

IN THE MATTER OF THE LOCALISM ACT 2011 SS 27 & 28 AND OF EAST
STAFFORDSHIRE BOROUGH COUNCIL'S CODE OF CONDUCT FOR
COUNCILLORS AND ITS PLANNING CODE FOR COUNCILLORS

DRAFT REPORT

1. I have been asked to report on allegations made against Councillor McGarry as set out in three complaints 2018-07, 2018-09 and 2018-12 made by three complainants.
2. In this report I have been asked to consider the complaints against the Code of Conduct, but also against whether the conduct of the councillor has demonstrated some other kind of unlawful conduct such as predetermination or a failure to declare a pecuniary interest.
3. I have been appointed to investigate the complaints pursuant to section 5 of the Standards Committee Complaints Procedures. In accordance with that procedure I have to decide whether or not there is evidence of a failure to comply with the Code in relation to each complaint.
4. I considered it was appropriate to interview the Councillor. That interview took place on Monday 9 September 2018 [1] (Monday 10th September). Where for the purposes of this report I have recorded findings of fact I have made those findings on the balance of probabilities.

Summary of Report

5. In my view each of the complaints made provides evidence of a breach of the Code of Conduct.

Discussion

Factual background

6. The complainants are Cllr Lynne Shelton, Mr Michael Jones and Cllr Phillip Hudson.
7. The gravamen of these complaints is the allegation that the Councillor has been lobbying with the Hazelwalls Impact Group (“HIG”), a protest group set up in opposition to the proposed development of land at Hazelwalls Farm, Uttoxeter. It is alleged she has associated herself with the production, publishing and distribution by HIG of a leaflet making inappropriate criticisms of the Council’s actions in relation to the Hazelwalls Farm development. The Councillor was, at material times, the relevant ward member. [2] I would like to refer to the allegation with regard to the leaflet in this paragraph. For further background information Cllr Mrs Lynne Shelton did have input on the publishing of the leaflet and also helped financially with the leaflet.
8. In doing so, the suggestion is that the Councillor made a close association with a minority group so any decision made would have a greater effect to a greater extent than any for the majority of other Council tax payers.
9. It is further alleged that the Councillor has worked with and been part of the HIG. An allegation is made that as a member of Uttoxeter Town Council the Councillor has influenced that Council’s approach to the Hazelwalls Farm development. [3] Point of

clarity I was not present at the UTC meeting where the Hazelwalls application was considered and UTC voted to reject the application. Council minutes will show this evidence.

10. The Hazelwalls application was a full application for the “*erection of 429 dwellings, public open space, landscaping, drainage, attenuation areas, access roads and associated works and the demolition of existing buildings*”.
11. I discussed this matter during interview with the Councillor. The following matters became apparent.
12. The structure of HIG is that it is a single issue campaigning group. Its membership was variously quoted as being between 100 – 400 individuals. At the meetings described below there would typically be 20-30 people in attendance. Naturally, as the Councillor accepted, they were individuals proposing to pursue objections to the planning application. The meetings were mainly organised and chaired by the two main co-ordinators of the campaign David Lynch and Cedric Bygrave. The purpose of each meeting was to seek to develop and articulate the case against granting planning permission in relation to the site, and by April 2018 seeking to resist any of the development which was outside the settlement boundary. Beyond that there was no particular hierarchy to the HIG and so, in my view, the presence of a speaking councillor at a sequence of private meetings of this kind would appear to an objective bystander to be likely to have given her a special significance and likely influence upon those attending.
13. When the Councillor attended meetings she spoke at them. She told me that the tenor of her approach was that, as the site was allocated, development would occur on the site. However, her approach at the meetings was to seek to ensure any final proposal

was fully policy compliant. The Councillor did not consider the proposal before the committee was compliant due to a significant proportion of it being outside the settlement boundary. There are no notes of any of these meetings, so I cannot reach an accurate view about the overall nature of the discussions at those meetings, but I have set out their purpose as the Councillor understood them to be.

14. There were a number of meetings of the HIG between February 2017 and April 2018 to which the Councillor was invited. There were up to about 5 such meetings that she attended. The meetings were called at every stage when something significant in the planning process had occurred. [4] I do not recall this last sentence being discussed in my interview so I am unsure of how you can state this. Furthermore in the absence of a detailed timeline it would be impossible to make this statement. My personal account of when meetings were called and why, would have been to update the group on where the application was.

