councillor J Salter,Councillor B Surtees

1. APOLOGIES FOR ABSENCE

2. MINUTES (Pages 5 - 8)

To approve as a correct record the minutes of the meeting held on 27 January 2009 (attached).

3. DECLARATIONS OF INTEREST

To declare interests in any item on the agenda.

4. THE STANDARDS COMMITTEE (FURTHER PROVISIONS) REGULATIONS 2009

Recommendation:

That the issues to be covered by the regulations be noted.

(Monitoring Officer) Draft regulations are being prepared which will allow the Standards Board to suspend the initial assessment functions of an authority and will enable authorities to establish joint standards committees. They will also amend the powers of standards committees to grant dispensations to members who would

otherwise be unable to take part in authority business because of a prejudicial interest. The regulations are expected to come into force in May 2009.

The circumstances in which the Standards Board will intervene are likely to include an authority's failure to comply with Standards Board guidance or directions, or where the standards committee or monitoring officer fail to carry out their functions properly. An authority can also ask the Board to intervene. If the Board makes a direction the authority must publish details of it in a local newspaper and any other publication the Board thinks is appropriate.

Joint standards committees will be able to deal with all or any functions of a standards committee but there can be no concurrent functions. The finances are to be shared as agreed by the authorities and in default of agreement by an arbitrator appointed by them. The Standards Board will be producing guidance including a draft constitution or terms of reference.

A new provision will clarify that members can seek a dispensation where the political balance of the meeting would be upset sufficiently to prejudice the outcome of voting on the issue.

5. STANDARDS BOARD ANNUAL RETURNS

Recommendation:

That the introduction of annual returns be noted.

(Monitoring Officer) From April 2009, the Standards Board will be collecting information from standards committees in the form of an annual return. The information required will be on the arrangements for supporting the ethical conduct and questions will ask about protocols for member/officer relations, the existence of mechanisms for dealing with member/member and member/officer disputes, the chairman of the committee relationship with the Chief Executive, Monitoring Officer and Council Leader, steps being taken to promote the committee's work, and general activities of the committee including training.

The annual return will take the form of an online questionnaire, similar to the quarterly return.

6. ANNUAL ASSEMBLY OF STANDARDS COMMITTEES - 2009

Recommendation:

To consider whether to appoint representatives to attend the Annual Conference.

(Monitoring Officer) The Standards Board's Annual Assembly will be held on 12 and 13 October 2009 at the ICC, Birmingham.

The 2009 Assembly will have a range of sessions including:

- (a) making sense of political party governance and discipline;

- (b) exploring the effectiveness of the ethical environment;
- (c) working effectively with members, council leaders and chief executives to embed high standards in the culture and governance of your authority; and
- (d) improving the skills of the standards committee.

The Standards Board say that they have worked with a forum of monitoring officers, independent chairs and standards committee members to develop a range of workshops, plenary sessions and advice clinics that will concentrate on good practice, and answer questions on key areas of the standards framework.

The cost is £430 plus VAT per delegate which includes conference materials and refreshments (Monday lunch and dinner and Tuesday lunch). One day attendance is £230 plus VAT per delegate which includes conference materials and refreshments (Monday dinner and lunch on the day attending).

7. BIAS AND THE CODE OF CONDUCT - HIGH COURT DECISION (Pages 9 - 12)

(Monitoring Officer) To consider the attached report on a High Court decision..

At the last meeting, the Committee received an initial oral report on this case and decided that the issue should be taken into account as part of the current review of the Planning Protocol.

8. ALLEGATIONS MADE ABOUT THE CONDUCT OF DISTRICT AND PARISH/TOWN COUNCILLORS (Pages 13 - 14)

(Monitoring Officer) To consider the attached report on the current position of allegations made about District and Town/Parish Councillors.

9. DATES OF FUTURE MEETINGS

(Monitoring Officer) The calendar for 2009/10 provides for meetings of the Committee on 14 July 2009, 13 October 2009, 19 January 2010 and 13 April 2010.

Additional meetings can be arranged as and when required by the Committee.

