

## BASINGSTOKE AND DEANE APPEAL DECISION NOTICE

REFERENCE: 045659/AGR

Complainant: Mr. G March

Subject Member: Cllr R Lissmann

### Introduction

My name is Howard Bone, and I am a Senior Solicitor employed by Test Valley Borough Council. I have previously been employed as Deputy Monitoring Officer and Monitoring Officer by another local authority for some nineteen years. I have been appointed by Ann Greaves, Monitoring Officer to Basingstoke and Deane Borough Council, to determine this appeal, effectively standing in the place of the Council's Monitoring Officer for that purpose.

In determining this appeal, I have considered Pamber Parish Council's Code of Conduct and Basingstoke and Deane's adopted arrangements for dealing with complaints (in respect of conduct of borough, and parish, councillors), the original complaint form, the Monitoring Officer's original decision, and the complainant's email to the Monitoring Officer of 30 August 2019 indicating a wish to appeal against that decision. I have also taken into account the published minutes of the Pamber Parish Council, correspondence between the Monitoring Officer and Cllr Lissmann and the member of the public involved in the incident complained about, together with the additional evidence submitted by the complainant with his appeal.

I am treating this as an appeal by the complainant against the "Stage 2" decision, under paragraph 6.9 of the document entitled "Arrangements for dealing with complaints against Councillors."

In accordance with the published arrangements, I have consulted with the Independent Person and the Parish Representative before reaching my decision. Both are in agreement with my decision.

### Decision

For the reasons set out below, I have concluded that the appeal should be dismissed.

### Preliminary

I understand that the complainant, Mr. March was a parish councillor at the time of the conduct complained about, as was Mr. Chris Snook (who has provided evidence in support of Mr. March's appeal). For clarity, I refer to Mr. March as "the complainant" or "Mr. March" throughout this decision record (as I do not consider that Mr. March's status as a parish councillor is relevant to my determining this appeal). However, Mr. Snook's status as a parish councillor is pertinent to the decision, so I have referred to him as "Cllr Snook".

### Basis of Complaint

The complainant sets out details of the complaint on the Council's standard complaint form, and the appended document accompanying it. The complaint relates to Cllr Lissmann's dealings with a member of the public, Mr. Thomas Cullum, about Mr. Cullum's concern around an alleged oil leak at Berry Court Business Park.

The matter arose at the meeting of Pamber Parish Council on 11 March 2019, when planning application ref 19/00370/FUL was considered by the Council. Reference was made to a "neighbour comment" letter that a member of the public [Mr. Cullum] had written to the Parish Council, stating that he had reported an incident of oil being discharged into the stream on the site to the Parish Council and no action had been taken. When the Chairman suggested that the Council should write to the member of the public confirming that the leak had not been reported to the Council, it is alleged that Cllr Lissmann then confirmed that he had been in contact with the parishioner concerned, and had himself reported the matter to the Environment Agency.

The basis of the complaint is that in respect of his dealings with the oil leak, Cllr Lissmann acted on behalf of the Parish Council and contacted the Environment Agency without full consultation or full agreement from the Parish Council, and without any proof.

No specific breach of the Parish Council's Code of Conduct is alleged. The complainant does however refer to the Parish Council's Standing Orders, which he states provide that Councillors cannot act without agreement from the Council. Cllr Lissmann is said to have complained at a previous meeting that the Vice-Chairman acted alone and without the agreement of the Council, calling for the Vice-Chairman's resignation as a consequence.

Finally, the complaint states his view that Cllr Lissmann is acting solely for his own agenda and not in the interest of the entire Parish.

#### Decision of Assessment Team

The Assessment Team, comprising the Monitoring Officer, the Independent Person and a Parish Representative assessed the complaint, and concluded that Cllr Lissmann had not breached the Parish Council's Code of Conduct, as he was not acting as a councillor when he made a report to the Environment Agency but in his personal capacity.

#### Basis of Appeal

The complainant appealed against the Monitoring Officer's decision by email dated 10 September 2019. The complainant enclosed five letters/emails from other Parish Councillors (in one case, Cllr Goss, a former Parish Councillor – see below).

The basis of the appeal was essentially therefore that this additional evidence had not been taken into account in the original decision record.

#### Assessment of Complaint

The complaint did not refer to any provision of the Parish Council's Code of Conduct.

The Code of Conduct published on the Parish Council's website (adopted by Pamber Parish Council on 9th July 2012.) is the applicable Code of Conduct. As it states at the start of the document, it applies (only) when a member [councillor] is acting as a member.

The Code contains various general obligations, including:-

“5. You:

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; “

I can find no other relevant provisions of the Code that might apply to the circumstances under consideration.

