

# **ESSENTIAL REFERENCE PAPER B**

## **REPORT OF AN INVESTIGATION UNDER s60 OF THE LOCAL GOVERNMENT ACT 2000 INTO ALLEGATIONS CONCERNING COUNCILLOR DAVID GIBBS A COUNCILLOR OF HUNSDON PARISH COUNCIL**

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## **1.0 Abbreviations**

'CMN' means Councillor Michael Newman

'CDG' means Councillor David Gibbs

'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

'PCCC' means Hunsdon Parochial Church Council

'the code' means Hunsdon Parish Council Code of Conduct – see document A

'the meeting' means the meeting of DCC on 7<sup>th</sup> November 2012 dealing with the application

## **2.0 Complaint**

The complaint (document B) by CMN, is regarding CDG's report as Chairman of Hunsdon Parish Council to the 2012/2013 Hunsdon Annual Parish Meeting on 25<sup>th</sup> March 2013 (see document B) in which it is alleged that CDG breached the HPC Code of Conduct.

## **3.0 Finding**

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

## **4.0 Councillor David Gibbs' official details**

- 2.1 CDG was first elected to HPC in May 2002 and has been re-elected since then. CMN proposed him as chairman of HPC in May 2004 and he has been elected into this position by members annually to date. He holds no other role within the Council.
- 2.2 There is no record of CDG having attended Code of Practice training. However he was furnished with a Good Councillors Guide booklet in 2003 and a Parish Counsellors Guide in 2009.

## **5.0 Summary of allegations**

- 5.1 The breach is alleged to have occurred in CDG's report as Chairman of Hunsdon Parish Council which he read out to its Annual Meeting on 25<sup>th</sup> March 2013. This report has subsequently been published with the minutes of the meeting and posted on the village website and is therefore public knowledge. The Report relates to CMN's conduct leading up to and at EHDC's DCC meeting on 7<sup>th</sup> November 2012 when a planning application regarding the current St Francis Chapel in Hunsdon was considered. CMN is both a Member of DCC and the Local Member for that application site.
- 5.2 The allegation is that CDG made a number of accusations that CMN acted improperly in this matter and did not abide by HPC Code of Conduct :-
- 5.2.1 Following notification by the then Chairman of DCC on 18<sup>th</sup> February 2013 to the Clerk to HPC that she 'understood there was a formal investigation taking place in connection with CMN's involvement with this application...and it would be most inappropriate for her to enter into correspondence on any of the points raised in the clerk's letter in connection with him' CDG should have refrained from any comment on the matter as this was sub judice on 25<sup>th</sup> March 2013.
- 5.2.2 CDG stated that CMN had demonstrated no support for the feelings of his electorate and failed to represent the community which had plainly made its views known through two public meetings. Furthermore he had demonstrated a dismissive attitude to EHDC Code of Conduct and it was his actions and words with a negligible consultation which culminated in a granted decision and tore the village apart with his speech being full of bias and partisan content.
- 5.2.3 CDG also stated that because CMN's wife is a Church Warden and a member of PCCC who was the applicant it was perceived that a personal interest could affect his judgment on Church matters and was consequently asked to withdraw from the planning meeting but refused.
- 5.3 This report investigates whether by his conduct CDG has breached the Code and considers whether he failed to comply with the relevant sections thereof.
- 5.4 It is alleged that CDG has breached the HPC Code of Conduct for Councillors
- Part 1 Section 3 (1) – You must treat others with respect  
Part 1 Section 5 - You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or Hunsdon Parish Council into disrepute.
- 5.5 A copy of the Code of Conduct is attached as Document A

## **6.0 Summary of Facts**

- 6.1 CDG is a member of HPC and therefore subject to its Code of Conduct for Councillors
- 6.2 CMN attended the meeting of DCC on 7<sup>th</sup> November 2012 and spoke on the application in his role as DCC Member
- 6.3 CMN was subsequently investigated by the Standards Committee for breaches of EHDC code of practice
- 6.4 The allegations were found to be not proven and there was no breach of the EHDC Code of Practice

- 6.5 CDG did read his report to members of HPC Annual Meeting on 25<sup>th</sup> March 2013 acting in an official capacity of HPC
- 6.6 The decision on the investigation report was not made until 26<sup>th</sup> June 2013
- 6.7 CMN did not have a pecuniary interest in the application to declare which is the only interest which has to be registered and disclosed and he was therefore entitled to speak and vote at DCC on the application
- 6.8 There was no evidence that the majority of CMN's constituents were against this application only that the HPC was.
- 6.9 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 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 issues. 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

