

**PRIVATE AND CONFIDENTIAL
REPORT**

Final Report

East Hertfordshire District Council

Case Reference EHDC/01/2008

**REPORT OF AN INVESTIGATION UNDER 59 OF THE LOCAL
GOVERNMENT ACT 2000 by G ROBERTSON appointed by Monitoring
Officer for East Hertfordshire District Council INTO an ALLEGATION
CONCERNING COUNCILLOR M ALEXANDER**

DATE: 25 February 2009

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1 Executive summary

1.1 Allegation

The complaint is that Councillor Alexander attended a site meeting with reference to a planning application for Little Samuels Farm reference 3/07/2674/FP which the complainant Parish Councillor D Gibbs felt breached the Councils Members Planning Code of Good Practice. At subsequent Council meetings Councillor Alexander was asked to give an assurance that he had not heard any representations during site visits in the past year from applicants or interested third parties without an officer of the Council being present and his response led Councillor Gibbs to believe that Councillor Alexander's conduct represented a breach of the Members Code of Conduct in that it 'could reasonably be construed as bringing a members office or authority in to disrepute.' Councillor Gibbs noted that the referral from the Assessment Sub Committee referred in addition to 'failure to treat others with respect' and 'using your position as a member improperly to secure an advantage or disadvantage' but that these were no part of his complaint.

I have investigated the complaint made and in doing so have interviewed Councillors Alexander, Gibbs, Clark, and Burlton.

1.2 Finding

My finding is that there was no breach of the Members Code of Conduct.

2 Councillor Alexander's official details

2.1 Councillor Alexander was first elected at the 1 May 1999 full Council elections. He was re-elected in 2003 and 2007. He is not a member of any other council

2.2 Cllr Alexander is a Member of the Executive and Development Control Committees.

2.3 Councillor Alexander signed a written undertaking to abide by the Councils Code of Conduct on 8 May 2007.

3 The relevant legislation and protocols

3.1 The Members Planning Code of Good Practice was adopted in January 2008. The current Members Code of Conduct was adopted in September 2007. The relevant clause in the Members Code is contained in clause 5 General Obligations – **'You must not conduct**

yourself in manner which could reasonably be regarded as bringing your office or authority into disrepute.'

3.2 As regards the relationship between the Members Code and the Planning Code the latter makes it clear at para 1 that the rules of the Member Code should be applied first and 'must always be complied with'. Clause 1.2 of the Planning Code stresses that failure to comply with the Planning Code **may** expose the Member to risk of complaint if the failure is also likely to breach the Members Code of Conduct.

3.3 Relevant sections of the Planning Code are;

4.0 Contact with Applicants, Developers and Objectors

4.1 Do refer those who approach you for planning, procedural or technical advice to officers.

4.2 Don't agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Director of Neighbourhood Services to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

4.3 Do otherwise:

- follow the rules on lobbying;*
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and*
- report to the Director of Neighbourhood Services any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.*

4.4 In addition in respect of presentations by applicants/developers:

- Don't attend a planning presentation unless an officer is present and/or it has been organised by officers.*
- Do ask relevant questions for the purposes of clarifying your understanding of the proposals. Do remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the appropriate Committee of the planning authority.*

- *Do be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.*

5.0 Lobbying of Councillors

5.1 Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making process and to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.

5.2 Do remember that your overriding duty is to the whole community not just to the people in your ward area and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

5.3 Don't accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible. Remember to register the gift or hospitality where its value is over £25.

5.4 Do copy or pass on any lobbying correspondence you receive to the Director of Neighbourhood Services at the earliest opportunity.

5.5 Do promptly refer to the Director of Neighbourhood Services any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

5.6 Do inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts of hospitality), who will in turn advise the appropriate officers to follow the matter up.

5.7 Do note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:

- *listening or receiving viewpoints from residents, applicants or other interested parties;*
- *making comments to residents, applicants, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;*
- *seeking information through appropriate channels; or*

- *being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.*

7.0 Site Visits

- 7.1 *Do ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information.*
- 7.2 *Do ensure that you treat the site visit only as an opportunity to seek information and to observe the site.*
- 7. *Don't hear representations from any other party, with the exception of the Ward/Local Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present. Members should make a note recording the details of the meeting.*
- 7.4 *Don't express opinions or views to anyone.*
- 7.5 *Don't enter a site which is subject to a proposal unless:*
 - *you feel it is essential for you to visit the site,*
 - *you can ensure you will comply with these good practice rules on site visits, and*
 - *identify yourself (if necessary).*

4 The evidence gathered

- 4.1 I have taken account of oral evidence from Councillors Alexander, Gibbs, Clark and Burlton.
- 4.2 I have also taken account of documentary evidence obtained from Councillors Clark and Gibbs together with Minutes of Development Committee meetings of the 12th of March and 7th of May 2008..