10. EXCLUSION OF PUBLIC AND PRESS

To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the paragraph(s) of Part 1 of Schedule 12A of the Act indicated:

Agenda Item No	Subject	Exempt Information Paragraph Number
Nil	Nil	Nil

To resolve that the press and public be excluded from the meeting during the consideration of the following items which are confidential under Section 100(A)(2) of the Local Government Act 1972:

Agenda Item No	Subject
Nil	Nil

Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Standards Committee **Date:** Tuesday, 27 January 2009

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 7.30 - 8.25 am

Members Present: Ms M Marshall (Independent Member) (Chairman), Councillor Mrs D Borton (Parish or Town Council Representative), Councillor S Murray (Epping Forest District Council Appointee), Councillor B Rolfe (Epping Forest District Council Appointee), Councillor J Salter (Parish or Town Council Representative) and G Weltch (Independent Member)

Other Councillors:

Apologies: Councillor Mrs P Smith (Epping Forest District Council Appointee) and M Wright (Independent Member)

Officers Present: C O'Boyle (Monitoring Officer), S G Hill (Assessments Officer), G Lunnun (Allegations Determination Manager) and I Willett (Deputy Monitoring Officer)

19. MINUTES

RESOLVED:

That the minutes of the meeting of the Committee held on 8 December 2008 be taken as read and signed by the Chairman as a correct record.

20. MATTERS ARISING FROM THE MINUTES OF THE LAST MEETING

(a) Applications for Dispensation – Application Form (Minute 15(b))

The Deputy Monitoring Officer reported that the agreed proforma had been sent to the Clerks of Parish and Town Councils and had been drawn to the attention of District Council members.

21. REVIEW OF PLANNING PROTOCOL

The Deputy Monitoring Officer advised that it had been approximately eighteen months since the Protocol had last been reviewed and he drew attention to two items which had recently arisen in relation to the Protocol. The items related to Section 8 – Councillors involved in the Property Market – and Section 22 – Development Proposals submitted by Councillors and Officers.

The Committee discussed a further issue in relation to Section 23 – Prejudicial Interests and a Councillor's Representative Role – regarding the order of speaking when more than one member declared a prejudicial interest in a planning application and wished to exercise the right to speak at a planning meeting.

RESOLVED:

(1) That the Monitoring Officer consult District Councillors, the District Council's Planning Services Scrutiny Standing Panel, the Director of Planning and Economic Development, Parish and Town Councils, and Planning Agents regarding suggested revisions to the Protocol in relation to the items raised; and

(2) That consideration be given at a future meeting to possible revisions to the Protocol in the light of the responses to the consultation exercise.

22. ALLEGATIONS MADE ABOUT THE CONDUCT OF DISTRICT AND PARISH/TOWN COUNCILLORS**(a) Current Position**

The Committee noted the current position of allegations made about District and Parish/Town Councillors.

In relation to references EFDC1/2008 and EFDC3/2008, the investigator's report had been issued. Following an exchange of e-mails with members of the Assessments Sub-Committee it had been decided to arrange for a formal meeting of that Sub-Committee to be held on 9 February 2009 in order to consider the investigating officer's finding and determine further action.

In relation to reference EPF4/2008 the external practitioner appointed by the Monitoring Officer had commenced his investigation.

In relation to reference EFDC5/2008 the parties had resolved their differences following the decision of the Assessments Sub-Committee to take no further action in relation to the matter.

(b) Officer Responsibilities for and the Resource Implications of Determining Allegations

The Deputy Monitoring Officer reported orally on the need for a review of the local assessment/investigation and adjudication processes in the light of experience.

He drew attention to recent cases where he had advised on the declaration of interests which could have led to advice on how to complain even though he could have eventually been the investigating officer. He advised that it was now considered there were five separate roles in the processes to be undertaken by four officers. He outlined proposals for ensuring that an officer giving advice was not "conflicted out" from undertaking a subsequent role in the process.

The Deputy Monitoring Officer also drew attention to the benefits of adopting a "critical friend" approach to potential complainants.

The Committee was advised of the Standards Board for England guidance in relation to the referral of a complaint to the Board. He pointed out that it was apparent the Standards Board would be unwilling to accept investigations unless a detailed justification was put forward. He suggested therefore that there should be an assessment of the suitability of each complaint being investigated locally and that this assessment should be considered by the Assessment Sub-Committee.

The Deputy Monitoring Officer also drew attention to the need to look more carefully at the sections of the Code which might have been breached before referring a matter to an investigating officer. He suggested that the complainants should be encouraged to determine the appropriate breach on which the complaint was based rather than present a general complaint which might impact on all sections of the Code.

In the light of experience gained in relation to reference EFDC 1/2008 and EFDC 3/2008, the Deputy Monitoring Officer suggested that in future, investigating officer's reports would need to be considered at a formal meeting of the Assessments Sub-Committee rather than being sent to members of the Sub-Committee for individual written response.