## **7.0 Reasoning as to whether there have been failures to comply with the Code of Conduct**

- 7.1 I must now consider whether the conduct of CDG constitutes a breach of the HPC Code of Conduct. It is the responsibility of a Councillor to comply with the provisions of the Code whenever s/he conducts the business of the Authority in an official capacity. A very clear line has to be drawn between the Code of Conduct and the freedom to disagree with the views and opinions of others.
- 7.2 I have taken into account the decision in R(Calver) v Public Services Ombudsman for Wales 2012 which related to council members and politicians who use social media as a way of commenting on other members. Although it was found that the comments directed towards other councillors were 'sarcastic and mocking' they were not found to amount to 'political expression'. Judge Beatson J stated that it was necessary to bear in mind 'the traditions of robust debate' which may include 'some degree of lampooning of those who place themselves in public office' which would necessarily require politicians to have 'thicker skins than others'. The Court found that the Adjudication Panel's decision that comments made on a public web site had broken the council's code of practice had been a disproportionate interference with the Councillor's rights under Article 10 of the European Community Human Rights.
- 7.3 **Part 1 Section 3 (1) – You must treat others with respect**
- 7.3.1 CDG made his report on 25<sup>th</sup> March 2013 and stated that some villagers had asked him to explain how the application came to be granted when it was recommended by the planning officer for refusal, and objected to by a large majority of parishioners. He then went on to place much of the fault at the feet of CMN and gave an account of his interpretation of 'what went on'.

7.3.2 Quite clearly CDG believed what he said to be true, and still does.

7.3.3 There is no conclusive evidence that CDG knew of the contents of the letter of 15<sup>th</sup> February 2013 to the Parish Clerk but I am prepared to accept that this is possible.

7.3.4 CMN was not cleared of the complaints against him until 26<sup>th</sup> June 2013 and prior to that the nature of the investigation would not have been known to the public, including CDG.

7.3.5 Although I consider CDG was careless with his choice of words in his report, I do not see them as being anything more than him stating what he believed to be true and comes within the remit of the Calver case which clearly anticipates 'some degree of lampooning'. Whilst CMN does not agree with all that was said, and some of his remarks were inaccurate, this is what politics are all about and a fine line has to be drawn between opinion and lack of respect. People are entitled to their own interpretation of events.

7.3.6 Both parties are respected Councillors.

7.3.6 On the balance of probabilities I find the scales just tip in favour of CDG and do not therefore find that he has been disrespectful to CMN in his report.

7.4 Part 1 Section 5 - You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or HPC into disrepute.

7.4.1 In view of my findings in 7.3 above I see no additional evidence to suggest that CMG has brought his office or HPC into disrepute.

## **8.0 Conclusion**

I do not find the complaint against Councillor David Gibbs founded in either section.

## **9.0 Final Consideration**

9.1 CDG says that he did not know of the communication on 18<sup>th</sup> February 2013 advising that CMN was under investigation or the nature of any allegation. I do not therefore see how he could know that what he reported could be sub judice.

9.2 Much of what CDG said about CMN's conduct was subsequently found to be factually and demonstrably untrue, but at the time he made his report the decision on the investigation had not been made and he believed his comments to be true. Failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another.

9.3 The Calver case I refer to involved Councillors and the social media, but the points from it that I have principally taken into account is the comment of Judge Beaston that Councillors need to accept that they may not always like what is said about them.

9.4 Whilst CDG may well have been better advised not to comment in the way that he did, he has not in my view been disrespectful in terms of the Code of Practice or brought his role as Councillor or HPC into disrepute on this occasion.

9.5 I now refer to an appeal decision dated 26<sup>th</sup> February 2008 in which The Appellant appealed against the Standards Committee's finding that he had failed to follow paragraphs 2(b), 2(c) and 4 of the Code of Conduct through the comments he made about the Town Clerk on 20 July 2006 at a meeting of the Charity Trustees. In the Appeals Tribunal's view, it was "important that members should be able to express in robust terms concerns that they have

about any aspect of the running of the council and that this can include expressing disagreement with officers and can include criticism of the way in which an officer handles particular matters.” It is my view that this can also refer to Councillors as well as officers. They went on to say “Whilst this was undoubtedly uncomfortable for the Town Clerk and it could be argued that it might have been better expressed in a more appropriate forum, the Appeals Tribunal does not believe that a reasonable objective observer of the proceedings would think that the comments would bring the office of councillor or the authority into disrepute”.

9.6 My conclusion remains that CDG has not breached HPC Code of Practice after my investigation into this complaint against him.. I recommend that no further action be taken in this matter.

## **APPENDIX A**

### **Schedule of evidence taken into account**

<b><u>Document Number</u></b>	<b><u>Description</u></b>
A	Code of Conduct for HPC
B	Complaint
C	Minutes of DCC on 7 <sup>th</sup> November 2012 dealing with the application
D	Report to Standards Sub Committee 26 <sup>th</sup> June 2013