

TO: Standards Committee

DATE: Thursday 20th November 2008

SUBJECT: Decision Notice in respect of Hearing Sub Committee held to consider allegations of breach of the Code of Conduct by three members of Lynsted with Kingsdown Parish Council

BY: Report of the Director of Corporate Services

Classification: Unrestricted.

Summary:

Implications: Human Resources Implications None

Finance Implications – None – costs of investigation accommodated with existing budgets

Legal Implications - none

Crime & Disorder Implications (Section 17) - none

Equalities & Diversity Implications – none

Sustainability Implications - none

Risk and Health and Safety Implications -none

Corporate Plan Implications - ***good governance and ethical behaviour are part of becoming a high performing organisation***

Decision Required: **Members are asked to note the decision in relation to the above complaint.**

1. Members will be aware that there was a recent hearing in relation to the above matter. To complete the process members need to formally receive the Decision Notice which is attached as Annex A,

2. **Members are asked to note the decision in relation to the above complaint.**

Mark Radford
Director of Corporate Services

23/10/2008

SWALE BOROUGH COUNCIL
Standards Committee Hearing Sub-Committee

Tuesday 23rd September 2008

Consideration of a report of a local investigation under Section 60 of the Local Government Act 2000 into an allegation concerning 3 members of Lynsted with Kingsdown Parish Council:

SBE 20769.08 Cllr. R. Baxter
SBE 20770.08 Cllr. T. English
SBE 20771.08 Cllr. J. Disney

DECISION

Sub-Committee; Mr.Nunn (Independent Chairman)
 Cllr. Mills (Parish Council representative)
 Cllr. Cindy Davis

This is an allegation brought under Section 60 of the Local Government Act 2000 into an allegation concerning 3 Members of Lynsted with Kingsdown Parish Council. Cllr English is no longer a Member of the Parish Council and Cllr Disney has recently passed away.

The allegation was referred to the local Standards Committee for determination by the Standards Board for England. The investigation has been conducted under the Code of Conduct then applying (the old Code). The Code of Conduct for Lynsted with Kingsdown Parish Council was adopted on 2nd April 2002 and the members of the Council were bound by that Code.

It was alleged that Councillors Baxter, Disney and English each failed to declare an interest at a meeting of the Parish Council on 23 May 2007. The Agenda Item in question was to consider an offer from a parishioner to make land available to the Council for affordable housing or to seek suggestions from the Council for other possible uses for the land, as the parishioner wished the land to be of benefit to the community. The complainant alleges that the Councillors ought each to have declared an interest because they each have 'property adjacent to the proposed site'.

Mr Mike Hawkins, Senior Solicitor, who was the Investigating Officer presented his report. Cllr Baxter wrote formally to state that he was satisfied with the Investigating Officer's report and did not wish to represent himself or attend the hearing. Mr English confirmed that he too did not wish to attend.

There was absolutely no dispute as to the relevant facts and the Committee acknowledged the co-operation of all parties. The requirements of the Code as it applies to the circumstances are clear. The Hearing considered that the potential of some form of development on the back doorsteps of the three members was raised and the members should have declared any personal and/or prejudicial interests. We further concluded that a decision on it might reasonably be regarded as to affect them to a greater extent than other Council Tax payers or inhabitants of the authority's area.

The Hearing, having established that there was a breach of the Code of Conduct, then considered whether it was appropriate or otherwise to impose a sanction in all the circumstances of the case.

In accordance with the hearing procedure, the Investigating Officer was asked in his opinion whether the Councillors' failure to comply with the Code of Conduct was such that the Standards Committee should impose a sanction and, if so, what would be the appropriate sanction.

It was suggested by him that, in the light of mitigating factors 2, 3, and 4 set out in Paragraph 9.3 of his report, namely,

2. Where, despite the lack of sanction there is not likely to be any future failure to comply with the Code;
3. Where there has been an absence of any harm being caused or the potential for such harm as a result of the failure to comply with the Code;
4. Where the imposition of a sanction will not be a deterrent to other members.

it would, in this instance, be inappropriate.

He explained that in the event, a further failure to comply is unlikely, no practical harm was caused, the imposition of a sanction is unnecessary as a deterrent, and, in fact, the interests of the members probably attracted more attention as a result of the argument at the meeting than they would have done had they been declared. It was not a decision that would have given rise to an immediate financial gain. In any event it would have been discussed at future stages when a firm proposal for the use of the land would have been proposed which the members concerned would have then been aware of as they had realised very quickly that there was a need to consider their personal and/or prejudicial interests. In these circumstances, the Committee considered that the decision notice was sufficient to ensure that there would be no future failure to comply with the Code.

We have been asked to consider the allegations against the three members in question. In reaching this decision the hearing has considered everything we have heard and seen today, the Investigating Officer's report, the 2000 Act and the Regulations and Guidance thereunder.

We have concluded that

- 1. There was a failure to comply with the Code of Conduct in the manner set out in the Investigating Officer's report.**
- 2. It would not be appropriate to impose a sanction against the members concerned**

The Monitoring Officer was asked to forward the decision notice to the Swale Branch of the Kent Association of Local Councils for their consideration

The Councillors are aware that they may appeal against the decision of the Standards Committee by writing to the President of the Adjudication Panel for England, ensuring that their letter sets out the grounds for such an appeal, includes a statement as to whether or not he consents to the appeal being heard by way of written representations, and is received by the President within 21 days of the date of the written notice of decision.

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Mr Robert Nunn

Independent Chairman

Dated...23 September 2008