15. Each meeting was private in the sense that private rooms were used and only members of the HIG or supporters were invited to these meetings. For example, the meeting of 3 February 2017 took place in a private conference room at a local supermarket. [5] Since our interview I have learned that no meetings prior to or after the 3rd of February 2017 were 'private'. The meeting held in the supermarket was a community room where all meetings are detailed on a 14 day rota system on a notice board within the supermarket itself. Also I believe it was not an issue if any members of the public wished to attend any meetings on an ad-hoc basis.

16. The Councillor did not make any arrangements for officers to take any record of what was discussed at the meetings. She did not tell Sal Khan or the Planning Manager about them. She did not seek to have them arranged by Sal Khan or the Planning

Manager. She did not report back to Sal Khan or the Planning Manager in relation to any of the meetings. [6] I would like it noted that:

- a) Although not informing Sal Khan of the original meeting in February 2017, Mr Khan was aware the meeting was taken place as Cllr Greg Hall (the then Chair Person of the Planning Committee) who attended this first meeting had informed senior officers that the meeting was taking place.
- b) I would like it noted that meetings took place with myself, Mrs Emily Christie (Planning officer), Mr Jeff Upton (Temporary planning Manager) and members of the developers of the application to discuss the issues HIG had with the application
- c) A site meeting was arranged during 2017 with both myself and Mrs Emily Christie to discuss the site and also the views and issues with the HIG group.
- d) On the 13th February 2018 a meeting took place at the Malsters offices in Burton between the following people, myself, Cllr George Allen, Mrs Emily Christie (planning officer), Mrs Anna Miller (Planning manager), Deputy Leader of the Council Cllr Mrs Jacqui Jones, Mr Sal Khan (Head of Service) and Mr Andy O'Brien (Chief Executive to the Council). This meeting was to discuss the concerns and complaints received following the committee decision of the Hazelwalls application and the position of the HIG.

Therefore I do not except that officers did not know about the contact I had with HIG.

17. At the HIG meeting of March or April 2018 final versions of the two leaflets which were ultimately distributed by HIG were available for attendees to collect and distribute. The Councillor accepted she was consulted on [7] only one of the draft

leaflets. She did not recall offering any comments on the drafts beyond ones relating to her contact details, but accepted that had she made comments they would have been considered as possible amendments by HIG.

18. Leaflet 1 is entitled *“Your local MP Andrew Griffiths persuades ESBC to ‘call back in’ the Hazelwalls Development”*. It states that 19% of the proposed development lies outside the settlement boundary and calls on people to object. It contends that 68 houses would lie outside the settlement boundary amounting to a total development of 29 units greater than the proposed allocation. The headline point, in red ink, capitalised and in bold is *“Yet more profit for the developer and more revenue for ESBC”*. The leaflet contains the following passages *“At no point did we think [the Council] would completely disregard [the views of]¹ your local councillors, the town council, and most importantly you. . . .Take this opportunity to object by 25th April 2018 . . . This development will affect everyone in our town, therefore if you are over 18 and live in Uttoxeter cast your objection . . . Conservative Councillors Sue McGarry . . . are totally committed to bringing this development back in line with council policy. Policy which you voted in favour of. If you need any help of guidance then get in touch . . .”*. The Councillor’s contact details follow immediately thereafter.

19. Leaflet 2 **[8] to which Cllr McGarry has stated she knew nothing of its existence** is entitled *“The Hazelwalls Development Has been called in!”*. It appears to have been a single sheet leaflet. In its final form it did not provide contact details for the Councillor or refer to her. The headline point, in red ink, capitalised and in bold is *“Yet more profit for [the developer] and more income for ESBC”*. The leaflet

¹ I have inferred these words because on my copy of the leaflet this part is illegible.

contains the following passages *“Take a drive around Uttoxeter, houses shoehorned into the smallest of sites and see what you get for your money!! Do we need another development like this in our town?? . . . Take this opportunity to object by 25th April 2018 . . . This development will affect everyone in our town, therefore if you are over 18 you are entitled to object, we urge you to help stop an unwanted development that will take arable Greenfield land when we have so much arable Greenfield land when we have so much available Brownfield sites stood derelict”*. [9] I would like it noted that I was unaware of this leaflet and its contents.

20. After the production of the leaflets, the Councillor took no positive steps to dissociate herself from their contents.

21. At the committee meeting of 18 July 2018 the Councillor spoke as a ward member, and thus was accorded additional privileges in the debate above a member of the public including not being restricted by the “3 minute rule”. [10]

I did not speak during the committee meeting on the 18th of July 2018 therefore this paragraph needs to be removed

22. In relation to the leaflets the Councillor’s main point to me was that nothing indicated she endorsed the messages in the leaflets.

