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Jeff Hughes
*Head of Democratic and Legal
Support Services*

MEETING : STANDARDS SUB-COMMITTEE
VENUE : ROOM 27, WALLFIELDS, HERTFORD
DATE : FRIDAY 13 MARCH 2015
TIME : 2.30 PM

PLEASE NOTE TIME AND VENUE

MEMBERS OF THE SUB-COMMITTEE

Councillors L Haysey, G Jones and P Phillips

(Note: Substitution arrangements must be notified by the absent Member to Democratic Services 24 hours before the meeting)

CONTACT OFFICER: JEFF HUGHES
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DISCLOSABLE PECUNIARY INTERESTS

1. A Member, present at a meeting of the Authority, or any committee, sub-committee, joint committee or joint sub-committee of the Authority, with a Disclosable Pecuniary Interest (DPI) in any matter to be considered or being considered at a meeting:
 - must not participate in any discussion of the matter at the meeting;
 - must not participate in any vote taken on the matter at the meeting;
 - must disclose the interest to the meeting, whether registered or not, subject to the provisions of section 32 of the Localism Act 2011;
 - if the interest is not registered and is not the subject of a pending notification, must notify the Monitoring Officer of the interest within 28 days;
 - must leave the room while any discussion or voting takes place.

2. A DPI is an interest of a Member or their partner (which means spouse or civil partner, a person with whom they are living as husband or wife, or a person with whom they are living as if they were civil partners) within the descriptions as defined in the Localism Act 2011.

3. The Authority may grant a Member dispensation, but only in limited circumstances, to enable him/her to participate and vote on a matter in which they have a DPI.

4. It is a criminal offence to:

- fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register;
- fail to notify the Monitoring Officer, within 28 days, of a DPI that is not on the register that a Member disclosed to a meeting;
- participate in any discussion or vote on a matter in which a Member has a DPI;
- knowingly or recklessly provide information that is false or misleading in notifying the Monitoring Officer of a DPI or in disclosing such interest to a meeting.

(Note: The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.)

Audio/Visual Recording of meetings

Everyone is welcome to record meetings of the Council and its Committees using whatever, non-disruptive, methods you think are suitable, which may include social media of any kind, such as tweeting, blogging or Facebook. However, oral reporting or commentary is prohibited. If you have any questions about this please contact Democratic Services (members of the press should contact the Press Office). Please note that the Chairman of the meeting has the discretion to halt any recording for a number of reasons, including disruption caused by the filming or the nature of the business being conducted. Anyone filming a meeting should focus only on those actively participating and be sensitive to the rights of minors, vulnerable adults and those members of the public who have not consented to being filmed.

AGENDA

1. Appointment of Chairman

To appoint a Chairman for this meeting.

2. Apologies

To receive any apologies for absence.

3. Chairman's Announcements

To receive any Chairman's announcements.

4. Declarations of Interest

5. Minutes (Pages 5 - 10)

To approve the Minutes of the meeting held on 19 February 2015.

6. Complaint in respect of Councillor W Ashley - Supplemental Report (Pages 11 - 22)

7. Urgent Business

To consider such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration and is not likely to involve the disclosure of exempt information.

MINUTES OF A MEETING OF THE
STANDARDS SUB-COMMITTEE HELD IN
THE ROOM 27, WALLFIELDS, HERTFORD
ON THURSDAY 19 FEBRUARY 2015, AT
6.30 PM

PRESENT: Councillor G Jones (Chairman)
Councillors L Haysey and P Phillips

ALSO PRESENT:

Councillors D Andrews, W Ashley, K Crofton
and P Moore

OFFICERS IN ATTENDANCE:

Simon Drinkwater	- Monitoring Officer
Jeff Hughes	- Head of Democratic and Legal Support Services

ALSO IN ATTENDANCE:

Philip Copland	- Independent Person
Denis Cooper	- Investigating Officer

13 APPOINTMENT OF CHAIRMAN

RESOLVED – that Councillor G Jones be appointed
Chairman for this meeting of the Sub-Committee.

14 CHAIRMAN'S ANNOUNCEMENTS

The Chairman advised that he was currently a Member of the Authority's Development Management Committee. This membership was not, in itself, a disclosable pecuniary interest in the matter recorded at Minute 17 below.

15 MINUTES

The Chairman advised that neither he nor any other Member of the Sub-Committee was present at its meeting held on 4 June 2014.

When invited to confirm the accuracy of the Minutes of this meeting, Members abstained from voting.

It was agreed that the motion to confirm the accuracy of the Minutes of the Standards Sub-Committee meeting held on 4 June 2014 be deferred on the basis that no Members now present were in attendance.

RESOLVED – that consideration of the motion to confirm the accuracy of the Minutes of the Standards Sub-Committee meeting held on 4 June 2014 be deferred on the basis that no Members now present were in attendance at that meeting and therefore determined to abstain from voting thereon.

16 EXCLUSION OF THE PRESS AND PUBLIC

The Sub-Committee considered whether or not to exclude the press and public from the meeting during consideration of the matter recorded at Minute 17 below. Members noted the statutory provision that provided for this exclusion.

The Sub-Committee also considered whether or not the associated report be made available for public information.

The Sub-Committee agreed that the matter should be considered in public and that the report be made publically available.

RESOLVED – that the press and public be not excluded from the meeting during the discussion of the matter detailed in Minute 17 below and the associated report be made available for public information.