The Committee noted that with the engagement of an external investigator for reference EFDC 4/2008 the Standards Committee budget had been fully committed for the current financial year. He confirmed that reciprocal investigation arrangements with other Monitoring Officers remained an option but that in practical terms they were difficult to achieve as most authorities had limited staff resources in this area.

RESOLVED:

That a report be submitted to the meeting of the Committee to be held on 14 July 2009 recommending detailed proposals for amending the local assessment/investigation and adjudication processes in the light of the issues raised.

23. DATES OF FUTURE MEETINGS

The Committee noted that the calendar for 2008/9 provided for another meeting of the Committee on 14 April 2009.

Members also noted that the draft calendar for 2009/10 to be considered by the Council in February 2009 provided for meetings of the Committee on 14 July 2009, 13 October 2009, 19 January 2010 and 13 April 2010.

24. ANY OTHER BUSINESS

(a) Definition of "Close Associate/Friend"

The Monitoring Officer drew attention to a recent decision of the Administrative Court in the case of R (on the application of Michael Gardener) (Claimant) v Harrogate Borough Council (Defendant) and Mr and Mrs Atkinson (Interested Party) (2008) relating to the judicial review of a planning decision. She advised that the case shed some light on the definition of close associate/friend debate and that this would be useful to consider as part of the forthcoming review of the Planning Protocol.

RESOLVED:

(1) That the issue be included in the forthcoming review of the Planning Protocol; and

- (2) That the Monitoring Officer submit a full report on the case to the next meeting of the Committee.

CHAIRMAN

Report to the Standards Committee

Date of meeting: 14 April 2009



**Epping Forest
District Council**

**Subject: R (on the application of Michael Gardner) (Claimant) v
Harrogate Borough Council (Defendant) and Mr & Mrs Atkinson
(Interested Party) (2008)**

Officer contact for further information: Colleen O'Boyle – Monitoring Officer

Recommendation:

That the report be considered and noted.

Purpose of the Report

To advise members about a recent decision of the Administrative Court in R (on the application of Michael Gardner) (Claimant) v Harrogate Borough Council (Defendant) and Mr & Mrs Atkinson (Interested Party) (2008) relating to the judicial review of a planning decision.

Background Information

1. This case has been the subject of an investigation by both the Local Government Ombudsman and the Standards Board for England which reached two different conclusions. It has now been before the Administrative Court with Mr Justice Jeremy Sullivan giving judgement. It is noteworthy that the claimant was the Leader of Harrogate Borough Council (Mr Michael Gardner).
2. The Administrative Court decision was delivered on 19 November 2008.
3. The facts were, in March 2005, Councillor Atkinson of Harrogate Borough Council applied for outline planning permission for a permanent dwelling in the open countryside to replace a caravan. She did not attend the relevant meeting of the Planning Committee considering the application. Planning permission was granted on the casting vote of the Chairman of the Committee, contrary to the officer recommendation in breach of six material planning policies. The councillors on the Planning Committee gave no valid planning reasons for the committee decision. This prompted a local resident to lodge a complaint with the Local Government Ombudsman.
4. The complaint was upheld. She found that there had been maladministration leading to injustice, one reason being that Councillor Simms, the Chairman of the Planning Committee should have recused himself because of his relationship with Councillor Atkinson. It turned out that the Chairman was in the habit of driving Councillor Atkinson to Council meetings, they belonged to the same political party, and church functions, political events, village gatherings and mutual friends brought the two families together, on average, once a fortnight. This, concluded the Ombudsman, meant that the Chairman's involvement in the determination of the application gave rise to the existence of apparent bias.
5. The outcome in relation to a complaint made to the Standards Board for England was that the Ethical Standards Officer found that, in the circumstances of the case, no action needed to be taken.

6. The Ethical Standards Officer found that one Councillor stated that he often gave the applicant a lift to Council meetings as her house was the way there, but he did not believe this made them friends. The Councillor stated that the journey took about 15 minutes, during which they would make polite small talk. They met on occasions at political, church and large-scale social functions, but no particular friendship existed between them.

7. The Ethical Standards Officer did not consider that the personal interest stemmed from the applicant being a fellow Councillor, as the application was not related to the political group of which they were both Members and was submitted in the applicant's private capacity. The nature of the social contact between them was not enough to constitute a friendship under the Code of Conduct.

