

STANDARDS COMMITTEE 29 JULY 2008

*PART 1 – PUBLIC DOCUMENT	AGENDA ITEM No. 5a
----------------------------------	---

TITLE OF REPORT: COMPLAINT OF BREACH OF THE KINGS WALDEN PARISH CODE OF CONDUCT

REPORT OF THE DEPUTY MONITORING OFFICER

1. SUMMARY

This report concerns the investigation and hearing of a complaint made by Mr John Poulter of Woodview Darleyhall against the conduct of Councillor Joe Beavis. Councillor Beavis is alleged to have breached the code of conduct by failing to declare an interest at a meeting.

2. FORWARD PLAN

This matter does not have relevance to the Forward Plan

3. BACKGROUND

3.1 Mr John Poulter made a complaint to the Standards Board in April 2007 that Councillor Hilary John (Joe) Beavis had failed to declare an interest at a meeting of the Kings Walden Parish Council in February 2007. An item on the agenda for that meeting was consideration of an application for planning permission for 'Land between Oakwood and 1 Darleyhall Luton'. Councillor Beavis resides at 4 Darleyhall Luton.

3.2 The Standards Board referred the matter for local investigation on 24 May 2007. The investigation was undertaken by the Council's Monitoring Officer, Frances Bogie and concluded on 13 May 2008 when the final report was issued.

3.2 The investigative (final) report and enclosures are at agenda item 5(c).

3.3 In accordance with Standards Board Guidance I am required to write to Councillor Beavis to advise of the date of this hearing. I sent this letter on the 11 July 2008 enclosing various forms for Councillor Beavis to return outlining any objections to the investigation or its conclusions.

3.4 The Guidance also requires that I produce a Deputy Monitoring Officer's report which I attach as appendix 1 to this report.

4. ISSUES

4.1 The Standards Committee are required to make one of three findings:

- That there has been no breach of the Code of Conduct

- That the Code of Conduct has been breached but that no action should be taken, and
- That the Code of Conduct has been breached and a sanction must be applied.

4.2 The sanctions are

- To censure the member
- Restriction on access to the authority's premises and resources for up to 3 months
- Partial suspension for up to 3 months
- Suspension for up to 3 months
- To require a written apology from the member
- That the member undertake training
- Partial or full suspension for a period of up to 3 months or until a written apology is issued
- Partial or full suspension for a period of up to 3 months or until a written apology is issued

4.3 It is ordinarily the case that the investigating officer makes recommendations to the Committee on an appropriate sanction if the member is found to have breached the Code, however the investigating officer in this case is currently absent from work long term and will not be attending the hearing. I propose, therefore, to issue advice to the Committee if it should make a finding that the Code has been breached. A recommendation is given in the report at paragraph 9.2 for training of Town and Parish Clerks.

5. LEGAL IMPLICATIONS

5.1 This procedure is conducted in accordance with the Local Authorities (Code of Conduct)(Local Determinations) Regulations and Standards Board Guidance on Standards Committee Determinations.

5.2 The Regulations require the Standards Committee to carry out the hearing in accordance primarily with the Standards Board Guidance. The process is reflected in the Council's own protocol for hearing these matters which is attached at appendix 2 to this report.

5.3 The principle obligations of the Standards Committee are to ensure

- that the member is given the right to attend or make written representations to the Committee. Alternatively he may choose to be represented at the hearing
- If the member seeks to call witnesses, the Standards Committee does have the right to restrict the number of witnesses it hears from if believes the number of witnesses is unreasonable
- If the member fails to attend the hearing the Standards Committee may either hear the matter in his absence or adjourn the hearing

6. APPENDICES

Appendix 1 – Deputy Monitoring Officers report on pre-hearing process

Appendix 2 – Procedure for Local Standards Hearings

7. CONTACT OFFICERS

Kim Sawyer Deputy Monitoring Officer x4561

8. BACKGROUND PAPERS

Local Authorities (Code of Conduct)(Local Determinations) Regulations
Standards Board Guidance on Standards Committee Determinations

THIS PAGE IS BLANK

AGENDA ITEM 5(b)**SUMMARY OF CASE: STANDARDS COMMITTEE HEARING****COMPLAINT NO. SBE 18472.07****HEARING DATE: 29 July 2008**

