

Investigating Officer's Report – FINAL REPORT 11.06.09

Case reference: 08/02

Report of an investigation (referred to the Monitoring Officer under section 57A of the Local Government Act 2000) by Catherine Knight, Monitoring Officer, Lewes District Council into an allegation concerning Councillors Tim Cogdon and Sue Crosthwaite, South Heighton Parish Council.

1 Executive Summary

- 1.1 The complainants (Gareth Roberts and Sarah Roberts) allege that Councillor Cogdon and Councillor Crosthwaite failed to declare personal and prejudicial interests when dealing with a retrospective planning application for a raised patio at South Heighton Village Hall (Lewes District Council planning ref No LW/08/0600).
- 1.2 In particular, the complainants allege that Councillor Cogdon has undertaken paid work on the village hall site and unpaid work on the village hall site (both before and after submission of the planning application) and that Councillor Crosthwaite has a personal and prejudicial interest in that she is the parish council's representative on the village hall committee.
- 1.3 The complainants allege that Councillor Cogdon and Councillor Crosthwaite have a close association with members of the village hall such as to have made it improper for them to take part in the parish council's decision to support planning application LW/08/0600.

2 Members' Details

- 2.1 Councillor Tim Cogdon and Councillor Crosthwaite are current members of South Heighton Parish Council and were members at the date of the incident the subject of complaint.
- 2.2 Councillor Cogdon gave a written undertaking to observe the Code of Conduct on 28 September 2005. Councillor Crosthwaite gave a written undertaking to observe the Code of Conduct on 29 July 2007.
- 2.3 Councillors Cogdon and Crosthwaite, like other town and parish councillors, have been provided with guidance published by the Standards Board but have had no specialist training in the Code of Conduct.

3 Relevant legislation and protocols

- 3.1 The Parish Council has adopted a Code of Conduct in which the following paragraphs are included:
 - You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (paragraph 5).
 - Subject to sub-paragraphs (2) to (7) where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the

existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent (paragraph 9(1)).

- Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business (paragraph 9(2)).
- Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial business where 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 your judgement of the public interest (paragraph 10(1)).
- You do not have a prejudicial interest in any business of the authority where that business:
 - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8 (paragraph 10(2)).
- Subject to paragraph 14, you must register in your authority's register of members' interests details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer (paragraph 13).

4 Evidence gathered

4.1 I have taken account of oral evidence from Gareth Roberts and Councillor Tim Cogdon.

4.2 I have taken account of documentary evidence obtained from:

Mrs T A Drury, Clerk to South Heighton Parish Council

Gareth Roberts

Sarah Roberts

Councillor Tim Cogdon

5 Summary of material uncontested facts

- Councillor Crosthwaite attends Village Hall Management Committee meetings on behalf of the Parish Council.

Councillor Crosthwaite is not a member of the Village Hall Committee. She is not invited to make any comment at meetings; she has no ability to vote.

- The Village Hall Management Committee commenced work on building a raised lawn at the rear of the village hall without planning permission
- When it became aware of these works Lewes District Council informed the Village Hall Management Committee that planning permission was not required for these works.
- On 1 October 2007 Mr Roberts sent an email to Councillor Cogdon informing him that in the event of the Village Hall Management Committee failing to erect a fence between the village hall site and Mr Robert's property, Mr and Mrs Roberts would press for retrospective planning permission. He asked Councillor Cogdon to confirm that the Parish Council did not own or maintain the village hall.
- On 1 October 2007 Councillor Cogdon sent an email to Mr Roberts confirming that the village hall was neither owned or maintained by the Parish Council.
- On 18 April 2008 Lewes District Council wrote to Mrs S Thorpe on behalf of the Village Hall Management Committee advising that the Council had misunderstood the position on ownership of the village hall and that in fact planning permission was required. The District Council asked for the submission of a retrospective application.
- A planning application was submitted on 27 May 2008 (reference LW/08/0600). It was submitted by the Village Hall Management Committee. The application sought retrospective planning permission for the retention of a raised, turfed area surrounded by a retaining wall.
- South Highton Parish Council was consulted on the planning application. There was no meeting of the Parish Council scheduled during the consultation period.
- Councillor Cogdon, in his capacity as Chairman of the Parish Council responded to the District Council's Planning department by email on 30 June 2008:

“re the above planning application: The parish council have no objections, and applaud the industry of the village hall committee in improving the facilities within the village.”
- Councillor Cogdon made this response after consulting his fellow councillors by telephone.
- The District Council duly recorded the parish council as having “No objections.”
Retrospective planning permission was granted on 4 August 2008.
- Councillor Cogdon put up gates in the village hall grounds and was paid to do so by the Village Hall Management Committee.
- The gate was installed and payment for the work made by March 2008.

- Councillor Cogdon took measurements in the village hall grounds prior to submission of the planning application.
- Councillor Cogdon, together with 3 members of the Village Hall Management Committee barrowed topsoil to the area at the rear of the hall. This was at a time prior to submission of the planning application.
- Councillor Cogdon has entered the village hall with tools for the purpose of carrying out minor repairs. These works were undertaken voluntarily; no payment was received.
- Councillor Cogdon put some items into a skip which the Management Committee had hired.

6 Reasoning as to whether there have been failures to comply with the Code of Conduct

6.1 Alleged interests on the part of Councillor Crosthwaite

6.1.1 Councillor Crosthwaite attends Village Hall Management Committee meetings on behalf of the Parish Council. She has done this since 2007 when she took over the role from Councillor Mead. Councillor Crosthwaite is not a member of the Village Hall Management Committee. She is not invited to make any comment at meetings; she has no ability to vote. She attends in the capacity of an observer only. Similarly observers attend on behalf of the Cricket Club, Football Club, WI, Amenities Committee. On the basis of the information supplied Councillor Crosthwaite does not have a personal interest. The Code of Conduct states (at paragraph 8) that a person has a personal interest in business where it relates to or is likely to affect:

“(i) any body of which you are a **member or in a position of general control or management** and to which you are appointed or nominated by your authority;

(ii) any body –

(aa) exercising functions of a public nature; of which you are a **member or in a position of general control or management.**” (my emphasis).

6.1.2 Councillor Crosthwaite’s status as an observer does not constitute a personal interest. There can be no prejudicial interest where there is not a personal interest. There is no breach of the Code and I have not deemed it necessary to interview Councillor Crosthwaite.

6.2 Alleged close relationship between Councillors Crosthwaite and Cogdon and the Village Hall Management Committee.

6.2.1 Mr Roberts makes this allegation in his original complaint and expands on it in his later submissions by giving examples of indicators which he believes highlight a close relationship between the Parish Council generally and the Village Hall Management Committee. The issues raised by Mr Roberts have been put to Councillor Cogdon. His response to these points is set out in Document C.

6.2.2 The Standards Committee's powers are restricted to dealing with alleged breaches of the Code of Conduct by individual councillors. It cannot deal with generalised comments about the Parish Council as an organisation.

6.2.3 Councillor Crosthwaite's relationship with the Village Hall Management Committee is explained above. There is no breach of the Code.

6.2.4 In this context there are allegations that Councillor Cogdon:

- attends the AGMs of the Village Hall Management Committee and that this is an indication of this special relationship between the Parish Council and the Village Hall Management Committee.

Councillor Cogdon's response is that his attendance is an indication of his appreciation of the efforts made by voluntary organisations. Historically, the Parish Council Chair has always attended the Village Hall Management Committee and vice versa, a tradition in place before Councillor Cogdon became Chair of the Parish Council.

In my opinion, this does not constitute a breach of the Code.

- was seen using a skip hired by the Village Hall Management Committee.

Councillor Cogdon's response is that the Village Hall Management Committee had a skip which was only half full. He states that he, along with other residents, asked if he could put a few items in it.

In the absence of any other evidence this does not constitute a breach of the Code.

