

**\*PART 1 – PUBLIC DOCUMENT**

**AGENDA ITEM No.**

**5b**

**TITLE OF REPORT: HEARING FOLLOWING INVESTIGATION – PARISH COUNCILLOR  
BEAVIS (KINGS WALDEN PARISH TOWN COUNCIL) – INVESTIGATING OFFICER'S  
REPORT**

REPORT OF THE INVESTIGATING OFFICER (MONITORING OFFICER)

Report attached.

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**FINAL REPORT - CONFIDENTIAL**

**NORTH HERTFORDSHIRE DISTRICT COUNCIL  
STANDARDS COMMITTEE**

**REPORT IN TO AN ALLEGATION AGAINST A KINGS WALDEN  
PARISH COUNCILLOR – COUNCILLOR JOE BEAVIS**

**SBE 18472.07**

**REPORT OF THE MONITORING OFFICER**  
**SBE REF:- 18472.07**

**1. The allegation**

- 1.1 The allegation is made by Mr J Poulter, resident of "Woodview", Darleyhall, Hertfordshire. The allegation is that Councillor Beavis failed to declare an interest and failed to withdraw from a meeting of Kings Walden Parish Council on 28 February 2007, when a planning application relating to Darleyhall was considered.
- 1.2 Mr Poulter refers in his complaint<sup>1</sup> to the minutes<sup>2</sup> of the meeting of 28 February 2007, a letter of objection from Councillor Beavis<sup>3</sup> to the Planning department of North Hertfordshire District Council and a letter of objection dated 9 March 2007 sent on behalf of the Parish Council<sup>4</sup>.
- 1.3 Councillor Beavis is alleged to be a neighbour of Mr Poulter. The complaint alleges that Councillor Beavis advised the Parish Council of his objection. Mr Poulter's allegations were made to the Standards Board for England on 17 April 2007.

**2. The Legislation**

- 2.1 Section 58 of the LGA 2000 places the Standards Board under a duty to consider written allegations made under 58(1) in respect of alleged failures of members of relevant authorities to comply with the authority's adopted Code of Conduct. For the purpose of 58(1) LGA 2000 a member of a relevant authority includes members of parish councils.
- 2.2 Written allegations which the Standards Board consider should be investigated must be referred to an Ethical Standards Officer (ESO). An ESO may make a finding that the matters, which are the subject of an allegation, should be referred to the Monitoring Officer (MO) of the relevant authority concerned for local investigation. Where such a finding is made the ESO must refer the matters to the MO under section 64(2)(b) LGA 2000.
- 2.3 When an investigation is referred to the MO of the relevant authority, the MO is required to conduct an investigation into the allegation and, following investigation, prepare a written report on the investigation and the findings. The MO's written report is required to be submitted to the Standards Committee of the relevant authority, as the body responsible for monitoring the operation of the authority's Code of Conduct.
- 2.4 On receiving a written report from the MO, or from a person nominated by the MO under section 64(2) LGA 2000, the Standards Committee of the relevant authority must consider the report. If the report concludes that there has been no failure to

<sup>1</sup> Mr Poulter's Complaint Form and accompanying documents

Pages 1-11

<sup>2</sup> Kings Walden Parish Council - Minutes of meeting 28<sup>th</sup> February 2007

Pages 5-7

<sup>3</sup> Letter of objection from Councillor Beavis dated 24 February 2007

Pages 3

<sup>4</sup> Letter of objection sent on behalf of Kings Walden Parish Council

Pages 4

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observe the Code of Conduct the Standards Committee may accept the finding without a Committee hearing. In all other cases the Standards Committee must consider the reports findings at a hearing.

- 2.5 Following a hearing, the Standards Committee must make a finding as to whether the person subject to an allegation has failed to comply with the Code of Conduct. Where a Standards Committee finds that a breach of the Code of Conduct has occurred various sanctions can be imposed on the member subject to the finding.

