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Standards Hearing Sub Committee

Held at Council Chamber, Ryedale House, Malton
on Monday 12 September 2011

Present

Councillor Maud – Elected Member of Ryedale District Council
Mrs G Baker – Independent Member of the Standards Committee (In the Chair)
Mr B Cole – Parish Member of the Standards Committee

Mr K Stevens, Investigating Officer
Dr M Ahmad, Legal Advisor

In Attendance

Audrey Adnitt

Malton Town Council: Councillor P Andrews, J Fitzgerald-Smith, J Ford, A Hopkinson
and D Lloyd-Williams

Minutes

1 Appointment of Chairman of the Sub Committee

Mrs Gill Baker was appointed Chairman of the Sub Committee for this meeting.

2 Declarations of Interest

Councillor Maud declared a personal interest, on the basis that the persons to whom the complaint referred were known him as Councillors of Malton Town Council.

Mrs Baker declared a personal interest, as she was acquainted with Councillor Mrs Ford who had attended meetings at her work place. Mrs Baker was also acquainted with the Mr Skehan, Malton Town Council clerk, who had been a former colleague some years ago.

3 Complaint against Town Councillors Jason Fitzgerald Smith, David Lloyd Williams, Jane Ford, Anne Hopkinson and Paul Andrews - Malton Town Council

The Council Solicitor and Monitoring Officer submitted a report (previously circulated) in order to provide advice to Members in relation to the conduct of the hearing of an investigation.

The complaint related to an alleged breach of the Code of Conduct by five Town Councillors. Following receipt of the complaint in April 2011, it was

considered by the Standards Initial Assessment Sub-Committee who determined that the matter merited investigation.

The Monitoring Officer appointed Mr Keith Stevens to investigate the complaint on 27 April 2011, and his report was published on the 23 June 2011.

The outcome of the investigation was considered at a Standards Committee meeting on the 14 July 2011, who considered that the matter be listed for full hearing.

The issues to be determined at the hearing were:-

- a. Whether the actions of the Town Councillors in this matter were covered by paragraph 8(1) (a) (ii) (cc) of the Members' Code of Conduct.
- b. Whether the Town Councillors all should have registered an interest under paragraph 13 of the Members' Code of Conduct in relation to this matter.
- c. Whether the Town Councillors all should have made a declaration of a personal interest under paragraph 9 of the Members' Code of Conduct.

The hearing was conducted in the following manner:

- i. Stage 1 – Preliminary Issue: Should the hearing be conducted in public.
- ii. Stages 2 & 3 – What are the facts and do they reveal a breach of the code. The External Investigator presented his report, and this was followed by the Respondent Councillors response, and witness statements, and questions from members of the Standards Committee.
- iii. Determination of the appropriate sanction.

Resolved

That the hearing be conducted in public.

The Respondent Members sought clarification about why the complainant was not present to give evidence to the hearing. The Chairman of the Sub-Committee requested Mr Keith Stevens as the Investigating Officer to comment and Dr Ahmad to advise as the Legal Adviser to the Sub-Committee.

Mr Keith Stevens indicated that the way these proceedings operate, the original complainant is not a party once they reach this stage. The only parties are the Respondents and the Investigating Officer presenting the case.

Dr Ahmad advised the Sub-Committee that Mr Stevens had set out the procedure correctly. The Investigating Officer's report is the basis on which the hearing is being conducted. It is not essential for the complainant to be present, the evidence is from the Investigating Officer's report and that is sufficient for these hearings.

At each stage the Investigator and Respondent Members were given the opportunity to address the Sub-Committee, and each Member of the Sub-Committee had the opportunity to question them.

Mr Stevens, Investigating Officer presented his report, and answered questions from the Committee Members and Councillors P Andrews, J Fitzgerald-Smith, J Ford, A Hopkinson and D Lloyd-Williams were also given the opportunity to question Mr Stevens.

The five Town Councillors also made statements, and were questioned by Committee Members and Mr Stevens. In addition, Mr M Skehan, Malton Town Clerk and Mr A Winship, Council Solicitor and Monitoring Officer for Ryedale District Council addressed the hearing and provided further information.

The Sub-Committee retired to consider its decision at each stage of the hearing and on its return the Chairman delivered the Sub-Committee's findings as detailed in the attached Decision Notice.

Resolved

To determine the complaint as set out in the Decision Notice attached as a supplement to these minutes.

