



Lewes District Council

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Standards Committee

Minutes of a meeting of the **Standards Committee** held in the **Warren Room, Lewes House, 32 High Street, Lewes** on **Tuesday 4 August 2009** at **2.00pm**.

Present:

Mr E P O Mercer (Independent Member) (Chair – on election)
Mrs J M Redman (Independent Member)
Councillor B Clutterbuck (Ditchling Parish Council)
Councillor L Holland (Seaford Town Council)
Councillor E E J Russell

Officers Present:

Ms C Knight, District Solicitor and Monitoring Officer
Ms J Gavigan, Committee Officer

In Attendance:

Councillor P Burnaby-Davies, Rodmell Parish Council

Minutes

7 Election of Chair

Resolved:

7.1 That Mr E P O Mercer be elected as Chair for the meeting.

8 Minutes

The Minutes of the meeting held on 22 June 2009 were approved as a correct record and signed by the Chair, subject to the amendment that the wording in Resolution 6.5 be corrected to read 'Resolution 6.4 above'.

9 Apologies for Absence

Apologies for absence had been received from Mr G Eysenck (Independent Member), Councillor C Terry (Peacehaven Town Council), Councillors M Chartier, T Hawthorne and D Mitchell.

Action

10 New Regulations: Standards Board Intervention, Joint Standards Committees and Dispensations

The Committee received Report No 146/09 relating to the new regulations regarding intervention by the Standards Board, joint Standards Committees and dispensations for councillors which came into force on 15 June 2009.

The Monitoring Officer summarised the new regulations as follows:

- Suspension of the functions of local Standards Committees where they failed to perform their role satisfactorily, or where Monitoring Officers failed to perform their functions, or where issues were too difficult for the Committee to deal with.
- Power to set up joint Standards Committees.
- Power to Standards Committees to give dispensations to councillors to participate on prejudicial matters.

The Monitoring Officer had raised the possibility of joint Standards Committees with neighbouring authorities but they had no interest and could see no immediate benefits at this time.

The Committee considered the new regulations regarding dispensations to allow councillors to speak and vote on matters in meetings, which were set out in paragraph 4 of the Report, and discussed the narrow grounds upon which Standards Committees could grant them. The following points were raised:

- Councillors were often unaware of the number of members who were going to be debarred from consideration of a particular matter until it was too late to request dispensation from the Standards Committee before the meeting took place.
- Previously granted dispensations could render remaining councillors ineligible for dispensations if the 50% point of the committee membership were met before all dispensations were heard. Any previously granted dispensations should be disregarded in order to work out which circumstances applied to which councillor on an issue by issue basis.

Resolved:

10.1 That Report No 146/09 be noted;

10.2 That the Monitoring Officer be authorised to advise all Lewes District Councillors and all Town and Parish Clerks of the new grounds for application for dispensation in respect of prejudicial interests and refer them to the relevant Standards Board guidance; and

MO

- 10.3** That the advice given by the Monitoring Officer in respect of Resolution 10.2 above include an explanation of the narrow grounds for dispensation and an example case to help clarify when councillors are able to remain and participate in Council meetings. MO
- 11 Request for Dispensation – Councillor G Collier, Newick Parish Council**
- The Committee received Report No 147/09 relating to a request for dispensation on behalf of Councillor G Collier of Newick Parish Council. As set out in Appendix 1 to the Report, a dispensation was requested to allow Councillor Collier to speak on issues ascertaining to his position on the Newick Village Hall Management Committee.
- Paragraph 1.11 of the Monitoring Officer’s report set out the reasons why Councillor Collier’s interest in this matter was not generally regarded as prejudicial. Therefore, it was unlikely that it would prevent him from participating in Parish meetings. As the criteria under the dispensation regulations had not been met in this case, a dispensation could not be granted.
- Resolved:
- 11.1** That Report No 147/09 be noted;
- 11.2** That the Monitoring Officer be authorised to write to the Clerk of Newick Parish Council and to Councillor G Collier advising them of: MO
- (a) The decision that a dispensation cannot be granted because the criteria for granting one is not satisfied;
 - (b) The effect of the Standards Committee (Further Provisions)(England) Regulations 2009;
 - (c) The circumstances in which Councillor Collier may/may not participate in Council business which affects the village hall; and
- 11.3** That the Monitoring Officer be authorised to deal with any future requests from councillors for dispensation unless such requests fell within the penumbra of the Standards Committee’s discretion. MO to note
- 12 Investigator’s Report: Complaint against Councillor Burnaby-Davies, Rodmell Parish Council**
- The Committee considered Report No 148/09 relating to an investigation into a complaint by Mrs L Smart against Councillor P Burnaby-Davies of Rodmell Parish Council. The report set out the details of the complaint in which Mrs Smart had alleged that:
- Councillor Burnaby-Davies failed to declare an interest in a matter

