

## **EAST HERTFORDSHIRE DISTRICT COUNCIL**

### **ALLEGATION OF BREACH OF THE CODE OF CONDUCT**

#### **SUPPLEMENTAL REPORT OF THE INVESTIGATING OFFICER**

##### **1. Introduction**

1.1 On 19<sup>th</sup> February 2015 I presented to the Standards Sub-committee part of my report on the investigation of allegations made against Cllr William Ashley, that he breached the Code of Conduct adopted by the Council under the provisions of the Localism Act 2011.

1.2 The part of my initial report which was for consideration at the meeting was the finding set out in paragraph 9.20 of my report as follows:

“Accordingly, I do not find any breach of the Code of conduct in respect of the complainant’s allegation that

Cllr Ashley has gained a pecuniary advantage in the manner in which he obtained various planning permissions bringing himself, East Herts Council and members of the Planning Committee into disrepute. Statements made in obtaining permissions appear to be very misleading.

He abused his position by ambiguous means in changing the fundamental framework of implementing such permissions. Some of the permissions appear to have been covered up (sic) by misleading and ambiguous statements to officers, the press and others.

He flagrantly breached conditions imposed on particular permissions and in doing so appears to have obtained substantial financial gain.”

1.3 After careful consideration of my report the Sub-Committee deferred a decision on the acceptance of my conclusions and asked me to consider further two matters in my report. These were:

1.3.1 The allegation in paragraph 5.9 of the report (within the section of the report containing the complainant’s evidence) that “During the course of dealing with this issue, Cllr Ashley had unsuccessfully sought to obtain a Certificate of Lawful Use for the site and in so doing, the complainant alleged, had secured affidavits about past use which he knew to be incorrect.”

1.3.2 The allegation in paragraph 6.4 of the report (the section of the report containing the third party evidence) that “She (Cllr 1) also questioned

whether the appropriate pre-application fee had been paid for each of Cllr Ashley's applications as is the correct procedure."

- 1.4 I have reviewed both of these matters and my conclusions are set out below.
- 1.5 I would reiterate that my remit as independent investigating officer was to establish whether there was any evidence to support the allegation contained in the complaint that Cllr Ashley had breached the Council's Code of Conduct for Members. Although there were a number of substantive issues raised in the complaint and supporting papers about various planning applications and enforcement notices and planning policies relating thereto, these were not within my remit.
- 1.6 Any issues about the merits of proposals are not matters for me nor are decisions about enforcement action except to the extent that it could be demonstrated that the decisions were influenced or affected by Cllr Ashley in a manner which constituted a breach of the Code. Other procedures are available to deal with substantive issues relating to planning and any suggestion of maladministration on the part of the Council.
- 1.7 I stress that it is important to demonstrate, if that were the case, in what way Cllr Ashley had failed to comply with the Code. There is no presumption that simply because he is a Councillor, he will unduly influence his application. Rather, the system is designed to provide safeguards for the Council, members and the public when a Councillor makes a planning application. Cllr Ashley is entitled to run his business provided he does not take advantage of his position as a Councillor.

## 2. **The allegation about the affidavits**

- 2.1 The complainant supplied further information about this issue as follows
  - 2.1.1 A copy of the officers report assessing the application for a Certificate of Lawfulness.
  - 2.1.2 A copy of a letter dated 4<sup>th</sup> January 2013 advising that the application had been withdrawn.
- 2.2 He commented that the applicant had used a mix and match of the evidence to support his application but the planning officer in his report had reached a different conclusion.
- 2.3 Cllr Ashley supplied copies of the affidavits and further correspondence sent to the Council in support of his application. He drew my attention to the comment of the Council Solicitor to the effect that 10 year use was established.