### **3. The Code of Conduct**

- 3.1 Section 50(1) and (2) of the LGA 2000 provides for a Code of Conduct governing the ethical behaviour of members of relevant authorities to be issued by the Secretary of State.
- 3.2 Under section 51(1) and 83(1) of the LGA 2000 relevant authorities are required to pass a resolution adopting the Code of Conduct within 6 months of its issue. Furthermore, all members of a relevant authority must give the authority a written undertaking that they will observe the authority's Code of Conduct.
- 3.3 The Parish Councils (Model Code of Conduct) Order 2001 (SI No. 2001/3576) was issued by the Secretary of State and came into force on 27 November 2001. This Code of Conduct was in force at the time of the alleged behaviour which is the subject of the complaint. Councillor Beavis had undertaken to abide by this Code.<sup>5</sup>

### **4. Alleged breaches**

- 4.1 The allegation shows the following potential breaches of the Code of Conduct:-
1. a failure to declare a prejudicial interest;
  2. a failure to withdraw from the meeting;
  3. improperly seeking to influence the outcome of a decision;
  4. seeking to improperly use his position to confer an advantage or disadvantage on any person.

### **5. The investigation**

- 5.1 On 8 May 2007, officers of the Standards Board for England determined the case should be referred to an Ethical Standards Officer. On 24 May 2007, the Ethical Standards Officer referred the matter for local investigation under s.60(2) of the Local Government Act 2000.
- 5.2 The investigation has been carried out by the Monitoring Officer for North Hertfordshire District Council, Frances Bogie.
- 5.3 In the course of this investigation the following evidence was considered:-

Mr Poulter's complaint form dated 17 April 2007;<sup>6</sup>  
Kings Walden Parish Council Code of Conduct;<sup>7</sup>  
Councillor Beavis' Declaration of Acceptance of Office;<sup>8</sup>  
Councillor Beavis' Register of Financial Interests;<sup>9</sup>

<sup>5</sup> Councillor Beavis' Declaration of Acceptance of Office

<sup>6</sup> Mr Poulter's complaint form dated 17 April 2007

<sup>7</sup> Kings Walden Parish Council's Code of Conduct

<sup>8</sup> Councillor Beavis' Declaration of Acceptance of Office

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Minutes of Kings Walden Parish Council Meeting of 28 February 2007;<sup>10</sup>  
Minutes of Kings Walden Parish Council Meeting of 28 March 2007;<sup>11</sup>  
Minutes of Kings Walden Parish Council Meeting of 25 April 2007;<sup>12</sup>  
Letter of Councillor Beavis dated 4 June 2007;<sup>13</sup>  
Letter of Kings Walden Parish Council to North Hertfordshire District Council dated 9 March 2007;<sup>14</sup>  
Plan of the application site showing 4 Darleyhall;<sup>15</sup>  
Interview with Mrs J Ashby (Clerk to Kings Walden Parish Council);<sup>16</sup>  
Interview with Councillor J Beavis.<sup>17</sup>  
Letter from Councillor Beavis dated 4 April 2008.<sup>18</sup>

- 5.4 The investigation is only conducted into the alleged breaches of the Code of Conduct. Allegations relating to the evidence considered by the Parish Council is not within the jurisdiction of the Standards Committee and is not considered in this investigation.

### **6. Background**

- 6.1 Kings Walden Parish Council are a statutory consultee on planning applications within their area. North Hertfordshire District Council are the planning authority who decide an application.
- 6.2 Councillor Beavis' Register of Financial Interest, shows he is the owner of 4 Darleyhall.<sup>19</sup>
- 6.3 From consideration of Councillor Beavis' letter of objection, dated 24 February 2007, it is clear that he is a neighbour of Mr Poulter and that he considers his property to be potentially affected by the application.<sup>20</sup>
- 6.4 Councillor Beavis' letter to the Monitoring Officer of 4 June 2007, states that he informed the Parish Council of his objection to the application and that he intended to withdraw from the meeting.<sup>21</sup> In interview, Councillor Beavis stated that he told the Council meeting that he "was objecting in a personal capacity and therefore felt [he] should withdraw". He went on to state that the Chairman of the Parish Council requested that he remain in the meeting as he "had read the complete document" and "was the one who knew the layout of things at Darleyhall". He went