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**RYEDALE DISTRICT COUNCIL
STANDARDS HEARING SUB-COMMITTEE
FULL WRITTEN REGULATION 20 DECISION NOTICE
HEARING DATED 12 SEPTEMBER 2011
COUNCILLORS ANDREWS, FITZGERALD-SMITH, FORD,
HOPKINSON & LLOYD-WILLIAMS**

Authority:
Ryedale District Council
Subject Members:
Councillors P J Andrews, J Fitzgerald-Smith, J Ford, A Hopkinson & D Lloyd-Williams
Complainant:
Lt Col T Hemesley
Standards Committee Member who chaired the hearing:
Mrs Gill Baker – Independent Lay Member
Standards Committee Members who took part in the hearing:
Cllr B Maud – District Council Member Cllr B Cole – Parish Council Member
Monitoring Officer:
Dr M Ahmad, Barrister & Legal Advisor to the Standards Hearing Sub-Committee
Ethical Standards Officer who referred the matter:
Not applicable
Local investigator who investigated the matter (if applicable):
Mr K Stevens – Independent Investigator
Clerk of the hearing or other administrative officer:
Mrs A Adnitt – Committee Clerk
Case reference numbers for the principal authority and from Standards for England, (if applicable):
Not applicable
The date of the hearing:
12 September 2011 (from @ 1:30pm to @: 7pm)
The date of the report:
23 June 2011
Summary of the complaints:
<p>The complainant alleged that Town Councillors Paul Andrews, Jason Fitzgerald-Smith, Jane Ford, Ann Hopkinson and David Lloyd-Williams have failed to comply with the Council's Code of Conduct by failing to make a declaration of interest at Malton Town Council meeting on Wednesday, 30 March 2011 when voting to incur expenditure of £6,500 in relation to a Neighbourhood Plan in circumstances where those five Members were Members of an outside body ie the Neighbourhood Plan Group (NPG). The Members of the NPG were originally part of a campaign group opposed to the disposal of Wentworth Street Car Park, Malton by Ryedale District Council for development. It is alleged that these Councillors had a personal or personal and prejudicial interest because of their interests in an outside body or as close associates and taking part in the meeting when they had a prejudicial interest.</p>

The relevant sections of the Code of Conduct:

- The application of paragraph 8 (1) (a) (ii) (cc) relating to any body one of whose principal purposes includes the influence of public opinion or policy of whilst being a Member or in a position of general control or management.
- Failing to declare at Malton Town Council meeting on 30 March 2011 a personal or a personal and prejudicial interests because of their interests in an outside body or as close associates and taking part in the meeting when s/he has a prejudicial interest contrary to paragraph 9(1) (Declare Interest) and 12 (Withdraw from meeting) of the Members' Code of Conduct.
- Failure to give written notification within 28 days of becoming aware of any new personal interest or change to any registered personal interest contrary to paragraph 13 of the Members' Code of Conduct. Details of the new personal interest or change must be registered.

A summary of the evidence considered and representations made:

- i. The Investigator's report with supporting documents
- ii. Pre-hearing documentation of:-
 - (a) Councillor Andrews
 - (b) Councillor Fitzgerald-Smith
 - (c) Councillor Mrs Ford
 - (d) Councillor Mrs Hopkinson
 - (e) Councillor Lloyd-Williams
- iii. E-mail of Councillor Andrews dated 8 September 2011
- iv. E-mail and hard copy correspondence between Anthony Winship and Councillor Paul Andrews dated 30 June 2009, 7 July 2009, 9 July 2009, 9 July 2010 and 20 July 2010.
- v. The Chairman of the Standards Hearing Sub-committee also made the following key jurisdictional points at the start of the Hearing so as to ensure the expedient handling of the proceedings: -
 1. The Standards Hearing had no jurisdiction over:-
 - a. any planning issues;
 - b. the sale of any land and the use to which it is currently being used or may be put to in the future;
 - c. the content of any Neighbourhood Plan or the detail of any consultation process agreed /carried out by the Town Council(s);
 - d. the legality (or otherwise) of the use of £6,500 for consultation purposes by the Malton Town Council on 30th March 2011; or
 - e. the previous issues mentioned in the papers over the declaration of interest relating to the Fitzwilliams Estate.

2. The Standards Hearing only had jurisdiction over the alleged conduct of Councillors the subject of this complaint in relation to the Code of Conduct. Any representations on points not covered by the jurisdiction of the Hearing would not be allowed; and

3. The Chairman sought the co-operation from everyone involved in ensuring any representations made were brief and to the points in dispute, as members of the panel had read all of the papers.

The findings of fact, including reasons for them:

The Standards Hearing Sub-Committee found the following facts based on the paragraphs in the Investigation report, namely paragraph 4.3, 4.6, 4.7, 4.8, 4.9, 4.10 and 4.11.

These are as follows:-

4.3 Between January and March 2011, the five respondent Councillors and about five to seven local business people and residents met together at least fortnightly in various locations in Malton. The meetings were informal with no office holders, minutes, constitution/rules etc and were held to discuss the drafting of a Neighbourhood Plan covering Malton and Norton. The meetings were originally lead by Councillor Andrews and then by Emma Brooksbank.