- 2.4 He also expressed concern that this further inquiry might lead to the details of the affidavits entering the public domain to the detriment of those who provided them.
- 2.5 I read the officers report but not the affidavits as part of my initial investigation. I have now read the affidavits and other papers including the application and considered the comments of the parties.
- 2.6 It is clear that that the planning officer placed a different construction on the evidence and went to some lengths to investigate the matter, drawing upon a variety of sources. He did not limit his investigation to the information provided by Cllr Ashley.
- 2.7 In a thorough and carefully written report, he reached the conclusion that the application should be rejected. Although in his view, the application was contradictory and ambiguous, there was no suggestion from the Council that the application was not a genuine application or that the applicant had done anything other than try to put forward a convincing case on the basis of the information available to him.
- 2.8 The applicant responded to that conclusion by withdrawing the application.

3. **The allegation that Cllr Ashley did not pay the fee for pre-determination advice**

- 3.1 Cllr 1 questioned whether the appropriate pre-application fee had been paid for each of Cllr Ashley's applications as is the correct procedure. In the absence of any evidence on this point, I did not pursue that issue at the time.
- 3.2 The complainant has produced copies of the relevant parts of five planning applications each indicating that a pre-application discussion took place.
- 3.3 Cllr Ashley has stated that the only pre-application discussions related to an application in February 2015 (no reference given) and that the correct fee was paid. These events took place after the conclusion of my report.
- 3.4 The council have produced a copy of the application for a Certificate of Lawfulness which indicates that pre-application advice was sought. I have not been advised of the substance of any pre-application activity on this matter.
- 3.5 The council stated that the pre-application charging regime was introduced in April 2007 and have commented as follows on the various applications:.
- 3.5.1 3/08/1222/FP and 3/08/1739/FP – these are applications for the conversion of the former agricultural buildings at the site to live/ work units. On both it is indicated that pre-application advice was received under ref S/08/0258/01. The records do not hold a copy of a

completed pre-application request and S is the not the reference used in the Councils files for pre-application submissions. The file consists of an email request from Cllr Ashley and a response letter from a Council employee. This suggests that the work may not have been logged as a paid for pre-application advice request. The Council cannot be certain that no payment was made without interrogation of payment records which might not be conclusive as daily payments received are consolidated before pay in.

- 3.5.2 S/09/0130/01 – this comprises pre-application advice in relation to a domestic garage. This comprises a householder proposal. The advice was provided on 16 Feb 09. Charges for householder proposals were not introduced until 2011.
- 3.5.3 3/11/0079/FP, 3/11/1611/MA and 3/11/1808/FP – these are all applications which comprise later permutations of the conversion of the agricultural buildings to live work units. In these cases it is indicated that pre-app advice was received but no separate reference is given. Other information provided suggests that the advice sought was no more than whether a further application was required for the amendment to the proposals now being sought. The council would not charge to give advice only in relation to whether a further application or an amendment process is required.
- 3.5.4 3/12/1910/CL, 3/13/0055/CL and 3/13/1513/FO – the first two related to the lawful development certificates in relation to the claimed car storage use, the last is an application seeking to vary a controlling condition relating to the garage at Longcroft. These applications were made after the commencement of informal enforcement investigations. The Council would not charge for advice which arose as a result of enforcement investigations and set out how a land owner may seek to regularise any potential breach of planning control at their site.

3.6 In response to a draft of this report Cllr Ashley commented

“Your report makes reference to two further applications, 3/08/1222 and 3/08/1739. As you say these were made in 2008 and relate to the live/work development of the poultry houses. 3/08/1739 followed 3/08/1222 both for 4 live/work units but the second with a basement which in a later application was removed. It was a major development for us and a learning curve and it took a number of redesigns and applications until it was finally right for the site. With regard to pre application advice, it's not advice that I recall having as I understand that in obtaining pre app advice an applicant receives a written summary of the advice received which we didn't receive. As you recognise the

passage of time and a more robust system is now in place. The e-mail and officer follow up letter suggests that first considering an application on such a large scale for us, it meant it may have been a simple enquiry just as a visit to a duty planning officer located in the reception at Wallfields would be for any member of the public.”