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| <sup>9</sup> Councillor Beavis' Register of Financial Interests   | Pages 23-25 |
| <sup>10</sup> Confirmed minutes of Kings Walden Parish Council Meeting of 28 February 2007 and shorthand notes of Clerk | Pages 26-27 |
| <sup>11</sup> Confirmed minutes of Kings Walden Parish Council Meeting of 28 March 2007                                 | Pages 28-30 |
| <sup>12</sup> Confirmed minutes of Kings Walden Parish Council Meeting of 25 April 2007                                 | Pages 31-32 |
| <sup>13</sup> Letter of Councillor Beavis dated 4 June 2007   | Page 33     |
| <sup>14</sup> Letter of Kings Walden Parish Council to North Hertfordshire District Council dated 9 March 2007          | Page 4      |
| <sup>15</sup> Plan of the application site showing 4 Darleyhall   | Pages 34-35 |
| <sup>16</sup> Interview transcript with Mrs J Ashby (Clerk to Kings Walden Parish Council)                              | Pages 36-43 |
| <sup>17</sup> Interview transcript with Councillor J Beavis   | Pages 44-51 |
| <sup>18</sup> Letter from Councillor Beavis dated 4 April 2008  | Page 52     |
| <sup>19</sup> Councillor Beavis' Register of Financial Interests  | Pages 23-25 |
| <sup>20</sup> Letter of objection from Councillor Beavis dated 24 February 2007   | Page 3      |
| <sup>21</sup> Letter of Councillor Beavis dated 4 June 2007   | Page 33     |

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on to say he “was there to provide any information which the Councillor’s wanted as local information”.<sup>22</sup>

- 6.5 The minutes of the meeting of 28 February 2007, do not contain any reference to Councillor Beavis’ interest in the item, merely noting that “Councillor Beavis reported on the problems ....”<sup>23</sup>
- 6.6 Mrs Ashby stated in interview that Councillor Beavis had said “should he speak at the meeting and that Members had agreed and I forgot to put that on the minutes”<sup>24</sup>. She went on to say that she “ did not believe that Mr Beavis has a financial interest due to the fact that he only lives there and that [she] advised the Council of this”.<sup>25</sup>
- 6.7 From the minutes, Councillor Beavis’ letter of 4 June 2007 and the interviews, there is agreement that Councillor Beavis remained in the room throughout consideration of this item. There is also agreement that Councillor Beavis voiced his objections to the application.
- 6.8 In interview Mrs Ashby<sup>26</sup>, and Councillor Beavis<sup>27</sup> stated that he voted on the proposal to object to the planning application. Subsequent to the final draft of this report having been sent to Councillor Beavis he objected. His letter of objection received by the Monitoring Officer on the 7 April 2008 were considered and this report reflects those considerations.
- 6.9 On 4 February 2008, Councillor Beavis was sent a copy of the draft Investigation Report. In the covering letter he was asked for his comments to be sent in writing to the Monitoring Officer by 11 February 2008. No response was received.
- 6.10 Having contacted the Council via the Customer Service Centre, on 7 April 2008, Councillor Beavis hand delivered a letter to the Monitoring Officer, a copy of which is attached.<sup>28</sup>
- 6.11 Councillor Beavis’ letter of 4 April 2008 states that he considers paragraphs 6.8 and 7.5 of the final report to be “totally untrue”. Whilst he acknowledges that he does not know the evidence given by Mrs Ashby, he states that he said in interview that he did not vote. Having re-considered Councillor Beavis’ specific reference to his interview, I am satisfied that he said “other than providing information as the discussion went on local knowledge, I took no other part in the discussion and I certainly didn’t vote”.
- 6.12 Further questioning regarding the formality of the vote and the possible perception of a member of the public who may have attended the meeting as to how the vote was taken elicited the following responses from Councillor Beavis:-

“it is a small informal Council you know it is not very often that a [*sic*] military showing of hands”.

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<sup>22</sup> Interview transcript with Councillor J Beavis Page 45  
<sup>23</sup> Kings Walden Parish Council – Minutes of meeting 28<sup>th</sup> February 2007 Pages 6  
<sup>24</sup> Interview transcript with Mrs J Ashby (Clerk to Kings Walden Parish Council) Page 39  
<sup>25</sup> Interview transcript with Mrs J Ashby (Clerk to Kings Walden Parish Council) Page 39  
<sup>26</sup> Interview transcript with Mrs J Ashby (Clerk to Kings Walden Parish Council) Page 41  
<sup>27</sup> Interview transcript with Councillor J Beavis Page 47  
<sup>28</sup> Letter from Councillor Beavis dated 4 April 2008 Page 52

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“generally it is a sense of the meeting”.