4.6 The Clerk of Malton Town Council wrote in his briefing to Council on 26 January 2011 "The Mayor will advise of some work currently being done by a group of Malton/Norton connected people who actively campaigned against the Wentworth Street Car Park sale, and are now compiling a 'Neighbourhood Plan'".

4.7 The Clerk's report to the Malton Town Council dated 17 February 2011 says that the "draft Neighbourhood Plan has been written by a group which includes members of the business community and the public, and some individual Town Councillors. It is the first draft of a document which will, after consultation with the public and after adoption by the Town Councils, be put forward for formal acceptance by Ryedale District Council".

4.8 In March 2011, as attached to the Clerk's brief to Council dated 17 March 2011, one of the report's authors and a member of the group referred to above. Emma Brooksbank, wrote to Malton Town Councillors:

"As you will be aware, the group of people who organised the campaign against the sale of Wentworth Street Car Park last year have spent the winter discussing what is good in the towns and where improvements may be needed ... We felt it important to provide information on to the community on many aspects of life in the towns ... We have tried to provide an appropriate depth of information the main strategy subjects in a readable way so they can be easily understood, to enable the public to properly consider them. Where there are different points of view, we have endeavoured to set them out in a way that gives the Plan breadth and suggests finding a balance between retaining the distinctive nature of Malton and Norton and stimulating the local economy. Section 2 of the Plan is currently receiving a final edit from a planning

consultant (at the group's expense) and a draft should be available to you in time for the meeting.”

4.9 Emma Brooksbank and Denys Townsend made a presentation on the draft Neighbourhood Plan to Malton Town Council on 30 March 2011. The latter is Chairman of Malton Business in Action.

4.10 At the beginning of the 30 March 2011 meeting, the Clerk advised members that he was not aware of any reason why any member who may have contributed already to work on the draft Neighbourhood Plan should consider that he or she would have a personal financial or any other prejudicial interest in the outcome of any resolution that might be forthcoming in this connection. Members were reminded that it is each member's individual responsibility to decide whether a declaration of interest is appropriate in any situation.

4.11 On 30 March 2011, Malton Town Council resolved:-

- (a) To adopt the draft Neighbourhood Plan document for the purpose of taking it through a consultation process and then submitting an appropriately amended and agreed final document to Ryedale District Council as evidence in the formulation of the Local Development Framework.
- (b) To allocate £6,500 to fund the public consultation process, to include the engagement of a specialist advisor to assist the consultation and plan finalisation process.

After hearing submissions from all of the parties to the proceedings and retiring to consider the same in private, the Standards Hearing Sub-Committee confirmed that, in addition to the foregoing findings of fact, it also found the following facts:-

- (i) Malton Town Council is entitled to receive draft plans or submissions relating to its activities from interested groups or individuals and Malton Town Council is entitled to undertake a wider public consultation on any draft plans or submissions that it might receive;
- (ii) Without in anyway ruling on the legality or otherwise of the expenditure actually allocated in this matter by Malton Town Council for consultation purposes on the draft Neighbourhood Plan, Malton Town Council is entitled to allocate if necessary, resources to support a public consultation exercise.
- (iii) Malton Town Council has no jurisdiction to adopt the draft Neighbourhood Plan even after public consultation and at best the Town Council could only make recommendations to Ryedale District Council over any such plan or other development, local development plans.
- (iv) Councillor Andrews played a leading role in calling relevant Councillors and other interested persons to initial meetings, from December 2010, to create a draft Neighbourhood Plan and took an active part in such meetings which were held on a fortnightly basis from January to March 2011. All of the other respondent Councillors attended such meetings and

contributed, to varying degrees, in the development of the draft Neighbourhood Plan.

(v) Emma Brooksbank and Denys Townsend presented the draft Neighbourhood Plan to the Town Council meeting on the 30 March 2011 at which the Town Clerk gave some advice on declarations of personal and prejudicial interests. Councillor Andrews proposed the adoption of the draft Neighbourhood Plan for public consultation purposes and the allocation of £6,500 for such purposes. After the meeting the draft plan was put out to public consultation by Malton Town Council and subsequently submitted to Ryedale Council for adoption.

(vi) All five respondent Councillors were named publicly at the start of the meeting as being contributors to the draft Neighbourhood Plan but none of them declared any personal or any personal and prejudicial interests at that meeting on the 30 March and neither did any of them record the nature or extent of any of their activities relating to the development of the draft Neighbourhood Plan in the register of interests.

The finding as to whether the members failed to follow the Code of Conduct and reasons for the finding:

The relevant paragraphs of the Members' Code of Conduct are listed in the Investigating Officer's report and these are paragraph 8 (1) (a) (ii) (cc), paragraph 9 (1), (declare personal interests) and paragraph 13 (register interests). The Standards Hearing Sub-Committee accepted the findings of the Investigating Officer that there was no breach of the code in respect of prejudicial interests.