- 3.7 The complainant in his review of a draft of this report commented that there clearly was pre-application advice on number of matters.

### **Findings of fact**

- 3.8 I have very carefully reviewed all the document supplied to me together with the various representations.
- 3.9 I find that Cllr Ashley relied upon the documents in his possession to support his application for a Certificate of Lawfulness. Notwithstanding that evidence the Council reached the view that the application should be rejected.
- 3.10 There was no evidence to support the allegation that Cllr Ashley submitted evidence which he knew to be incorrect.
- 3.11 Cllr Ashley submitted five applications in which he indicated that pre-application advice had been sought.
- 3.12 There may have been one instance when advice was provided prior to the submission of the initial application to convert the agricultural building at the site to live/work and no fee payment was made when one might be expected.

### **4. Evaluation of the evidence and conclusions**

- 4.1 In regard to the allegation regarding affidavits, in my experience establishing planning history outside of official records is a complex matter and it is not uncommon to uncover conflicting evidence and disputed recollections. In this case the site has a complex history and the configuration of uses changed markedly and frequently. As the planning officer points out it may be that the recollections of those who gave the affidavits does not match the site under consideration. There is no valid way to establish whether or not that is the case.
- 4.2 However, the allegation is that Cllr Ashley knowingly relied upon affidavits which he knew were incorrect. Whether or not the affidavits were correct or not, no evidence has been produced to show that Cllr Ashley perpetrated any deceit. I note that Cllr Ashley gave no direct evidence from his own knowledge. Bearing in mind the gravity of the allegations, I would require clear evidence that he had done so in order to reach such a conclusion. Such evidence is not present here. It is impossible to conclude from any incorrectness in the documents that Cllr Ashley submitted them “knowing them to be incorrect”.

- 4.3 Therefore, I do not find that Cllr Ashley submitted an application which included evidence that he knew to be incorrect.
- 4.4 On that basis I do not believe that Cllr. Ashley acted in a manner which breached the Code of Conduct.
- 4.5 No pre-applications discussions took place without payment of the proper fee save possibly in relation to one application. The evidence concerning that application raised doubt as to the extent of those pre-application discussions and the council were unclear whether a payment had been made or not. In the circumstances I cannot be satisfied that there was pre-application support for which no fee was paid.
- 4.6 On that basis I do not believe that Cllr. Ashley acted in a manner which breached the Code of Conduct.
- 4.7 In evaluating the evidence, I must again consider the issue of **capacity**. Section 26 of the Localism Act 2011 requires the authority to adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity
- 4.8 Compliance with the Code is required whenever a member
- 4.8.1 conducts the business of the authority including the business of any office to which the member is appointed; or
  - 4.8.2 acts, claims to act or gives the impression that the member is acting as a representative of the authority.
- 4.9 A key question in reviewing the evidence will therefore be, whether the allegations relate to Cllr Ashley's conduct as a councillor.
- 4.10 In relation to both of the further matters raised by the Sub-Committee Cllr Ashley was pursuing his business interests not acting in his capacity as a councillor.
- 4.11 In my Report I commented on the use by Cllr Ashley of his council email address when processing his planning applications. I said that he was unwise to do so and I remain of that opinion. However, the use of his council email address did not mean that he was acting as a Councillor as he was clearly acting in pursuit of his legitimate business interests.
- 4.12 Given the evidence before me and that Cllr. Ashley was not acting in his capacity as a councillor, I do not consider that there has been a breach of the Code of Conduct in relation to the two matters raised by the Standards Sub-Committee on 19<sup>th</sup> February.

5. **Conclusion**

- 5.1 This report will be considered by the Monitoring Officer and by the Standards Sub-Committee in conjunction with the report already submitted.
- 5.2 Once again, I wish to thank all those who have been involved in the additional work for their speedy responses.
- 5.3 I have not attached any documentation to this Supplemental Report but this can be provided if required by the Monitoring Officer or the Sub-committee.