“I would have taken that my absence or my silence would have indicated that that was me finished”. Councillor Beavis amended this transcription to read “I would have taken it that my silence would have indicated that that was me finished”.

“I would have said that there was no doubt about it at all, that the mood of the meeting was that this letter should be written”.

“Oh well, I was just sitting there, with a few members who proposed and seconded it were obviously involved and the other members who were there, from there sense and body language and facial expressions”.

6.13 In view of the lack of clarity around who voted and how this was ascertained, I am of the opinion that the item was not disposed of following a formal vote, but that the “mood of the meeting”, was taken to be a consensus and hence the matter considered resolved. Whilst I have not seen or considered the Standing Orders of Kings Walden Parish Council’s constitution it is acceptable practice in non-regulatory or administrative decision-making for the “mood of the meeting” to be judged by the Chair and recorded as the decision of the Council. The minutes of the meeting read “Land adjacent to No. 1 Darley Hall – Re-submission of Outline Planning Application for one new dwelling: The occupant at No.1 had written against this development. Mr Beavis reported upon the problems the development may cause regarding sewerage/waste water, access and also stated that the speed tests were carried out at the wrong position. It was proposed by Mr Bretherton, Seconded by Mr Galliers and Agreed that the Clerk should write objecting to the new proposals”.<sup>29</sup>

6.14 In stating that it was untrue that he said that he voted on the matter Councillor Beavis is correct and I therefore amend this sentence to read:-

Having considered the responses of Councillor Beavis and Mrs Ashby in full, I have applied an objective test of openness and transparency as to how a member of the public would be likely to perceive the presence and involvement of Councillor Beavis’ in the vote on this item. I am satisfied that a member of the public would not have been able to tell whether, let alone how, Councillor Beavis voted. The “mood of the meeting” seems to have been a unanimous one for which Councillor Beavis was present. In being present whilst having an undeclared prejudicial interest, Councillor Beavis is in breach of the requirements of the Code of Conduct. Whether or how Councillor Beavis voted is in my opinion irrelevant to the determination of whether or not he was in breach of the Code. This is the only issue on which the Monitoring Officer or the Standards Committee has jurisdiction to reach a finding.

6.15 In conclusion, whilst Councillor Beavis did not respond to the draft or final report, and his submissions should have been addressed to the Deputy Monitoring Officer who was handling taking the final report to the Standards Committee, I have considered his representations and re-considered my findings, he is correct to highlight the factual statement that he said he did not vote, and hence I have amended this in my report. Considering the materiality and accuracy of this objection, does not in my opinion merit any further or substantial amendment to my final report. The further conclusion that I would draw from this response, is that Councillor Beavis’ presence in the room when the “mood of the meeting” was

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<sup>29</sup> Kings Walden Parish Council - Minutes of meeting 28<sup>th</sup> February 2007

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taken, exacerbated the factual breach of his very presence and that his lack of vocal involvement at the stage of the item being disposed of, does not mitigate the fact of the breach or the purpose for which the Code of Conduct made this explicit provision. In conclusion, I consider this to be supportive of the need for members to understand the public law principles on which the Code is based and the need for open, transparent and accountable public decision making.

- 6.16 Mrs Ashby was responsible for drafting the letter of objection on behalf of the Parish Council. In interview she confirmed that she wrote this letter and stated that she did so based on the comments from the Parish Council's consideration of the planning application and that Councillor Beavis made the report to the Council.<sup>30</sup>