6.2.5 Whilst other points raised by the complainants and responded to by Councillor Cogdon are indicative of the relationship between the Parish Council and the Village Hall Management Committee generally they do not deal with alleged misconduct on the part of named councillors in this context and cannot be the subject of any determination by the Standards Committee as to any breach(es) of the Code of Conduct.

6.3 Alleged interests on the part of Councillor Cogdon.

- 6.3.1 The complainants say that Councillor Cogdon was paid by the Village Hall Management Committee to put up a gate in the playground of the Village Hall. This is admitted by Councillor Cogdon.

The complainants' concern is that a reasonable member of the public might be concerned that Councillor Cogdon was offered paid work by the Village Hall Committee when both he and the Committee knew that he would shortly be called upon to vote on a recommendation as to whether retrospective planning permission should be granted. The complainants' concern is that Councillor Cogdon might have felt obliged to support the application. The complainant has submitted an email which he says he sent to the Parish Council on 10 January 2007. (The date on the email sent to the Investigating Officer reads 10 January 2008, but in the course of the investigation it has transpired that it was actually sent on 1 October 2007). In this email Mr Roberts informs the Parish Council of his intention to press for a retrospective planning permission and points out that Lewes District Council's planning department's conclusion that planning permission was not needed was based on an erroneous belief that the Parish Council owned the Village Hall.

- 6.3.2 Mr Roberts claims his email to the Parish Council was therefore an early alert to Councillor Cogdon of a forthcoming retrospective planning application, such as to put him on notice of a conflict of interest in the event of him undertaking paid work for the Village Hall Management Committee.

- 6.3.3 Councillor Cogdon says that he repaired a brick column on the end of a wall in the playground and hung a gate off it. He was paid to do this by the Village Hall Management Committee.

The works were carried out in February/March 2008. The work was invoiced and paid for in March 2008. The work was carried out and paid for before any planning application was submitted.

- 6.3.4 The Code of Conduct provides that a person has a personal interest in the business of their authority where it relates to any employment or business carried on by them.

Councillor Cogdon's view is that he did not have a personal interest in the matter of the Village Hall Management Committee's planning application. He says that he had nothing personally to either gain or lose in the event of the planning application being granted or refused. The gate hanging had been a one-off piece of work undertaken for the Village Hall Management Committee. He might get some paid work in the future or he might not. He does not believe that would be affected by any recommendation made on the planning application; nor does he believe that a reasonable member of the public with knowledge of the relevant facts would consider this likely to prejudice his judgement of the public interest.

6.3.5 Councillor Cogdon carried out the work, for which he was paid, before the planning application was submitted. He says that the email of 10 January 2007 (sic) to which Mr Roberts refers was sent to the Parish Council on an earlier date, namely 1 October 2007. (Mr Roberts has checked the date of his email and now confirms it was originally sent on 1 October 2007). Councillor Cogdon says he had forgotten about this email. He cannot find any response he made to it. Mr Roberts has, however, found and forwarded a copy. Councillor Cogdon responded to Mr Roberts on 1 October 2007 confirming that the Parish Council neither owned or maintained the village hall. Councillor Cogdon says that prior to receipt of Mr Roberts' email on 1 October 2007 he, Councillor Cogdon, had already told Mr Roberts at a public meeting that the Parish Council didn't own the Village Hall.

6.3.6 Councillor Cogdon's understanding at the time he undertook this work was that the Village Hall Management Committee had been told by the District Council that it did not require planning permission. Councillor Cogdon says that when a Village Hall Management Committee member asked him if he thought planning permission might be needed Councillor Cogdon advised him to telephone the District Council planning department.

6.3.7 It is a matter for Councillor Cogdon's judgement as to whether he had a personal interest, but in the context of the complaint it is for the Standards Committee to determine whether his judgement is reasonable in the circumstances.

Such evidence as is available shows Councillor Cogdon to have undertaken one ad hoc piece of paid work for the Village Hall Management Committee. There is no evidence that the Management Committee is a regular customer of Councillor Cogdon's or that he is in any way reliant upon its custom for the continuation of his business. In these circumstances Councillor Cogdon's conclusion that the matter of the Management Committee's planning application did not constitute a personal interest is not considered unreasonable.