8 (1) (a) (ii) (cc) – Body influencing public opinion or policy

Finding: The Neighbourhood Plan Group, which included the five respondent Town Councillors, was as a matter of fact a body one of whose principal purposes included the influence of public opinion or policy.

Reasons: The Standards Hearing Sub-Committee determined, on a balance of probabilities, using commonly understood words, that the meetings relating to the development of the draft Neighbourhood Plan, were of sufficient prominence and activity, supported by the personal commitment of the respondent Councillors to the cause and its purposes by way of proactive membership and attendance, to constitute a body, one of whose principal purposes included the influence of public opinion or policy whether temporarily or not under 8 (1) (a) (ii) (cc) of the code. The Standards Hearing Sub-Committee also found, as a matter of fact, that there was a clear focus and seeking to influence public opinion or policy and that the body came into existence from January 2011 and that it had not met after the draft Neighbourhood Plan was presented to the Malton Town Council.

9 (1) – Disclosure of Interests

Finding: No Breach

Reasons: The Standards Hearing Sub-Committee determined, on a balance of probabilities, that the business before the Malton Town Council on the 30 March 2011 related to, or was likely to affect that body. However, it was not enough to stop there as it was also important and essential to consider the actual decision making resolutions before Malton Town Council on 30 March 2011, as there could only be a failure to declare personal interests if the personal interests “related to or was likely to affect” that body.

The Standards Hearing Sub-Committee determined that, in the present circumstances, the actual decisions of Malton Town Council in relation to this item of business related to whether or not the draft Neighbourhood Plan should or should not be developed further through some public consultation and, as such, it allocated some funds for such purpose and not to the body.

The Standards Hearing Sub-Committee determined, therefore, that Malton Town Council did not make a decision “relating to or affecting” the body one of whose principal purposes included the influence of public opinion or policy.

Accordingly, the Standards Hearing Sub-Committee determined that there was no need for any of the respondent councillors to declare a personal interest or a personal and prejudicial interest on that occasion as the decisions of the Town Council did not “relate to or affect” the body, but were related to public consultation purposes.

13 – Registration of Members Interests

Finding: Breach

Reasons: Having determined, on a balance of probabilities, that the Neighbourhood Plan Group was a “body” covered by paragraph 8 (1) (a) (ii) (cc) of the Code of Conduct, the Standards Hearing Sub-Committee was satisfied that the business of such a “body” was of sufficient prominence and importance to have put the respondent Councillors on notice that it would be prudent for them to register the “body” in their registers of interest within 28 days of such a body coming into existence as failure to do so, within 28 days, would trigger a continuing breach under the Code of Conduct.

The Standards Hearing Sub-Committee determined that the Councillors on that body should have registered their interest in the Register of Members’ Interests within 28 days of the meeting of the body and their failure to do so was a breach of the Code of Conduct. It also noted that there was now no need to register that “body” as it appeared to have

achieved its purpose and had not met after the relevant Council Meeting.
The sanctions imposed, if any, including the reasons for any sanctions:
<p>Being mindful of all the submissions made at the hearing, the Standards Hearing Sub-Committee determined that it was not only appropriate, but proportionate, reasonable and necessary to Censure the following respondent councillors for failing to register, within 28 days of the first January 2011 meeting, the “body” within their Registers of Members Interests:-</p> <ul style="list-style-type: none"> (a) Councillor Paul Andrews (b) Councillor Jason Fitzgerald-Smith (c) Councillors Mrs Jane Ford (d) Councillor Mrs Ann Hopkinson (e) Councillor David Lloyd-Williams
Additional recommendations to the Council to promote high standards of conduct
<p>Being mindful of all the submissions made at the hearing, the Standards Hearing Sub-Committee determined that it would be appropriate to make a recommendation to Malton Town Council requiring it to undertake suitable training, at a time of its choosing, for all Town Councillors of Malton Town Council on the provisions of the Members’ Code of Conduct and any revisions to it.</p>
<p>Right of appeal: There is no automatic right of appeal against a decision of the Standards Hearing Sub-Committee. If the Respondent Councillor wishes to appeal this decision he must write to the Principal Judge of the First Tier Tribunal (Local Government Standards in England), Tribunal Service, York House, 31-36 York Place, Leeds, West Yorkshire LS1 2ED</p> <p>(www.adjudicationpanel.co.uk) for permission to appeal <u>WITHIN 28 DAYS</u> of receiving notice of this decision.</p> <p>The letter must outline the reasons for appeal and indicate whether if permission were granted, whether an appeal is sought as a hearing on the basis of a hearing with evidence or whether the matter can be considered on written submissions.</p>

Decision Notice signed by

The Chairman of the Standards Hearing Sub-Committee

This day of September 2011

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