### **7. Findings**

- 7.1 Councillor Beavis had a personal interest in the planning application. The fact that his property is included in his Register and this is adjacent to Darleyhall, means that Councillor Beavis had a personal interest in the planning application of Mr Poulter.<sup>31</sup>
- 7.2 From the minutes of the meeting it is clear that there was a failure to declare and record the existence and nature of Councillor Beavis' interest, either as a personal or a prejudicial interest. It is the personal responsibility of the Member to ensure that the existence and nature of an interest are declared in the minutes.
- 7.3 In deciding whether this personal interest was also a prejudicial interest the test to be applied is whether a reasonable person with knowledge of all the relevant facts would consider it so significant that it was likely that Councillor Beavis' judgement of the public interest was prejudiced. Councillor Beavis did not consider this test.
- 7.4 In my opinion it is clear that Councillor Beavis had a prejudicial interest in this matter. In interview he acknowledged this and indicated that he now would apply this test.<sup>32</sup> Where a prejudicial interest exists the Code of Conduct requires that the Member declare the existence and nature of the interest and that he then withdraw from the meeting and not seek to improperly influence the decision.
- 7.5 All the evidence supports the finding that Councillor Beavis failed to declare his interest, either as personal or prejudicial. Although he referred to his interest, he did not ensure that this was recorded in the minutes as is required and he did not declare whether the interest was personal or prejudicial. The evidence also supports a finding that Councillor Beavis failed to withdraw from the meeting. He admits that he remained, spoke and voted.
- 7.6 Although the evidence of Mrs Ashby supports Councillor Beavis' assertion that he was asked to remain in the meeting and to speak on the item, it is his personal duty to observe the requirements of the Code and thus it is not a relevant consideration in determining whether or not a breach has been proven.
- 7.7 In considering whether the objections put by Councillor Beavis were an attempt to influence the decision of the Council, in my opinion it is reasonable to consider that this was the case. Mrs Ashby stated in interview that the minutes of this February meeting were agreed and approved at the March meeting, without comment on the

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<sup>30</sup> Interview transcript with Mrs J Ashby (Clerk to Kings Walden Parish Council)

Page 41

<sup>31</sup> Councillor Beavis' Register of Financial Interests

Pages 23-25

<sup>32</sup> Interview transcript with Councillor J Beavis

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issue of interests being declared or recorded. She stated that Councillor Beavis was as that meeting. She also stated that subsequent to this Mr Poulter contacted her and she discussed the interest issue with him. She then reported this back to the Parish Council at their meeting in April. She stated that Councillor Beavis queried whether he should have been present for discussion on the item. She stated that the Chairman told him he should not have left as "he needed to stay as a resident"<sup>33</sup>. Without imputing any ill-intent this must be found to be an improper influence on the decision of the Council, due to the fact the Code required any member with a prejudicial interest to withdraw from the meeting. Councillor Beavis' own evidence confirms that his submissions in relation to the application were the primary considerations of the Parish Council.

- 7.8 It is relevant background to this finding that Mr Poulter's application was a second application. In the year prior to this the Parish Council had considered the first application and had no objection to this.
- 7.9 The remaining question is whether or not Councillor Beavis sought to use his position to improperly confer an advantage or disadvantage on himself or any other person. In my opinion the outcome of the planning application was clearly one which would have an impact on Councillor Beavis' enjoyment of his property. The objections that he raised at the Parish Council meeting were those contained in his letter to the Planning department dated 24 February 2007<sup>34</sup>. The refusal of the application was then likely to be of an advantage to Councillor Beavis and by necessary implication a disadvantage to Mr Poulter. In the circumstances I find that the Code has further been breached by this use of Councillor Beavis' position as a Parish Councillor to seek to confer an advantage on himself.

### **8. Considerations**

- 8.1 It is notable that Councillor Beavis has received no training on the 2001 Code of Conduct in force at the time and its implications. It is also notable that none of the other Parish Councillors have received such training. Whilst this is not a defence to the finding of breach of the provisions of the Code, the Committee may wish to take this into consideration when considering the sanction to be imposed and in considering their wider remit of providing advice and guidance to town and parish councils in the District.

This is my final report having considered all the available evidence. Councillor Beavis was given the opportunity to comment on my draft report and made no representations to me but I have considered his subsequent representations and amended my report accordingly.

### **9. Recommendations**

- 9.1 That the Standards Committee note the content of the report and reach a finding of breaches of the following provisions of the Code:-
1. a failure to declare a prejudicial interest;
  2. a failure to withdraw from the meeting;
  3. improperly seeking to influence the outcome of a decision;
  4. seeking to improperly use his position to confer an advantage or disadvantage on any person.

<sup>33</sup> Interview transcript with Mrs J Ashby (Clerk to Kings Walden Parish Council) Page 42

<sup>34</sup> Letter of objection from Councillor Beavis dated 24 February 2007 Page 3

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- 9.2 That the Standards Committee consider the appropriate sanction against Councillor Beavis.
- 9.3 That the Standards Committee recommend to all Town and Parish Clerks that they ensure that clerks and all members have a training programme in place to ensure members understand the application of the current (2007) Code and their personal responsibilities in complying with it.