8. It should be noted that the revised Code of Conduct refers to "close associate" instead of "friend". The Standards Board Investigator did not consider bias, so its conclusion had little weight in the mind of the Administrative Court.

Report

9. If a local authority grants planning permission by mistake, Section 97 of the Town and Country Planning Act 1990 allows revocation of a planning permission, but this carries with it duty to compensate under Section 107. Only a Court Order can quash a planning permission but the local authority cannot litigate as both claimant and defendant in the same proceedings.

10. In this case the Leader of the local authority was nominated as claimant, with the local authority named as defendant. The local authority did not resist the claim, but it was resisted by an 'interested party' (in this case the beneficiary of the planning permission).

11. Mr Justice Jeremy Sullivan made the following observations in the Harrogate case which are of note:-

"35. *I of course give appropriate weight to Mrs Atkinson's evidence, but the critical question is not her perception of the relationship between herself and Councillor Simms, but how Councillor Simms' relationship with her would have appeared to the fair-minded and informed observer. Whatever the arguments as to the details of the extent of the social and other contact between them, on both the Ombudsman's and the Board's findings, that contact went beyond the contact which might normally be expected between fellow Councillors who were simply in the same political party. Although they were not friends, as defined by the Board, they were fairly described as "friendly acquaintances", and were plainly perceived as such by their fellow Councillors, including Councillors who were the political allies of Councillor Simms.*

37. *It is also relevant, as part of the surrounding circumstances, that his vote was not simply one amongst a large number of votes either in favour of or against a particular proposal, his was the casting vote. Moreover, it is of particular importance that his casting vote in favour of planning permission was a vote contrary not simply to one but to two very strong recommendations by the Planning Officers to refuse planning permission. I would readily accept the submission that officers recommend and Members decide, but in looking at all of the circumstances of this case, it is relevant to bear in mind that the officers' recommendations that planning permission should be refused on policy grounds were expressed in very strong terms. In the officers' view, this was not a finely balanced decision. There were very clear policy objections to the proposed development.*

39. *In these circumstances, in my judgement, any fair-minded and informed observer would conclude that there was indeed a real possibility of bias in the decision to grant planning permission."*

12. Against that background the Administrative Court held that the application for judicial review succeeded and accordingly the planning permission was quashed. Councillor Atkinson and her husband were ordered to pay costs.

Conclusion

13. This case shed some light on the 'close associate' 'friend' debate. The Administrative Court clearly took the view that the relationship between the two councillors was more than that of political colleagues, and this was a compelling reason for the chairman to recuse himself. The fact that the Chairman's vote was the casting vote, against officer recommendations was important.

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Agenda Item 8

Allegations made against District and Parish/Town Councillors

(Monitoring Officer)

(a) To note the current position on allegations made against District Councillors:

Reference	Current Position
EFDC 1/2008	Assessments Sub-Committee on 15 July 2008 referred the allegation to the Monitoring Officer for investigation. Sub-Committee also directed that the Monitoring Officer should combine this investigation with a linked complaint (EFDC 3/2008). Deputy Monitoring Officer undertook the investigation. Hearings Sub-Committee to meet on 31 March 2009 to consider the allegation.
EFDC 3/2008	Assessments Sub-Committee on 15 July 2008 referred the allegation to the Monitoring Officer for investigation. Sub-Committee also directed that the Monitoring Officer should combine this investigation with a linked complaint (EFDC 1/2008). Deputy Monitoring Officer undertook the investigation. Hearings Sub-Committee to meet on 31 March 2009 to consider the allegation.

(b) To note the current position on allegations made against Parish/Town Councillors:

Reference	Current Position
EFDC 4/2008	Assessments Sub-Committee on 9 December 2008 referred the allegation to the Monitoring Officer for investigation. Monitoring Officer appointed an external practitioner to undertake the investigation. His report has been received and is due to be considered by the Assessments Sub-Committee on 3 April 2009.
EFDC 1/2009	This complaint concerns four councillors. Assessments Sub-Committee on 13 March 2009 decided that no action be taken in respect of three members and that the allegation about the fourth should be referred to the Monitoring Officer for investigation.
EFDC 2/2009	Assessments Sub-Committee on 13 March 2009 referred the allegation to the Standards Board for England.
EFDC 3/2009	Assessments Sub-Committee on 13 March 2009 decided that no action be taken.
EFDC 4/2009	Assessments Sub-Committee on 13 March 2009 decided that no action be taken.
EFDC 5/2009	Assessments Sub-committee to consider the allegation on 3 April 2009.

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