17 COMPLAINT IN RESPECT OF COUNCILLOR W ASHLEY

The Monitoring Officer submitted a report on the complaint alleging that Councillor W Ashley had breached the Authority's Code of Conduct.

Standards Sub-Committee, at its meeting held on 4 June 2014, had referred the complaint to the Monitoring Officer for investigation (Minute 12 refers).

Members noted that the Monitoring Officer had appointed Denis Cooper as the independent Investigating Officer.

The Investigating Officer's report on his investigation was appended to the Monitoring Officer's report.

The Chairman welcomed Mr Cooper to the meeting and invited him to present his report and summarise the conclusions reached following his investigation of the complaint.

Mr Cooper outlined the allegation and highlighted matters that were relevant to the conduct of the investigation.

Members noted that there were of number of substantive issues raised in the complaint and supporting papers about various planning applications and enforcement notices. These were not, however, within the remit of the Investigating Officer for the reasons now detailed.

Mr Cooper detailed the evidence obtained from relevant parties during the course of the investigation. He stated that he had carefully reviewed all documents supplied and representations received before reaching conclusions on the allegation. The conclusions as to facts had been reached on the basis of reasonable probability.

Standards Sub-Committee considered the Investigations Officer's conclusions.

Where the Investigating Officer had concluded that Councillor

Ashley had breached the Authority's Code of Conduct in relation to the matters identified, Members agreed to hold a hearing meeting of the Standards Sub-Committee. That meeting would determine whether or not Councillor Ashley had failed to comply with the Code and, if so, what action to take as a consequence.

In relation to the elements of the allegation where the Investigating Officer had concluded that no breach of the Code had occurred, the Sub-Committee decided to defer a decision thereon. Members agreed to request the Investigating Officer to report further on 2 aspects, namely the allegation in paragraph:

- (1) 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", and
- (2) 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."

Members expressed a wish for the further report now requested to be completed promptly.

Mr Cooper drew Members' attention to a number of recommendations he had made in his report on procedural aspects of processing a Code of Conduct complaint. Members agreed to request the Monitoring Officer to consider (and subsequently report thereon to a future meeting) the following recommendations of the Investigating Officer:

- the initial comments of the subject Member be sought before a decision is taken on whether or not to investigate a complaint unless to do so

- would prejudice any formal investigation;
- a review be undertaken of the procedure to ensure that if the complainant requests not to be identified then that request is met until the appropriate officer or committee has considered the request;
- a review be undertaken of the Code of Conduct complaint procedures generally as provided for by the provisions of the Localism Act 2011;
- all Members be reminded of the conditions the Authority has in place regarding its provision to them of IT facilities (including 'e'-mail accounts), and
- allegations that other Disclosable Pecuniary Interests were not disclosed should be investigated further.

RESOLVED – that (A) for those matters where the Investigating Officer had concluded that Councillor Ashley had breached the Authority's Code of Conduct in relation to the matters identified, a hearing meeting of the Standards Sub-Committee be held to determine whether or not that Member had failed to comply with the Code and, if so, what action should be taken as a consequence;

(B) consideration of the elements of the allegation against Councillor Ashley where the Investigating Officer had concluded that no breach of the Code had occurred, be deferred to enable the Investigating Officer to report further on 2 aspects, namely the allegation in paragraph:

- (1) 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", and

(2) 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”, and

(C) the Monitoring Officer be requested to consider the recommendations of the Investigating Officer, as detailed in the report now submitted, on procedural aspects of processing a Code of Conduct complaint and other matters identified, and report thereon to a future meeting.

The meeting closed at 8.00 pm

Chairman
Date

EAST HERTS COUNCIL

STANDARDS SUB-COMMITTEE – 13 MARCH 2015

REPORT BY THE MONITORING OFFICER

COMPLAINT IN RESPECT OF COUNCILLOR W ASHLEY- SUPPLEMENTARY REPORT

WARD(S) AFFECTED: NONE

Purpose/Summary of Report

- *The Sub-Committee at its meeting on 19 February 2015 deferred a decision on the acceptance of the investigating officer's report in relation to the conclusion in paragraph 9.20 in the report.*

1.0 Background

- 1.1 The Investigating officer has now produced a supplementary report. The supplementary report is contained in **Essential Reference Paper 'B'**.

2.0 Report

- 2.1 The Sub-Committee will consider the supplementary reports and decide what action to take.

- 2.2 Accordingly, the Investigating officer finds Councillor Ashley to be in breach of the Code of Conduct in relation to that correspondence, in that he did not value colleagues and staff, did not engage with them in an appropriate manner and failed to treat them with respect.

3.0 Implications/Consultations

- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

None

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Services- 01992 531405
simon.drinkwater@eastherts.gov.uk

Report Author: Simon Drinkwater

ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives <i>(delete as appropriate):</i>	People This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.
Consultation:	The Independent Person has been consulted.
Legal:	The procedures are in accordance with the regulations.
Financial:	None
Human Resource:	None
Risk Management:	The case should be determined in accordance with the regulations having regard to the relevant guidance.

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EAST HERTFORDSHIRE DISTRICT COUNCIL

ALLEGATION OF BREACH OF THE CODE OF CONDUCT

SUPPLEMENTAL REPORT OF THE INVESTIGATING OFFICER

1. Introduction

1.1 On 19th 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 4th 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 19th 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.

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