6.3.8 The complainants say that Councillor Cogdon took measurements in the village hall grounds. They say they are concerned that he was doing this to help prepare the planning application on behalf of the village hall which he subsequently supported.

Councillor Cogdon says that from memory he thinks he was trying to establish the suggestion from Mr Roberts that the raised lawn increased the potential for overlooking of his garden.

6.3.9 The complainants say they believe Councillor Cogdon was involved in the planning and construction of the raised patio.

Councillor Cogdon says he was not; he had nothing to do with the planning application.

- 6.3.10 The complainants say Councillor Cogdon helped the Village Hall Management Committee to lay the foundations for the raised patio.

Councillor Cogdon says that the area to the rear of the hall is a raised lawn. Councillor Cogdon has stated that he was not involved in laying the foundations for the retaining wall. He confirms that he did help three members of the Village Hall Management Committee to barrow topsoil to the rear of the hall. He says this was done prior to submission of the planning application at a time when the Village Hall Committee were under the impression that no planning permission was required. Councillor Cogdon says that his assistance was given voluntarily. The complainants have requested clarification of the extent of Councillor Cogdon's involvement in any works relating to the raised patio/lawn. Councillor Cogdon has confirmed that his involvement was as described above, namely that on one occasion he assisted in the barrowing of topsoil from close to Mr and Mrs Roberts' boundary to the rear of the village hall.

- 6.3.11 If Councillor Cogdon's explanations are accepted, (and there is no evidence available which proves or disproves them), then in my opinion the issues raised above do not indicate any breach of the Code.

- 6.3.12 The complainants say that Councillor Cogdon has been seen entering the village hall with tools on more than one occasion after the planning application was approved.

Councillor Cogdon says that he has occasionally carried out some minor repair work at the village hall. He has done this on a voluntary basis without payment. Examples were given of fitting light bulbs and repairing a toilet inlet.

In my opinion this does not constitute a breach of the Code.

- 6.3.13 The complainants say that Councillor Cogdon was recently seen using a skip hired by the Village Hall Management Committee.

Councillor Cogdon says that the Management Committee had a skip which was only half full. He says that he, along with other residents, asked if he could put a few items in it.

If Councillor Cogdon's explanations are accepted (and there is no evidence available which proves or disproves them), then the behaviour outlined above is not conduct which constitutes a conflict amounting to a personal and prejudicial interest which would prevent Councillor Cogdon taking part in the Parish Council's recommendation on the planning application.

(It is noted that some of the conduct complained about, eg. use of the skip, occurred only after the grant of planning permission and therefore has no bearing on it).

6.3.14 It is significant that the Parish Council's powers in this matter were restricted to making a recommendation on the planning application. The Parish Council had no power to make any decision on the application – that was a matter for the District Council.

6.3.15 The Standards Board has issued guidance which is relevant for authorities which are consulted for their views. That guidance is not directly applicable to this case because it is guidance given in the context of lobbying and campaigning by councillors. It considers whether participation by a councillor in a campaign would constitute a personal, and perhaps prejudicial, interest. The guidance does suggest that a less rigorous approach is required in cases where an authority is consulted for its views but has no power to make the decision. The guidance states:

“In our view, you should adopt a particularly cautious approach to planning and licensing matters. Membership of a group that campaigns for or against a particular planning or licensing application may well constitute a prejudicial interest. You should avoid committing yourself on any matter that may fall to be decided by you as a member of a planning or licensing committee.

Different considerations apply when an authority is consulted for its views on a matter in which does not have the power to take a final decision. A reasonable and informed member of the public would accept that campaigners should be able to participate in consultation, even in consultation on planning and licensing matters.

In these cases, you should declare a personal, but not prejudicial, interest, even if you have campaigned heavily on the issue.”