<i>Name of the Authority</i>	North Herts District Council
<i>The name of the member who the allegation has been made about</i>	Councillor Hilary John (Joe) Beavis of Kings Walden Parish Council
<i>The name of the person who made the original allegation (or state reasons to keep identity confidential)</i>	Mr John Poulter
<i>The name of the Standards Committee Chair</i>	Mr Nicholas Moss
<i>The name of the Monitoring Officer</i>	Ms Frances Bogie (Mrs Kim Sawyer, Deputy Monitoring Officer for the hearing)
<i>The name of the ESO who referred the matter</i>	Mr Steven Kingston
<i>The name of the Clerk of the hearing</i>	Mr Ian Gourlay
<i>The date the pre-hearing process summary was produced</i>	11 July 2008

APPENDIX 1

<i>The date, time and place of the hearing</i>	29 July 2008 at 7.30pm Council Chamber, Council Offices, Gernon Road, Letchworth Garden City, Hertfordshire, SG6 3JF
Summary of the allegation	Mr John Poulter alleges that Councillor Joe Beavis breached the Code of Conduct by failing to declare an interest in a planning application for land between Oakview and 1 Darleyhall when the matter came before the Kings Walden Parish Council on 28 February 2007.
<i>The relevant section or sections of the Code of Conduct</i>	Members must, under paragraph 1 of the Parish Councils (Model Code of Conduct) Order 2001, observe the Code wherever they are conducting the business of the authority. Paragraph 5 states that a member must not use his position as a member improperly to confer on or secure for himself an advantage or disadvantage. Paragraphs 8 & 9 concern the duty of the member to make declarations of personal and prejudicial interests. Paragraph 10 states that a member with a prejudicial interest must withdraw from the room or chamber where a meeting is being held and he must not seek to improperly influence a decision about that matter.
<i>The finding of fact of the Investigating Officer that are agreed</i>	None indicated to date although Councillor Beavis may choose to refer to findings of fact in agreement at the hearing.
<i>The finding of fact in the ESO report that are not agreed/or the finding of facts of the Investigating Officer that are not agreed</i>	None indicated to date although Councillor Beavis may choose to refer to findings of fact in disagreement at the hearing.
<i>Whether or not the member or the ESO/Investigating Officer will attend or be represented</i>	The investigating officer, Ms Frances Bogie is absent and will not be attending the hearing. Councillor Beavis has not yet indicated whether he will be attending the hearing.

APPENDIX 1

<i>The names of any witnesses who will be asked to give evidence if matter goes to a final hearing</i>	None
<i>An outline of the proposed procedure for the hearing</i>	The procedure for the hearing is contained in the Councils Procedure for Local Standards Committee Hearings which has previously been sent to Councillor Joe Beavis and is attached to the report of the Deputy Monitoring Officer at Agenda item 5(a).

Standards Committee Procedure for Local Standards Hearings

1. Interpretation

- (a) 'Member' means the member of the authority who is the subject of the allegation being considered by the Committee, unless stated otherwise. It also includes the member's nominated representative.
- (b) 'Investigator' means the Ethical Standards officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the Investigator mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).
- (c) 'The Matter' is the subject matter of the Investigator's report.
- (d) 'The Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- (e) 'The Committee Support Officer' means an officer of the authority responsible for supporting the Committee's discharge of its functions and recording the decisions of the Committee.
- (f) 'Legal Advisor' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
- (g) 'The Chairman' refers to the person presiding at the hearing.

2. Modification of Procedure

The Chairman may agree to vary this procedure in any particular instance where s/he is of the opinion that such a variation is necessary in the interests of fairness.

3. Representation

The member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

4. Legal Advice

The Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the member and the Investigator if they are present.

5. Setting the Scene

At the start of the hearing, the Chairman shall ensure that each of the members of the Committee, the member (if present), the Investigator (if present) and any other officers present are introduced, and shall then explain the procedure which the Committee will follow in the conduct of the hearing.

6. Preliminary procedural issues

The Committee shall then deal with the following preliminary procedural matters in the following order:

(a) Disclosures of interest

The Chairman shall ask members of the Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

(b) Quorum

The Chairman shall confirm that the meeting is quorate.

(c) Hearing procedure

The Chairman shall confirm that all present know the procedure which the Committee will follow in determining the matter.

