

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 Councillor Pauline Burnaby-Davies of Rodmell Parish Council.

1 Executive Summary

- 1.1 The complainant, Mrs Lindy Smart, alleges that Councillor Burnaby-Davies failed to declare an interest in a matter under discussion at meetings of Rodmell Parish Council held on 17 November 2008 and 5 January 2009. The complainant alleges that the matter under discussion affected members of Councillor Burnaby-Davies's family. The complainant alleges that Councillor Burnaby-Davies participated in the discussion of this matter when she should not have done.
- 1.2 The agenda and minutes for the parish council meetings held on 17 November 2008 and 5 January 2009 do not make any mention of any interest being declared. On this basis, the Monitoring Officer was instructed to investigate the matter.
- 1.3 (The complaint received from Mrs Lindy Smart also claimed that Councillor Burnaby-Davies had failed to advise her family members to consult the Parish Council before erecting a fence across a public highway; it further suggested that Councillor Burnaby-Davies had condoned intimidating behaviour on the part of her brother against the complainant. The Assessment Sub-Committee did not consider that Councillor Burnaby-Davies could be held responsible for the behaviour of her relatives; nor did she have any duty to actively proffer advice to them. The Sub-Committee decided that these aspects of the complaint should not be investigated).

2 Member's Details:

- 2.1 Councillor Pauline Burnaby-Davies is a current member of Rodmell Parish Council and was a member at the date of the incident the subject of complaint.
- 2.2 Councillor Burnaby-Davies gave a written undertaking to observe Rodmell Parish Council's Code of Conduct on 15 May 2007. (Confirmed by Parish Clerk).
- 2.3 Councillor Burnaby-Davies, like other town and parish councillors, has been provided with guidance published by the Standards Board but has had no specialist training in the Code of Conduct.

3 Relevant legislation and protocols.

- 3.1 Rodmell Parish Council has adopted a Code of Conduct in which the following paragraphs are included:

- “8(1) You have a personal interest in any business of your authority where...
 - (b)...a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of your authority’s area.

- (2) ... a relevant person is –
 - a member of your family or any person with whom you have a close association.”

- “9(1) ... 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.”

- “10(1) ... 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.
 - (2) 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.”

- “12(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority –
 - (a) you must withdraw from the room or chamber where a meeting considering the business is being held -
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority’s standards committee.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting ... but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.”

4 Evidence gathered

I have taken account of documentary evidence obtained from:

Mrs Lindy Smart

Councillor Pauline Burnaby-Davies

Ms Kim Day, Clerk to Rodmell Parish Council

Councillor William Edmonds, Chair of Rodmell Parish Council

5 Summary of material uncontested facts

5.1 Councillor Burnaby-Davies is related to Mr Roger Dean (brother) and Mr Stephen Dean (nephew).

5.2 A meeting of Rodmell Parish Council was held on 17 November 2008. Councillor Burnaby-Davies attended the meeting

5.3 Item 5 on the agenda related to a matter entitled “Footpath/registered highway behind The Forge.” This concerned a fence which Stephen Dean, householder of “The Forge,” had arranged to be erected in such a way as to block a pathway.

5.4 Councillor Burnaby-Davies did not declare any interest in the item, but in introducing the item the Chair stated that Councillor Burnaby-Davies would not be taking part because she had an interest as a member of the family involved in the matter under consideration.

5.5 Councillor Burnaby-Davies did not withdraw from the meeting.

5.6 Councillor Burnaby-Davies did not take part in the discussion or vote on the endorsement of the letter drafted by Councillor Edmonds

5.7 Councillor Burnaby-Davies did not take part in the discussion or vote on the height of the fence.

5.8 The Parish Council meeting was suspended part way through the debate on Item 5. There then followed an “open meeting” about the Forge footpath. Members of the public present at the meeting participated in this discussion, including Roger Dean and Stephen Dean. Councillor Burnaby-Davies participated in this discussion.