6.3.16 As stated previously, this guidance is not directly applicable to the circumstances of this case. However, it is noteworthy that guidance from the Standards Board indicates that parish councillors might lobby hard either in favour of or against a particular planning application and still properly participate in the consultation decision. This is because the parish council does not have the power to take a final decision on the planning application. At the very least, the guidance suggests that parish councillors who find themselves consulted on a matter have greater freedom to participate in decisions where they may have interests than they would if they were the final decision-maker.

6.3.17 There is one final matter which needs to be addressed. As investigator I have not found either Councillor Crosthwaite or Councillor Cogdon to have personal or prejudicial interests. The Standards Committee may determine otherwise in which case it is necessary to consider the implications of these interests existing.

6.3.18 The consequence of a personal interest are as follows:

“... where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the

business is considered, you must disclose to the meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.”

That is the only consequence of a personal interest. A person with a personal interest, having disclosed it at the meeting, can participate fully in the decision-making at the meeting.

The consequences of a prejudicial interest are greater:

“... where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where 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 your judgement of the public interest.”

However, the Code of Conduct states:

“You do not have a prejudicial interest in any business of the authority where that business –

- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8” (of the Code).

(There is no evidence that the recommendation about the Village Hall Management Committee’s planning application would impact on Councillor Cogdon’s financial position or the position of his employment/business.)

6.3.20 The consequence of having a prejudicial interest in business is that a person must withdraw from the room where a meeting considering the business is being held and must not seek improperly to influence a decision about that business.

6.3.21 The wording of the Code of Conduct refers to interests needing to be disclosed at meetings. In the present case there was no meeting. The parish council was consulted by the district council on the planning application and invited to comment. There was no parish council meeting scheduled during the time period given for response by the district council.

6.3.22 In interview Councillor Cogdon explained that parish council meetings are held approximately once every six weeks and from time to time the parish council is consulted on applications between meetings.

Councillor Cogdon explained that when this happens the usual procedure is for him to telephone the other parish councillor for their views. This is what happened on this occasion. There is no record of the telephone consultation.

Councillors would be expected to disclose any interests. Councillor Cogdon said in interview that if he thought another councillor had an

interest he would say to them – “I’m not getting your view because you have an interest.”

It would be perverse if the fact that the Chair consulted colleagues by telephone rather than considering business at a formal meeting meant that the provisions of the Code of Conduct could be avoided. It is not clear from Councillor Cogdon’s response to the district council on the planning application that the parish council’s recommendation had been arrived at otherwise than at a meeting of the parish council.

- 6.3.23 The difficulty of dealing with applications which arrive between parish council meetings is understood and if the parish council is not to miss the opportunity to comment a telephone consultation is a reasonable way forward. However, there should be a record of this, to include a note of the persons consulted and any interests declared. It might be preferable too for the telephone consultation to be co-ordinated by the parish clerk. Additionally, agendas should carry a specific item relating to declarations of interests. The Standards Committee may wish to make recommendations to South Heighton Parish Council (and perhaps other town/parish councils too) on these points.

7 FINDING:

- 7.1 There has been no failure by Councillor Crosthwaite to comply with South Heighton Parish Council’s Code of Conduct.
- 7.2 There has been no failure by Councillor Cogdon to comply with South Heighton Parish Council’s Code of Conduct.
- 7.3 The Standards Committee may wish to recommend to South Heighton Parish Council (and possibly other town/parish councils) that they adopt the following practices:
- 7.3.1 Where the parish council is asked to comment on a planning application and there is no scheduled meeting the clerk shall contact parish councillors by telephone for their views, subject to the following:
- the clerk shall make a written record of those councillors consulted and the outcome and this shall be placed on the agenda of the next scheduled parish council meeting for noting.
 - In the event of any councillor informing the clerk that they have a personal interest in the matter the clerk shall include a note of the same in the written record. If that interest is also prejudicial the clerk shall note the same and shall not obtain or take into account any opinion expressed on the application by the councillor.
 - the clerk shall inform the district council that the parish council’s recommendation was made by telephone consultation and not at a meeting of the parish council.

- the clerk shall include an item requiring councillors to declare any interests on every council agenda.

FINAL