(d) Proceeding in the absence of the member

If the member is not present at the start of the hearing:

(i) the Chairman shall ask the Monitoring Officer whether the member has indicated his/her intention not to attend the hearing;

(ii) the Committee shall then consider any reasons which the member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;

(iii) if the Committee is satisfied with such reasons, it shall adjourn the hearing to another date;

(iv) if the Committee is not satisfied with such reasons, or if the member has not given any such reasons, the Committee shall decide whether to consider the matter and make a determination in the absence of the member or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

The Committee may exclude the press and public from its consideration of a matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

The Chairman shall ask the member, the Investigator and the legal advisor to the Committee whether they wish to ask the Committee to exclude the press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Committee shall then determine whether to exclude the press and public from all or any part of the hearing. The advisor may be asked for advice on these requests.

Where the Committee does not resolve to exclude the press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

7. Making findings of fact

The Committee will then address the issue of whether or not there are any significant disagreements about the facts contained in the Investigator's report so that it can accept any facts in the Investigator's report agreed by the Member and make findings with regard to those facts not agreed.

- (a) The Chairman shall ask the member to confirm that s/he maintains the position on any finding of fact in the Investigator's report as set out during the pre-hearing process. If there is:
 - (i) No disagreement about any facts, the Committee can move on to the next stage of the hearing, to consider whether there has been a failure to comply with the Code of Conduct under 8 below.
 - (ii) Disagreement about the facts, the Committee will consider the position set out in the Pre-Hearing Process Summary.
- (b) Pre-Hearing Process Summary
 - (i) The Chairman will ask the legal advisor or the Committee Support Officer to present his/her report, highlighting any points of difference identified in the Pre-Hearing Process Summary in respect of which the member has stated that s/he disagrees with any finding of fact in the Investigator's report. The Chairman will then ask the member to confirm that this is an accurate summary of the issues and ask the member to identify any additional points upon which s/he disagrees with any finding of fact in the Investigator's report.
 - (ii) If the member identifies additional finding(s) of fact in the Investigator's report with which s/he disagrees, the Chairman shall ask the member to explain why s/he did not identify these points as part of the pre-hearing process. The Chairman shall then ask the Investigator (if present) whether s/he is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Committee is not satisfied with the member's reason for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the member to challenge the veracity of those findings of fact in the Investigator's report which the member did not identify a point of difference in the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigator and/or any additional witnesses to attend the hearing.
- (c) Presenting the Investigator's report
 - (i) If the Investigator is present, the Chairman will then ask the Investigator to present his/her report, having particular regard to any relevant points of difference in the facts identified by the member and why the Investigator reached his/her findings of fact. The Investigator may call witnesses as necessary to address any points of difference. Where ever possible, the Investigator should be present.

APPENDIX 2

- (ii) If the Investigator is not present, the Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any relevant points of difference can be satisfactorily resolved in the absence of the Investigator. In the absence of the Investigator, the Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses' attention to any relevant section of the Investigator's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
 - (iii) Cross-examination shall be permitted, at the conclusion of the Investigator's report and/or of the evidence of each witness, following which the Chairman will ask Members of the Committee whether they have any questions of the Investigator or witness as appropriate.
- (d) The member's response
 - (i) The Chairman shall then invite the member to respond and to present his/her version of the facts in the Investigator's report and to and to call any witnesses as necessary to address any points of difference.
 - (ii) Cross-examination shall be permitted, at the conclusion of the member's evidence and/or of the evidence of each witness, following which the Chairman will ask Members of the Committee whether they have any questions of the member or witness as appropriate.
- (e) Witnesses
 - (i) The Committee shall be entitled to refuse to hear evidence from the Investigator, the member or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine the findings as to the relevant facts within the Investigator's report.
 - (ii) Any member of the Committee may address questions to the Investigator, to the member or to any witness.
- (f) Additional Evidence

At the conclusion of the evidence, the Chairman shall check with the members of the Committee that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.
- (g) If the Committee at any stage prior to determining the findings of fact as set out in the Investigator's report are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Committee may (on not more than one occasion) adjourn the hearing and make a request to seek and provide such additional evidence and to undertake further investigation on any point specified by the Committee.
- (h) Determination as to finding(s) of fact
 - (i) At the conclusion of the member's response, the Chairman shall ensure that each member of the Committee is satisfied that s/he has sufficient information to enable him/her to determine findings of fact.