5.9 A meeting of Rodmell Parish Council was held on 5 January 2009. Councillor Burnaby-Davies attended the meeting.

5.10 Item 6c) on the agenda related to the matter of “Forge House Footpath”

- 5.11** Councillor Burnaby-Davies did not declare any interest in the item and did not withdraw from the meeting.
- 5.12** Councillor Burnaby-Davies did participate in the discussion on item 6 c)III. Her participation was restricted to making a response to a direct question asked of her.
- 5.13** The Investigating Officer wrote to Councillor Burnaby-Davies on 9 July asking her to explain her reasons for not declaring any interest at the meetings held on 17 November 2008 and 5 January 2009.
- 5.14** Councillor Burnaby-Davies responded by letter dated 15 July 2009.

6 Reasoning as to whether there has been any failure to comply with the Code of Conduct.

- 6.1** A “relevant person” is defined as “member of your family or any person with whom you have a close association.” The relationship of sister and brother, and aunt and nephew are sufficiently close as to fall within the definition.
- 6.2** An item on the agenda of the meeting of 17 November 2008 and the agenda of the meeting of 5 January 2009 related to a footpath to the rear of “The Forge” and, in particular, to a fence which had been erected across that footpath by the occupier of The Forge, Steven Dean. Minutes of those meetings, including minutes of the “open meeting” held on 17 November 2008 show the erection of the fence to have caused local controversy, with some people objecting to the fence and with discussion focusing on a proposal to instal a gate in the fence.
- 6.3** Paragraph 8 of the Code of Conduct adopted by Rodmell Parish Council provides that a councillor has a personal interest in the business of their authority where a decision in relation to that business might reasonably be regarded as affecting the well-being of a relevant person (eg a relative) to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the parish.
- 6.4** Any decision made by the Parish Council in relation to what it might do about the matter of the fence/footpath to the rear of The Forge might reasonably be regarded as affecting the well-being of Councillor Burnaby-Davies’ nephew Steven Dean, the occupier of The Forge, to a greater extent than others. On this basis Councillor Burnaby Davies had a personal interest.
- 6.5** Paragraph 9 of the Code states that where a councillor has a personal interest in business of their authority and attends a meeting of their authority at which the business is considered, they should disclose to that meeting the existence and nature of that interest.
- 6.6** Councillor Burnaby-Davies attended parish council meetings on 17 November 2008 and 5 January 2009. At both those meetings the business relating to The Forge, in which she had a personal interest, was considered.

6.7 At the meeting held on 17 November 2008 Councillor Burnaby-Davies did not disclose the existence and nature of her interest. However, prior to consideration of the item relating to “The Forge”, the Chair of the Parish Council drew attention to Councillor Burnaby-Davies’ interest and explained that she would not be taking part. The Chair has written to the Investigating Officer confirming:

“I introduced that item on the agenda stating what was obvious to everyone present that Councillor Burnaby-Davies would not be taking part because she had an interest as a member of the family involved in the whole controversial issue. But I’m not sure I spelled it out that she was the aunt of Stephen Dean, because everyone there was fully aware of that anyway.”

6.8 On the evidence available it would appear that the existence and nature of Councillor Burnaby-Davies’ interest as a family member was made known to the meeting of 17 November.

6.9 A councillor who has a personal interest in a matter must go on to consider whether that interest is a prejudicial one.

Paragraph 10(2) of the Code states:

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

5.14.1.1 does not affect the financial position of a person described in paragraph 8” (ie in this case, Stephen Dean)

5.14.1.2 does not relate to the determining of any approval, consent, licence, permission or registration in relation to any person described in paragraph 8” (ie Stephen Dean).

6.10 The Minutes of the meeting held on 17 November 2008 record a proposal by Councillor Foster that the Parish Council recommend that the height of the fence is reduced to be in line with the height of the gate.

6.11 This proposal was recorded and agreed by the Parish Council.

6.12 In the event that this recommendation might be implemented then it is probable that the reduction in the height of the fence together with the installation of a gate would involve Stephen Dean in some expenditure. On this basis, the business under consideration could be said to affect his financial position. In my opinion the matter does constitute one in which Councillor Burnaby-Davies has a prejudicial interest.