under discussion at meetings of Rodmell Parish Council on 17 November 2008 and 5 January 2009.

- The matter under discussion affected members of Councillor Burnaby-Davies' family. Therefore, she participated in the discussion when she should not have done.
- Councillor Burnaby-Davies failed to advise her family members to consult the Parish Council before erecting a fence across a public highway.
- Councillor Burnaby-Davies condoned intimidating behaviour on the part of her brother against the complainant.

The Monitoring Officer explained that these matters were initially assessed by a Sub-Committee. The Sub-Committee had not considered that Councillor Burnaby-Davies could be held responsible for the alleged intimidating behaviour of her relatives, nor did she have any duty to actively proffer advice to them. The Sub-Committee had decided that these aspects of the complaint should not be investigated.

The Sub-Committee had asked the Monitoring Officer to investigate further only the aspects of the complaint concerning Councillor Burnaby-Davies' alleged failure to declare an interest and her participation in discussion of the matter. On the basis that the agenda and minutes for the Parish Council meetings on 17 November 2008 and 5 January 2009 did not make any mention of an interest being declared, the Monitoring Officer investigated this aspect of the complaint and her findings were set out in the Investigating Officer's report.

The Standards Committee had a duty to consider the Investigating Officer's report and to decide whether it agreed with the findings of the report that there had been a failure to comply with Rodmell Parish Council's Code of Conduct, or that it was not satisfied with these findings and believed that there was not a case to answer.

The Investigating Officer advised that the Committee consider the following key matters in relation to the complaint:

Alleged personal interest on the part of Councillor Burnaby-Davies

The Committee noted the definition of a personal interest under the Code of Conduct, as set out in paragraph 3.1 of the report. A councillor had a personal interest where a decision in relation to the authority's 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.

The Committee agreed with the Investigator's report that any decision made by Rodmell Parish Council in relation to what it might do about the matter of the fence/footpath to the rear of the Forge could reasonably be regarded as

affecting the well-being of Councillor Burnaby-Davies' nephew Stephen Dean, the occupier of the Forge, to a greater extent than others.

On this basis, the Committee concluded that Councillor Burnaby-Davies had a personal interest in the matter.

Alleged prejudicial interest on the part of Councillor Burnaby-Davies

The Committee noted the definition of a prejudicial interest under the Code of Conduct, as set out in paragraph 3.1 of the report. A councillor had a prejudicial interest in any business of the authority where that business affected the financial position of a relevant person (eg. a relative).

The Committee agreed with the Investigator's report that the decision by Rodmell Parish Council that Stephen Dean should reduce the height of the fence and install a gate would involve expenditure on his part. The Committee also felt that the value of Mr Dean's property could be enhanced if the footpath were closed off. On this basis, the business under consideration affected his financial position and the matter was one in which Councillor Burnaby-Davies had a prejudicial interest.

A further test of a prejudicial interest was where the interest in any business of the authority was one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it was likely to prejudice the councillor's judgement of the public interest.

The Committee agreed that, on balance of probabilities, a member of the public was likely to conclude that, by virtue of her relationship to Stephen Dean, Councillor Burnaby-Davies was too personally involved in the matter to consider it objectively.

On this basis, the Committee concluded that Councillor Burnaby-Davies had a prejudicial interest in the matter of the fence/footpath to the rear of the Forge.

Alleged failure on the part of Councillor Burnaby-Davies to declare her interest

The Committee noted that, under the Code of Conduct, having a personal interest in business of the authority meant that a councillor should disclose the existence and nature of that interest to the meeting at which the business was considered.