If I were to find Cllr Lissmann was acting at the relevant time in his capacity as a Parish Councillor, therefore, the only relevant Code of Conduct issue would be whether Cllr Lissmann breached the general obligation set out above.

The correspondence between the Monitoring Officer and Mr. Cullum, and between her and Cllr Lissmann, is amply set out on pages 2 and 3 of the Decision Notice dated 30 August 2019. This was considered and taken into account by the Assessment Team in reaching the decision to which this appeal relates.

In summary, Mr. Cullum comes into regular contact with Cllr Lissmann through their work for St. Stephen's Hall, and through Mr. Cullum carrying out repairs to Cllr Lissmann's property. Mr. Cullum states that he tried to raise the issue of contamination of the stream with the Environment Agency without success, and that Cllr Lissmann, as a friend/associate rather than acting on behalf of the Parish Council, offered to help, and indeed succeeded in contacting the Environment Agency. This account reflects the information provided by Cllr Lissmann, who confirmed he did contact the Agency's hotline but denies stating to the Agency that he was acting on behalf of the Parish Council. Cllr Lissmann also stated that he had a personal concern about the contamination in a stream next to his property. Cllr Lissmann stated that this took place 6 months prior to the March 2019 Parish Council meeting, and when the matter was discussed he did not make an immediate link between the correspondence mentioned at the meeting and his involvement with Mr. Cullum.

The Monitoring Officer subsequently asked Mr. Cullum for clarification about the reference in his representation letter to oil having been seen in the stream and reported to the Parish Council, as well as details of the Agency's reference number for the matter. Mr. Cullum responded on 5 July 2019 confirming that he did not separately report the matter to the Parish Council, but that he had no record of the reference number.

Cllr Lissmann also stated that neither he nor Mr. Cullum had a note of the reference number.

The Code of Conduct will only apply to Parish Councillors when they are acting as such. Whilst Mr. Cullum may well be aware that Cllr Lissmann is a Parish Councillor, that knowledge does not mean that when he met Mr. Cullum and contacted the Environment Agency, Cllr Lissmann must have been acting in that capacity. Indeed, as the Assessment Team considered in their decision, Mr. Cullum may well have thought that given Cllr Lissmann's links, he was (in raising his concern with Cllr Lissmann) "reporting the matter to the Parish Council". However, that is at odds with his firm comments to the Monitoring Officer which confirm that in his view, Cllr Lissmann was acting as a friend and associate, and not as a representative of the Parish Council.

As I understand it, there were no other persons present at this discussion, and therefore the only evidence available is the evidence they have provided to the Monitoring Officer.

The minutes of the meeting of 11 March do not provide any further information on what capacity Cllr Lissmann was acting at the relevant time, stating only that:-

*“Cllr Robert Lissmann stated that a member of the public did raise concerns with him which he passed on to the Environment Agency. The Parish Council was not informed of this.”*

In making his appeal, the complainant submitted five letters/emails from other Parish Councillors which in his view supported the allegation being made. The conduct complained about by the complainant came to his attention at a meeting of the Parish Council on 11 March 2019. The minutes of that meeting include the following:-

**“42/19: Planning**

**a) Planning applications.**

**Cllr David Snook and Cllr Philp Kingston declared interests in applications 19/00370/FUL and 19/00237/FUL they therefore left the hall.**

**19/00370/FUL –.**

*Change of use of land from agricultural to B8 use as an extension of Berry Court Business Park  
Berry Court Farm, Bramley Road, Little London*

*The Council resolved to respond with **no objections** but to request that screening in the form of a bund and hedgerow should be made a condition of any approval in order to obscure from public view the additional storage and parking areas. A condition should also be placed on the material used to provide the parking/hard standing area. Cllr Simon Greaves to provide the specific details of the requirements for surfacing before Clerk responds to the planning department.*

**19/00237/FUL -** *Continued use of land for the secure storage of touring caravans and motorhomes; retention of fence on top of existing earth bund; retention of extended hardstanding and 12 no. 4m high poles to mount CCTV cameras (no lights); retention of portable site office, retention of resurfaced access track and security gates/barriers (part retrospective).  
Land south of Berry Court Solar Farm, New Road, Little London.*

*Cllr Roger Gardiner declared an interest in this application and did not take part in the discussion or vote.*

*The Council resolved to **object** to this application for the same reasons given to the previous application which were the loss of green space and the increase in traffic movements in the area.*

*Cllr Goss raised a concern about allegations made in a ‘neighbour comment’ letter regarding this application. The member of the public stated that they had reported an incident of oil being discharged into the stream on the site to the Parish Council and no action had been taken.*

*Cllr Goss proposed that the Council should write to the member of the public to refute these allegations and copy the case officer for the planning application.*