- (ii) The Committee shall then retire to another room to consider in private its findings as to the facts as set out in the Investigator's report.
- (iii) The Committee shall take its decision on its findings as to the facts on the balance of probability based on the evidence it has received at the hearing.
- (iv) In carrying out its function to make a finding on the facts, the Committee may at any time, return to the main hearing room in order to seek additional evidence from the Investigator, the member or a witness, or to seek the legal advice from its legal advisor. If it requires any further information, it may adjourn and instruct an officer or request the member to produce such further evidence to the Committee.
- (v) The Committee shall then return to the main hearing room and the Chairman will state the Committee's principal findings with regard to the facts as set out in the Investigator's report.

8. Whether the member has failed to follow the Code of Conduct?

The Committee will then address the issue of whether or not, on the basis of the facts it has established, the member has failed to follow the Code of Conduct in the manner set out in the Investigator's report:

- (a) The Chairman will invite the Member to give relevant reasons why the Committee should not decide that the Member has failed to follow the Code of Conduct.
- (b) The Chairman will then invite the investigator if present to respond and to give relevant reasons why the Committee should decide that the Member has failed to follow the Code of Conduct.
- (c) The Committee may, at any time, question anyone involved on any point they have raised in their representations.
- (d) The Chairman will then invite the Member to make any final relevant points for the Committee to consider in making its determination on whether the Member has failed to follow the Code of Conduct.
- (e) The Chairman will then ensure that each member of the Committee is satisfied that s/he has sufficient information to enable him/her to take an informed decision on whether or not, on the basis of the facts it has established, the member has failed to follow the Code of Conduct in the manner set out in the Investigator's report.
- (f) The Committee will then retire to another room to consider in private the representations and determine its findings on the balance of probability whether the Member has failed to follow the Code of Conduct. The Committee may, at any time, return to the main hearing room in order to seek additional representations from the investigator, the member or a witness, or to seek legal advice from its legal advisor.
- (g) At the conclusion of the Committee's consideration, the Committee shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among members.

- (h) The Committee shall then return to the main hearing room and the Chairman will state the Committee's principal findings of fact and their determination as to whether the member failed to comply with the Code of Conduct as set out in the investigator's report.

9. If the member has not failed to follow the Code of Conduct

If the Committee determines that the member has not failed to follow the Code of Conduct in the manner set out in the investigator's report:

- (a) If the Committee apprehends, from the evidence which they have received during the hearing, that a member has failed to comply with the Code of Conduct (other than the matter which the Committee has just determined), the Chairman shall outline the Committee's concerns and state that the Committee has referred this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- (b) The Chairman should then set out any recommendations which the Committee is minded to make to the authority with a view to promoting high standards of conduct among members and seek the views of the member, the investigator and the legal advisor before the Committee finalises any such recommendations.
- (c) Finally, the Chairman should ask the member whether s/he wishes the authority not to publish a statement of its findings in a local newspaper.

10. Action consequent upon a failure to comply with the Code of Conduct

- (a) The Chairman shall ask the investigator (if present, or otherwise the legal advisor) whether, in his/her opinion the member's failure to comply with the Code of Conduct is such that the Committee should impose a sanction and, if so, what would be the appropriate sanction.
- (b) The Chairman will then ask the member to respond to the investigator's advice.
- (c) The Chairman will then ensure that each member of the Committee is satisfied that s/he has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- (d) Any member of the Committee may address questions to the investigator or to the member as necessary to enable him/her to take such an informed decision.
- (e) The Chairman should then set out any recommendations the Committee is minded to make to the authority with a view to promoting high standards of conduct among members and seek the views of the member, the investigator and the legal advisor.
- (f) The Committee shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations the Committee will make to the authority.

- (g) At the completion of their consideration, the Committee shall return to the main hearing room and the Chairman shall state the Committee's decisions as to whether to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Committee will make to the authority.

10. Reference back to the Ethical Standards Officer

If at any time before the Committee has determined upon any appropriate sanction, the Committee considers that the nature of the failure to comply with the Code of Conduct for Members is such that the appropriate sanction would exceed the powers of the Committee, the Committee may instruct the Monitoring Officer to resume responsibility for the conduct of the matter, and may adjourn the hearing until the Monitoring Officer advises the Committee of the Ethical Standards Officer's response to such a request.

11. The close of the hearing

- (a) The Committee will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the member as soon as practicable after the close of the hearing;
- (b) The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing.
- (c) Following the close of the hearing, the Committee Support Officer will agree a formal written notice of the Committee's determination and shall arrange for the distribution and publication of that notice (or a summary of that notice, where required) in accordance with Regulation 8 of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003.

THIS PAGE IS BLANK