5 Summary of the material facts

- 5.1** Councillor Alexander confirms that he received a phone call from Mr. Gear of Aiver Ltd on the 10th of March 2008 with reference to a planning application for Little Samuels Farm reference 3/07/2674/FP .The application was due to be heard on the 12 March 2008 and Mr. Gear was concerned to have Members view the site in light of the objections to the application on the grounds of noise and traffic movements. Councillor Alexander was aware of the application and agreed to attend the following day 11 March 2008 at 2pm.
- 5.2** On arriving at the site Councillor Alexander was met by Mr. Gear and Councillor Burlton who confirms that he had independently arranged a visit for the same reason namely to assess the distance of the operation from neighbours, assess noise from on site machinery and consider the affect of traffic from the site. Mr. Gear was concerned to ensure that Councillors considered traffic movements from the site and the extent to which they related to the operation of Aiver Ltd as opposed to other occupants of the site. Councillor Alexander referred to the site visit at the Committee meeting on the 12 March 2008 informing members of his view of issues relating to the consideration of traffic movement from the site.
- 5.3** Councillor Alexander confirmed that Members were aware of the Planning Code but that provisions relating to site visits were treated as guidance and not a mandatory requirement. It was not possible for the 16 Members of the Development Committee to visit sites in the company of an Officer and Members regularly visited sites individually for the purpose of assessing activities on site, location of neighbours etc. without being accompanied by an Officer. Councillor Burlton confirmed this view and indicated that his visit was for the same purpose of identifying the site, its location relative to neighbours and noise produced from on site activities. Councillor Alexander recalled that Members had considered the option of joint visits to application sites but this had been rejected as not economic and that it was felt by Members that these organised 'coach trips' did not represent good value for the Council.
- 5.4** Councillor Alexander acknowledges that at subsequent Council meetings he had been asked to provide details in relation to site visits as to representations he had received in the past year from applicants or interested third parties without an Officer of the Council being present. His responses were not intended to be dismissive but to stress the impossibility of trying to recall visits over a period of a year. Councillor Alexander claims that he asked for a more specific question to be put but this had not been forthcoming.

5.5 Councillor Clark confirmed in her statement that at a visit to the subject site in May 2008 with the Chairman of Hunsdon Parish Council Mr Gear for Aiver Ltd had indicated that a number of Members had visited the site, some 7 or 8 , and that he had arranged tours for them. Members had attended individually .It is not clear how many such Members were members of the Development Committee

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

6.1 I must now consider whether by his actions Councillor Alexander failed to comply with the Planning Code and breached clause 5 of the Members Code of Conduct

6.2 It must be stressed that a breach of the Planning Code may not constitute a breach of the Members Code. This is clear from the introductory clauses to the Planning code which stresses that failure to follow the guidance **may put members at risk of complaint**. The Planning Code is guidance for the purpose of avoiding such risks. It is therefore necessary to decide whether there has been a breach and whether taking all the circumstances into consideration the behaviour constitutes a breach of clause 5 of the Members Code.

6.3 Turning first to the Planning Code. It is clear that both Councillor Alexander and Councillor Burlton felt that their visit to the site on the 11th of March 2008 was both appropriate and acceptable in terms of the objective of viewing the site, its location relative to neighbours and assessing noise/traffic issues. Councillor Clark's information obtained later to the effect that 7 or 8 members also visited individually, accepting that all may not have been members of the Development Committee points to this being a not uncommon view.

6.4 The complaint refers to Planning Code clause 4 relating to Contact with Applicants etc and clause 7 relating specifically to Site visits and it is alleged that Councillor Alexander's attendance on site without an officer being present constituted a clear breach.

6.5 Clause 4.2 is cited by the complaint as authority for the view that all meetings with applicants, interested third parties should be held in the presence of an officer. But clause 4.2 refers to **formal** meetings. What constitutes a formal meeting is not defined. Clause 4.3 stresses the need to **'follow the rules on lobbying'** and **'report to the Director of Neighbourhood services any significant contact'**. Again there is no definition of 'significant' and as regards lobbying clause 5.7 states categorically that **'unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:**

- **listening or receiving viewpoints from residents, applicants or other interested parties.** (contrast this with cl 7.3 below relating to representations made on site)

6.6 Clause 4.4 requires planning presentations to be in the presence of an officer but again what constitutes a 'presentation' is not defined.

It is not clear from any of the evidence adduced that Councillor Alexander or indeed Councillor Burlton breached any of the elements of clause 7 of the Planning Code relating specifically to Site Visits. Dealing in turn with each sub clause ;

7.1 *Do ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information. **Councillor Alexander reported his visit and findings to committee.***

7.2 *Do ensure that you treat the site visit only as an opportunity to seek information and to observe the site. **No evidence to the contrary***

7.3 *Don't hear representations from any other party, with the exception of the Ward/Local Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present. Members should make a note recording the details of the meeting. **Conflicts with clause 5.7***

7.4 *Don't express opinions or views to anyone. **No evidence of breach***

7.5 *Don't enter a site which is subject to a proposal unless:*

- *you feel it is essential for you to visit the site,*
- *you can ensure you will comply with these good practice rules on site visits, and*
- *identify yourself (if necessary). **No evidence of breach***

6.7 The absence of definitions in key areas of the Planning Code and examples of contradictory advice shown above make it impossible to establish any breach of the Planning Code on the part of Councillor Alexander or any breach of the Members Code. The Planning Code needs to be reviewed to include definitions and worked examples and to remove apparent contradictions to clarify the advice and take account of the many and varied situations Members may be asked to deal with.

7 Finding

- 7.1** My finding in all the circumstances of this case is that in accordance with the Local Government Act 2000 there is no failure to comply with the Members Code.

Appendix A

Schedule of evidence taken into account

Case No: EHDC/01/2008

Core documents

Doc No	Description	Pages
1	Allegation letter	
2	Notes of the Meeting-Councillor M Alexander	
3	Note of Meeting- Councillor D Gibbs	
4	Note of meeting- Councillor A Burlton	
5	Note of a meeting – Councillor D Clark	
6	Various e mails –Councillor Clark	
7	Members Code and Planning Code	
8	Minutes of Development Committee meetings of the 12 th of March and 7th May 2008..	