Paragraph 6.7 of the Investigator's report stated that Councillor Burnaby-Davies had not declared her interest at the meeting on 17 November 2008. However, the Chair disclosed her interest on her behalf and declared that Councillor Burnaby-Davies would not be taking part due to her family connection to the issue. As such, the Committee was satisfied that no one at the November meeting had been unaware of the existence and nature of her interest.

Paragraph 6.24 stated that, at the meeting on 5 January 2009, Councillor Burnaby-Davies had not disclosed the existence and nature of her interest. The Committee believed it was a matter for mitigation as to whether it was assumed that the declaration was carried over from the previous meeting. This could not be regarded as a defence as it was a councillor's personal responsibility to disclose their interest at each relevant meeting.

Therefore, the Committee concluded that Councillor Burnaby-Davies had failed to disclose the existence and nature of a personal interest in business considered at a meeting of Rodmell Parish Council on 5 January 2009.

Alleged failure on the part of Councillor Burnaby-Davies to withdraw from the room and not participate in the discussion of the matter as a result of her interest

The Committee noted that, under the Code of Conduct, having a personal interest that was prejudicial meant that the councillor should withdraw from the meeting room during discussion of the matter and refrain from taking part in its consideration.

Paragraph 6.17 of the Investigator's report stated that Councillor Burnaby-Davies had not withdrawn from the November meeting during consideration of the matter but took no part in the discussion or vote thereon.

Paragraph 6.26 of the report stated that Councillor Burnaby-Davies had not withdrawn from the January meeting during consideration of the matter although her participation in the discussion was limited.

As set out in paragraph 5.8 of the Investigating Officer's report, the Committee noted that the Parish Council meeting of 17 November 2008 had been suspended part way through the debate and there followed an 'open meeting' about the Forge footpath. Councillor Burnaby-Davies and her relatives had participated in this discussion.

The Committee expressed concern as to the purpose and status of the 'open meeting'. Although Councillor Burnaby-Davies had not been in breach of the Code by participating in the 'open meeting', this was due to the Code of Conduct being rendered inapplicable as a consequence of the suspension of the formal Council meeting.

The Committee held the view that the 'open meeting' was still a meeting of Rodmell Parish Council and that Councillor Burnaby-Davies' contribution to the discussion could still have influenced the decision making stage. However, the Committee also felt that it would be harsh to hold an individual councillor responsible for failing to refrain from the discussion due to the confusing manner in which the meeting had been conducted by the Parish Council.

The Committee concluded that Councillor Burnaby-Davies had failed to withdraw from the room during meetings of Rodmell Parish Council on

17 November 2008 and 5 January 2009 despite having a prejudicial interest in the matter being considered.

The Committee expressed concern that there had been no agenda items to prompt councillors to declare their interests. However, the Committee noted from paragraph 6.23 of the report that Rodmell Parish Council had changed its practices as a result of this complaint. It now included declarations of interest as a standing item on Council meeting agendas, the 'Any Other Business' item had been removed and an opportunity for the public to speak was included at the beginning of meetings.

The next stage of the investigation would be to hold a hearing into the complaint.

Resolved:

12.1 That the Standards Committee agrees with the Investigating Officer's conclusion that there appears to be a failure by Councillor P Burnaby-Davies to comply with Rodmell Parish Council's Code of Conduct in that she:

- (a) Failed to disclose the existence and nature of a personal interest in business considered at a meeting of Rodmell Parish Council on 5 January 2009;
- (b) Failed to withdraw from the room or chamber where meetings of Rodmell Parish were held on 17 November 2008 and 5 January 2009 despite having a prejudicial interest in the matter under consideration;

12.2 That the Monitoring Officer be requested to write to all the Town and Parish Council clerks advising them of:

- (a) How to deal with public participation in formal Council meetings;
- (b) Which items should be included on formal Council meeting agendas; and

12.3 That the Monitoring Officer be authorised to arrange a hearing to make a final determination on whether the Code of Conduct was breached to take place within three months of the date of the Standards Committee meeting on 4 August 2009.

MO

MO/CO

The meeting ended at 3.40pm.

E P O Mercer
Chair