

**REPORT OF AN INVESTIGATION INTO ALLEGATIONS CONCERNING COUNCILLOR  
MICHAEL NEWMAN A COUNCILLOR OF EAST HERTS DISTRICT COUNCIL**

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## **1.0 Executive Summary**

'CMN' means Councillor Michael Newman

'the application' means planning application 3/12/1440/FP in relation to Hunsdon Parish Church approved by Development Control Committee on 7<sup>th</sup> November 2012

'DCC' means Development Control Committee

'EHDC' means East Herts District Council

'HPC' means Hunsdon Parish Council

'PCC' means Hunsdon Parochial Church Council

'the code' means EHDC's revised Code of Conduct for Councillors following the Localism Act 2011 – see document A

'the meeting' means the meeting of DCC on 7<sup>th</sup> November 2012 dealing with the application – see document C for minutes

'The Act' means the Localism Act 2011

### **1.1 Allegation**

The complaint (document B) by a member of the public, is regarding Councillor Michael Newman's representation and actions concerning the application. It is alleged that he has breached the Council's Code of Conduct for Councillors.

### **1.2 Finding**

My finding is that there is insufficient evidence that CMN failed to comply with this Code.

## **2.0 Councillor Michael Newman's official details**

2.1 CMN was first elected to EHDC on 11<sup>th</sup> November 2010 at the Hunsdon Bi Election. He was re-elected at the District wide elections on 5<sup>th</sup> May 2011 for four years to 2015. His first recorded attendance at DCC was on 25<sup>th</sup> May 2011 and he was elected Vice Chairman of this Committee at the 23<sup>rd</sup> May 2012 meeting for the civic year 2012/13.

2.2 Amongst numerous other courses, CMN attended a training course entitled 'New Code of Conduct' on 24<sup>th</sup> October 2012. There is no record of him having registered a pecuniary interest in respect of the application or Hunsdon Parish Church.

## **3.0 Summary of allegations and conclusions on whether there have been failures to comply with the Code of Conduct**

3.1 The complaint seems to contain four elements relating to CMNs conduct at the meeting.

- 3.1.1 he did not echo HPC's objections to this application when he spoke at the meeting
- 3.1.2 he questioned the planning officer's recommendation to refuse the application
- 3.1.3 he voted in favour of granting the application
- 3.1.4 he did not declare an interest and remove himself from consideration of the application
- 3.2 All of these are claimed to be against the interests of Hunsdon residents.
- 3.3 This report investigates whether by his conduct CMN has breached the Code and considers whether he failed to comply with the relevant paragraphs thereof.
- 3.4 I have also considered whether CMN should have declared an interest in the application at the meeting.
- 3.4 My finding is that the Code has not been breached.

#### **4.0 The Code of Conduct**

- 4.1 A pecuniary interest is that interest which a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated. These are defined in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. Since EHDC revised its code on 4<sup>th</sup> July 2012 this is the only interest which needs to be registered or declared.
- 4.3 The former personal and prejudicial interest system has gone. Disclosable Pecuniary Interests are much narrower due in part to the fact that they need to be clearly defined with the potential of prosecution for not declaring. However predetermination and bias still remain and cannot be addressed by the former prejudicial interest declaration which enabled Members to declare their interest, speak on the subject and then withdraw.
- 4.4 The rule against bias/pre-determination is strictly applied to the determination of planning applications but is quite separate from the rules on interests under Members Code of Practice. However the law recognises that Councillors are elected and operate in a political environment and it would be nonsense if Councillors were barred from participating in the very policy decisions which they have been elected to take. A Councillor is quite entitled to express a degree of general support for, or in opposition to, a particular outcome provided they make it clear they do not have a closed mind. Simply because a member of the public thinks there is a situation of bias does not prevent Members taking part in the decision.
- 4.5 A copy of the code is attached as document A

#### **5.0 Investigating Officer's summary of findings of fact**

- 5.1 I have found the following facts agreed:-
  - Councillor Michael Newman is an elected member of EHDC and is therefore subject to its Code of Practice

- His wife is an active member of the Church and PCC which is a voluntary position
- CMN attended the meeting of DCC on 7<sup>th</sup> November 2012 and spoke on the item concerning the planning application in relation to Hunsdon Parish Church in his role as Ward Councillor
- CMN has not registered an interest in this matter
- HPC passed a 'vote of no confidence' in CMN at their meeting on 19<sup>th</sup> November 2012 (document F)

## 5.2 I have also found the following to be fact

- under the Code only a disclosable pecuniary interest has to be registered and disclosed
- CMN did not have a disclosable pecuniary interest in the application
- There was no interest for him to declare at the meeting or before hand and therefore no reason for him to leave for consideration of this application
- CMN was not invited to speak against the application, as was Councillor Roger Beeching and David Kitching although it seems that some were expecting him to do so
- CMN took Legal advice prior to the meeting and was advised that his situation did not disqualify him from participation at the meeting
- The Director of Neighbourhood Services in attendance at the meeting considers CMNs comments to have been fair and reasonable and were within the remit of the advice he was given.
- The Vice Chairman of HPC spoke in person at the meeting to expound HPC's concerns.
- Members of the DCC should consider all applications on their own merits and vote accordingly.
- CMN was asked by the Hunsdon Parish Clerk to present HPCs objections to the DCC as Ward Councillor. CMN responded that he understood David Kitching would be at the meeting and would presumably put these points. He himself would probably speak as Ward Councillor and would probably do so but what he said would depend on everything he personally had read and heard prior to and at the meeting. I can find no evidence of him agreeing to present the HPCs views. Indeed in an email dated 15<sup>th</sup> October 2012 he states that he may comment at the DCC as a member of that Committee rather than on behalf of the community and with reference to the whole body of material available. I find that this is what he did, set out the background to the application and identify some issue. He did not describe the advantages that the community might gain or the penalties it might suffer from building the new chapel or invite members to vote one way or another.
- Roger Beeching did not attend the meeting after discussion with the Chair of the DCC not CMN.
- The residents of Hunsdon were not united in the view of this application