Discussion

The Code

23. The Code defines Ordinary Interests in section 6.

24. For the reasons set out below I consider the Councillor had an Ordinary Interest in HIG by reason a close association with that group. In my view the totality of the

Councillor's involvement with HIG suggests that she did have a close association with that group for the purposes of considering whether she had an Ordinary Interest in the business of the Council when it was deciding this planning application. Almost by definition, the decision in relation to Hazelwalls would reasonably be regarded as affecting the well-being or financial position of the members of HIG to a greater extent than it would affect the majority of others within the electoral ward. [11] In order to have a personal interest in the Hazelwalls planning matter the reasonable person looking at this case would have to agree on the balance of probabilities that a decision made in relation to the Hazelwalls planning matter by ESBC would affect HIG's wellbeing or financial position to a greater extent than the majority of Uttoxeter residents. HIG does not stand to lose or gain financially from such decisions about Hazelwalls nor do these decisions affect its wellbeing. If you are referring to the people in the HIG group I do not believe these people stand to lose or gain more or less than any Uttoxeter resident. The fact is that the loss of property value and reduction in wellbeing, if any, would be proportionate to how close you live to the development, rather than whether you are a member of the HIG and furthermore before this test is applied surely the first test is whether or not I have a close association with HIG.

As I have mentioned I initially attended a meeting organised by the HIG group as part of my role as ward councillor and I invited Cllr George Allen to help and advice HIG on what to expect moving towards the committee meeting in July 2017. That first meeting to which we both attended (along with both Cllrs Hudson and Greg Hall) was the 3rd of February 2017 after this date we did not attend another HIG meeting until after the committee meeting on the 18th of July 2017, nor did I or Cllr Allen have any significant contact with the group that would suggest or imply a close association. As

previously indicated officers at ESBC were made aware of the meeting prior to it taking place on the 3rd of February 2017 although I will admit I did not realise that all councillors are required to notify officers of their attendance at such meetings. I had no close association prior to this meeting and likewise after the meeting therefore to the reasonable person between February and July 2017 there was certainly nothing to suggest I had an ordinary interest to declare other than a meeting with the group which was reported to officers, albeit not by me.

The obvious indication that there was nothing to declare at the planning meetings in July 2017 was the fact that Cllr Greg Hall (who was a member of the planning committee) did not declare his involvement with HIG or sought a dispensation in accordance with section 11 of the code even though officers were aware of his involvement with the HIG meeting of February 2017. Therefore on conclusion I am unclear at what point you would expect me to have declared an interest. The meeting in February 2017 was disclosed to officers and that was the only meeting that took place until after the planning committee meeting in July 2017.

25. Accordingly, by paragraph 9.1.2.2 the Councillor ought to have disclosed this Ordinary Interest and should not have participated in the meeting without first seeking a dispensation in accordance with section 11 of the Code. **[12] I did not participate in a meeting on the 18th of July 2018 therefore this paragraph should be removed.**
26. In my view it is clear that this Ordinary Interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgment of the public interest. I take the view that the Councillor ought reasonably to have been aware that test was met having regard to the features of the case I mention below.

The Planning Code

27. The Council also has a specific code to provide further detailed guidance to members in relation to planning matters entitled the Planning Code of Good Practice for Councillors (“the Planning Code”). In paragraph 2.4 the Planning Code sets out when it applies. It includes “[2.4] . . .when taking part in the decision-making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings . . . [2.5] If Councillors have any doubts about the application of this Code of Good Practice to their own circumstances, they should seek advice early, from the Monitoring Officer or one of their staff, and preferably well before any meeting takes place”. I am instructed that the Planning Code applies to all councillors, not just those sitting on the planning committee.² [13] My view from this point is as long as it doesn’t put the planning process in jeopardy these meetings should be allowed. It is reasonable from an objective member of the public’s point of view that local Councillor’s should be able to meet with local residents opposing a development without the Council being involved from the outset.

² The Councillor suggested to me during interview that the Planning Code might only apply to members of the planning committee. However, it is clear to me that my instructions are correct. The Planning Code confirms that it is based on the PAS Probity in Planning Guide of April 2013 which at various places provides guidance which applies (for example) to ward members. Similarly, there are references in the Planning Code itself which are only consistent with it applying more widely than simply to committee members (see, for example, paras 4.2, 5.5 and 5.7).