6.13 The words “approval, consent, licence, permission” and “registration” as used in paragraph 10(2)(b) relate to matters requiring formal applications and subsequent grants evidenced by formal documentation. It is not entirely clear from the evidence available in the Parish Council Minutes whether this matter relates to a formal application and grant. It seems not. It seems to relate to a possible enforcement matter being handled by East Sussex County Council’s

Highways Enforcement Officer. I have not considered the implications of paragraph 10(2)(b) in connection with this matter further.

- 6.14** Notwithstanding the fact that Stephen Dean's financial position might be affected if the Parish Council's decision is implemented, there is a further test which must be applied in order to determine whether Councillor Burnaby-Davies might have a prejudicial interest.
- 6.15** Paragraph 10(1) of the Code provides that where a councillor has a personal interest they also have a prejudicial interest 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 councillor's judgement of the public interest.
- 6.16** A member of the public might well conclude that Councillor Burnaby-Davies was, by virtue of her relationship to Stephen Dean, too personally involved in the matter under consideration to exercise objective judgement.
- 6.17** My conclusion is that Councillor Burnaby-Davies' personal interest was one which was probably also prejudicial. The consequence of having such an interest is that she should have withdrawn from the formal part of the Parish Council meeting held on 17 November 2008. She did not do so although the parish clerk has confirmed that Councillor-Burnaby-Davies took no part in the discussion or vote on the endorsement of the letter drafted by Councillor Edmonds; nor did she take part in the discussion or vote on the height of the fence.
- 6.18** The Parish Council Minutes of the meeting held on 17 November 2008 record that part way through Item 5 on the agenda relating to the footpath/registered highway behind The Forge:
- "The Parish Council meeting was suspended to allow an open discussion about The Forge footpath."
- 6.19** Minutes of this "open meeting" are available. They show that Councillor William Edmonds chaired the meeting. There followed a free discussion about The Forge footpath between various parish councillors, including Councillor Burnaby-Davies, and members of the public, including Stephen Dean and Roger Dean.
- Paragraph 9 of the Code states:
- "... 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..." (my emphasis).
- 6.20** The Parish Council having formally suspended its meeting, this "open meeting" cannot be said to have been a meeting of the Parish Council. In these circumstances I do not believe that this "open meeting" is covered by paragraph 9 of the Code and the need for disclosure of interests.

- 6.21** Councillor Burnaby-Davies' participation in this "open meeting" does not constitute a breach of the Code.
- 6.22** It is unsatisfactory that the device of formally suspending the Parish Council meeting has the consequence of rendering the Code of Conduct inapplicable so that a councillor who would be prohibited by the Code from participating in the Parish Council meeting has the freedom to participate in the "open meeting" which follows.
- 6.23** It is noted that following this case, Rodmell Parish Council was quick to recognise the need for it to change its procedures. The clerk has confirmed that:
- 1 agendas now include a standing item:
"Declarations of Interests"
 - 2 a previous standing item: "Any Other Business" has been removed from agendas.
 - 3 there is an opportunity for open questions from members of the public at the beginning of the meeting. This negates the need for there to be any suspension of the Parish Council meeting.
- 6.24** At the meeting held on 5 January 2009 Councillor Burnaby-Davies did not disclose the existence and nature of her interest.
- 6.25** It is probable, given the explanation of the Chair, that people were already fully aware of the existence and nature of Councillor Burnaby-Davies' interest, especially since this was the second meeting about the same subject matter. However, the Code adopted by Rodmell Parish Council requires such interests to be disclosed at every meeting of the authority.
- 6.26** Councillor Burnaby-Davies did not withdraw from the meeting. The clerk has confirmed that Councillor Burnaby-Davies' participation at this meeting was restricted to making a response to a direct question asked of her.

7 FINDING

- 7.1** On the evidence available from this investigation it would seem that Councillor Burnaby-Davies failed to comply with Rodmell Parish Council's Code of Conduct in that she:
- (i) failed to disclose the existence and nature of a personal interest in business considered at a meeting of Rodmell Parish Council held on 5 January 2009.
 - (ii) failed to withdraw from the room or chamber where meetings of Rodmell Parish Council were held on 17 November 2008 and 5 January 2009 despite having a prejudicial interest in the matter under consideration.