## 5.0 **Reasoning**

5.1 I must now consider whether the conduct of Councillor Newman constitutes a breach of the Code of Conduct.

5.2 Paragraph 1 of the Code states that, as a Councillor, he has a responsibility to represent the community and work constructively with staff and partner organisations to secure better social, economic and environmental outcomes for all. When acting in his capacity as a member of EHDC he must be committed to behaving in a manner that is

consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

5.3 I have carefully read the minutes of the meeting and watched the web cam recording several times, and do not find that CMN spoke either for or against the application, but brought several issues to the attention of the Committee. For instance he stated that the existing chapel had served as a valuable community facility for 50 years but its safe use was now beyond question. He referred to the conflict posed by this application in that some residents felt the site should be retained for the amenity of the village whilst others wanted the site for the amenity of churchgoers.

5.4 Furthermore CMN neither proposed nor seconded the proposal to grant the application, although he did exercise his right to vote on the matter.

5.5 Despite the concerns outlined in the complaint, I cannot see that CMN had any duty to speak or vote against the application, and had not made any promises to do so.

5.6 I have found no financial gain or other material benefit that could be gained from this application for CMN or a related person per se.

5.7 As CMN did not have a pecuniary interest to disclose, there was no requirement for him to stand down from the meeting.

5.8 It is my finding that Councillor Newman has acted fairly and reasonable throughout this meeting and is not in breach of the revised Code of Conduct for Councillors.

#### 5.9 **SELFLESSNESS**

**Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves their family or their friends.**

5.9.1 I have found no evidence of any financial or other material benefit to be gained from this permission by CMN or his family or friends other than a general benefit to the community.

#### 5.10 **INTEGRITY**

**Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisation that might seek to influence them in the performance of their official duties**

5.10.1 I have found no evidence of any financial or other obligation to his wife or the Church that might seek to influence CMN. His wife's views were not made known to the meeting, although CMN did declare that she was a member of the Church which is not a fiduciary position

#### 5.11 **OBJECTIVITY**

**In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit**

5.11.1 I have found no evidence that CMN did anything but make his decision on the application on its merits. There is no requirement on him to address every issue in the application or report.

#### 5.12 **ACCOUNTABILITY**

**Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny as appropriate to their office**

5.12.1 see above

**5.13 OPENNESS**

**Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands**

5.13.1 see above

**5.14 HONESTY**

**Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts in a way that protects the public interest**

5.14.1 see above

**5.15 LEADERSHIP**

**Holders of public office should promote and support these principles by leadership and example**

5.15.1 I have not found any of the principles of the code breached

**5.16 CHAMPIONING THE NEEDS OF RESIDENTS**

**the whole community and in a special way the constituents, including those who did not vote for me, and putting their interests first**

5.16.1 I have not seen any evidence that the majority of CMN's constituents were against this application only that the HPC was. In any case the application had to be considered on its own merits.

**5.17 EXERCISING INDEPENDENT JUDGEMENT**

**And not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member of this authority**

5.17.1 I have not seen any evidence that CMN has allowed himself to be unduly influenced by anyone let alone the views of his wife

**5.18 Including relevant advice from statutory and other professional officers, taking all relevant information into consideration remaining objective and making decisions on merit**

5.18.1 see above

**5.19 PROVIDING LEADERSHIP**

**Through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority**

5.19.1 see above

### **DISCLOSABLE PECUNIARY INTEREST**

I could find no financial benefit to CMN or his wife as a result of this application being granted. His wife although a related person was not paid for her role with the Church which was voluntary.

### **6 Finding**

My finding on all the circumstances of this case is that there is no evidence of a failure to comply with the code.

### **7. Final Consideration**

7.1 The complainant does not agree with my conclusions.

7.2 He states that he understands the point I make that MN does not have to represent the views of Hunsdon residents in considering the application. However he says that MN has a duty not to misrepresent matters and there are two points on which he did this at the meeting as evidenced by the webcam. MN stated that the Chapel development was consistent with the Village Plan whereas the plan allows for refurbishment/renewal of the current Chapel and does not allow for a larger building in the proposed position.

7.3 Overall there is clearly an issue of morality here that is not covered by the code.

7.4 Having reviewed my report in the context of this further comment, I see no reason to change my finding in this matter. If the issue of morality is not covered by the code, I do not see how this can affect my decision as to whether Councillor Newman has breached the Council's Code of Conduct for Councillors.

## APPENDIX A

### Schedule of evidence taken into account

<u>Document Letter</u>	<u>Description</u>
A	Code of Conduct for EHDC
B	Complaint
C	Minutes of DCC 7 <sup>th</sup> November 2012
D	Web cam recording of this meeting (no document available)
E	Minutes of Hunsdon Parish Council 17 <sup>th</sup> September 2012
F	Minutes of Hunsdon Parish Council 19 <sup>th</sup> November 2012
G	Numerous emails with various people (not available)
H	Notes of Interview with Councillor M Newman and subsequent emails (not available)
I	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
J	Disclosable Pecuniary Interests document