[14] I refer to the footnote above on page 10 – We never discussed this item and when I was interviewed. I have since conferred with Cllr George Allen who confirmed that this was something you discussed with him.

28. Section 2 of the Planning Code sets out its aim, the key purpose of planning control and the role of a member of the planning authority (when making decisions). The aim is *“To ensure that in the planning process there are no grounds for suggestion that a decision has been biased, partial or not well-founded in any way”*. The role of the member is *“To make planning decisions openly, impartially, with sound judgment and for justifiable reasons”*. [15] I am not a member of the planning authority therefore this section surely cannot be included as I made no decisions with regard to this or any application.

29. The definition of Private Interest within the Planning Code includes Ordinary Interests as defined in the Code where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor’s judgment of the public interest: see para 1.2 of the Planning Code. [16] Please take into account my comments in paragraph 24 of this document in terms of ordinary interest

30. In my view, by failing to adhere to those requirements the Councillor compromised the aim of the Planning Code and her role as a member of the Council in light of her overriding duty to the whole community. [17] Please refer to my comments in paragraph 27

31. In my view there is evidence of a failure to comply with the Code and the Planning Code. The breaches of the Planning Code, in my view, provide evidence of failures to uphold the general principles of the Code relating to Selflessness, Objectivity and

Openness. These are issues which will, in my view, tend to bring the Council into disrepute. [18] Please consider the following:

Selflessness.

Councillors should act solely in terms of the public interest.

What advantage was conferred to HIG by attending meetings with objectors and putting my contact details on a leaflet? What disadvantage was conferred on the complainants? I would like you to show that an advantage /disadvantage has been conferred?

Openness

Councillors should act and take decisions in an open and transparent manner.

Information should not be withheld from the public unless there are clear and lawful reasons for doing so.

What information did I hold? I did not speak at any council meeting after the leaflets were published. I attended a meeting in February 2017 which was disclosed was disclosed and in fact three other councillors were in attendance. I also attended meetings with other senior officers at ESBC and also with Cabinet members of the Council all of which knew about my contact with HIG. Therefore please show where I have not been open.

Objectivity

Councillors must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

What decisions did I make that were not objective? I opposed the planning application because it was against the local and neighbourhood plan not based on the arguments put forward by one group. Surely they must show that I have been objective. The

argument that was put forward by the HIG were far more opportunistic and less objective. My comments at the meeting in July 2017 were based on policy.

32. As set out above, the code applies to councillors generally in dealing with planning matters, and not simply to members of the planning committee.
33. In my view the Councillor's conduct provides evidence of a sustained breach of this code. Section 6 of the Planning Code deals specifically with contact with applicants, developers and objectors. [19] Again I will reiterate that I do not believe I have put the planning process in jeopardy by agreeing to meet with HIG
34. The code requires that councillors should not agree to private meetings with (amongst others) groups of objectors where they can reasonably be avoided. In my view, the private meetings could reasonably have been avoided in this case. The Councillor did not set out any good reason why that could not have been done. [20] On discussions since my interview with members of HIG it has become apparent that the meeting on the 3rd of February 2017 was not a 'Private Meeting'. This meeting was publicised over a 14 day period on a notice board within the Supermarket to all members of the public who were also allowed to join the meeting if they so wished. I would also like to emphasise that the code does not require as such that councillors should not agree to private meetings the wording used in the code suggests that this is guidance and best practice. In February 2017 I did not consider it necessary to refuse to meet with residents as there was no good reason to not meet. As elected councillor if residents ask to speak to me then that is what I would do.
35. The code requires that any such meeting should never be arranged by the councillor themselves but should request Sal Khan or the Planning Manager to organise it. That was not done. The reasons for ensuring such protection are spelt out in paragraph 6.2

of the code. [21] I never arranged any meetings with HIG. The group themselves arranged all meetings and where appropriate invited me. I have been informed since our interview that meetings had previously been called with Health, Education and other Council agencies prior to the 3rd of February 2017.

Requests were also made to Jeff Upton (temporary planning manager) for a meeting to be arranged with the planning team, HIG and the developers which was declined. Meetings were also suggested to members of the HIG via Mr Sal Khan after the meeting mentioned above on the 13th of February 2018 which also did not come to fruition

36. Paragraph 6.3 requires councillors to report to Sal Khan or the Planning Manager any significant contact with parties interested in a planning application, explaining the nature and purpose of the contacts and their involvement with them, so that it can be properly recorded. The Councillor has not disclosed any notes made at these meetings. It does not appear that she considered the application of paragraph 6.3.3 of the code. [22] *In terms of 6.3.3 it clearly states that Councillors should report to Sal Khan or the Planning Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and their involvement in them, and ensure that this is recorded on the planning file.* According to 6.3 this does not apply with groups of objectors or residents. If the intention of the code was to make clear that Councillors should report to Sal Khan or the Planning Manager meetings with residents or groups of objectors it would state exactly that as is the case in 6.2.

37. Lobbying by councillors is dealt with in sections 7 and 8 of the Planning Code. By paragraph 7.2 councillors are reminded that the overriding duty is to the whole

community not just the people in their ward and, taking into account the need to make decisions impartially, that they should not appear to improperly favour any group or locality. By paragraph 7.4 lobbying correspondence received by a councillor must be passed on to Sal Khan or the Planning Manager at the earliest opportunity. By paragraph 8.1 councillors should not lead or represent an organisation whose primary purpose is to lobby to promote or opposed planning proposals. Within paragraphs 8.1 and 8.2 a clear distinction is drawn between single issue protest groups and general interest groups. [23] 7.2 is only relevant when that councillor is in a position which requires them to make a decision. In terms of 7.4 what lobbying correspondence have I not passed on? Paragraph 8.1 whilst my contact details are on leaflet 1 I still do not believe this automatically means I am leading or representing HIG. 8.1 does not categorically rule out a Councillor leading or representing an organisation. If a councillor led or represented an organisation whose primary purpose is to lobby to promote or oppose planning proposals then that Councillor will have fettered their discretion and would have to declare a private interest. At what point would you have expected me to declare an interest? The leaflet was delivered in April 2018, 9 months after the planning meeting in July 2017

38. In my view the sequence of events I have described above provides evidence of failure to comply with paragraphs 4.2.1, 5.7, 6.2, 6.3.2 and 6.3.3, 7.2, 7.4 and 8.1 of the Planning Code. [24] Could you provide an explanation on how you have come to the conclusion that I have not complied with each section referred to above. For instance 5.7 Councillor Ed Barker and John Kirkham (proper officer) were advised that as ward member I wished to speak. Councillor Ed Barker asked Cllr Allen if he wished to speak to which Cllr Allen replied that he was not a ward member. After a short discussion involving Mr John Kirkham the advice was that if Councillor Ed

Barker as the chair of the committee wished to allow Cllr Allen to speak then he could do so. Therefore where is their evidence of failure to comply?

39. In relation to paragraphs 7.2 and 8.1 I bear in mind the facts that would be taken to be known by the reasonable observer judging this matter. In particular that the Councillor attended a sequence of private HIG meetings as a councillor, that she spoke on each occasion, that drafts of the leaflets were provided to her, that she did not seek to dissociate herself from either of the leaflets, and that her contact details were attached to Leaflet 1 in a way that, in my view, would have given the reasonable observer to think that the Councillor supported the statements made in that leaflet. In my view the Councillor is wrong to think that a reasonable observer would not have taken the presence of her details in context as implicitly describing her support for opposition to the proposal. The reasonable observer would be taken to be aware of the contents of the Planning Code. [25] I would like to reiterate that I only knew about leaflet number 1 where my contact details are included and that I was unaware that any meetings I attended were private meetings. In relation to paragraphs 7.2 and 8.1 see paragraph 37 of this report.

40. I take the view that the headline message in Leaflet 1 (which was, to my mind, materially the same as that in Leaflet 2) was therefore one which a reasonable observer would have taken to be supported by the Councillor. In my view that headline did convey the message that the further revenue (or income) for ESBC might be inappropriately influencing the judgment of the Council upon the planning application. Such an allegation has an obvious risk of bringing the Council's decision making into disrepute. [26] Point of clarity the word 'income' is not used in the leaflet where my contact details are included.

41. In my view there is evidence of a failure to comply with the Code and the Planning Code. The breaches of the Planning Code, in my view, provide evidence of failures to uphold the general principles of the Code relating to Selflessness, Objectivity and Openness. These are issues which will, in my view, tend to bring the Council into disrepute. [27] Could you provide evidence of a failure to comply with the Code and the Planning Code? I refer to my points raised in paragraph 31 of this report in respect of Selflessness, Objectivity and Openness.
42. In my view the provisions of paragraph 3.10 of the Code do not materially add to the conclusions I have reached above.

WAYNE BEGLAN

CORNERSTONE BARRISTERS

4 OCTOBER 2018