*Cllr Robert Lissmann stated that a member of the public did raise concerns with him which he passed on to the Environment Agency. The Parish Council was not informed of this. Cllr Goss to draft a letter for approval by the Parish Council to send to the member of the public.*

**Cllr David Snook and Cllr Philip Kingston re-entered the hall.”**

The minutes were confirmed as a true record at the next meeting of the Parish Council on 19 April 2019:-

*57/19: Minutes of the last meeting.*

*The minutes of the last meeting were approved and signed as a true record*

The minutes record that Cllr Kingston and Cllr Snook were present, but Cllr Lissmann was not. The minutes do not record any debate about the accuracy of the minutes, but either no issue

was raised by any councillors present (including Cllrs Kingston and/or Snook), or the accuracy was questioned but any objections were overruled. Either way, it is in my view appropriate to rely on them (as approved) as an accurate record of the proceedings.

Letters/emails of support were submitted by the complainant as a pdf attachment to his email to the DMO on 10 September 2019, from:-

Chris Goss – Chairman  
Philip Kingston – Vice Chairman  
Roger Gardner – Parish Councillor  
Mary Hale – Parish Councillor – At time of meeting  
David Snook – Parish Councillor – At time of meeting

Cllr. Snook stated:-

“I was also at the March Parish Council meeting in my, then, capacity as parish councillor.

*I remember very well the discussion and Robert Lissmann did state that he was acting on behalf of the parish council in his capacity as parish councillor, for which he should not have done so.” [emphasis added].*

Cllr. Kingston stated:-

“I believe that Cllr Lissmann did admit that he represented himself as a complainant representing the Parish Council to the Environment Agency regarding contamination in Bow Brook at the request of Tom Cullen.”

As noted above, the approved minutes record both Cllrs Snook and Kingston declared an interest in the Berry Court applications, including application 19/00237/FUL. The minutes were approved by the Parish Council at the subsequent meeting as a true record, including Cllrs Snook and Kingston who were present at the subsequent meeting, but excluding Cllr Lissmann who was not present.

On the basis that the minutes are accurate, I do not understand how Cllr Snook can “remember very well the discussion” as according to the minutes he was outside the room during the discussion. As I can ascertain it, the discussion concerning Cllr Lissmann’s involvement took place as part of the discussion on the application (during which time Cllrs Snook and Kingston were outside the room). This conclusion is supported by the minutes, as these record Cllrs Snook and Kingston re-entering the hall after the conclusion of the discussion on the application in question.

Accordingly, I place no weight on the evidence provided by Cllr Snook in support of the complainant’s appeal.

Cllr Kingston caveats his comments by saying “I believe that...” without giving any explanation as to the source of that belief. Like Cllr Snook, he was not present during the discussions, but unlike Cllr Snook he does not indicate his evidence is first hand. His belief may result from subsequent conversations from those present at the meeting, but I do not think his comments give any weight to the evidence of what Cllr Lissmann actually said at the meeting. This is because all Cllr Kingston can do is repeat what he has been told about the discussion, rather than reinforcing (through first hand evidence of what he heard/saw) a particular account of events.

The other Parish Councillors who provided evidence in support of the complainant’s appeal were Cllrs Mary Hale, Cllr Gardiner, and Cllr Goss. According to the minutes, all three were present during the relevant discussion.

Cllr Hale states that she was present, and that Cllr Lissmann did indeed state that he was acting on behalf of the Parish Council in his capacity as Parish Councillor.

Cllr Gardiner recalls [Cllr Lissmann] stating that he acted in his capacity as Parish Councillor, but that he did not recall that he stated he acted on behalf of the Parish Council. Cllr Gardiner goes on to give his view that Mr. Cullen [sic] appeared to have thought he was reporting to the Parish Council [but] the message did not get passed on. He considers that Cllr Lissmann acted on Mr. Cullen's behalf, in his capacity as Parish Councillor. Cllr Gardiner concludes by saying that he would have done the same, unless Mr. Cullen had made it clear that his complaint was to the Parish Council (in which case he would have copied in Leonie [who I believe was the clerk at the time]).

Cllr Goss, the Chairman of the Parish Council, states that his recollection was that initially nobody admitted to speaking to a parishioner about contamination in the brook, but Cllr Lissmann volunteered that Mr. Cullen had spoken to him as a Parish Councillor and he had approached the Environment Agency on his behalf.

Only Cllr Hale provides any evidence that Cllr Lissmann stated he acted on behalf of the Parish Council, but all three of them refer to him stating he acted as a Parish Councillor.

In my view, the best evidence must be from those who were present when the conduct in question took place, namely Mr. Cullum and Cllr Lissmann. The only additional evidence brought forward to the appeal stage by the complainant is the five pieces of evidence from the five Parish Councillors. Of these, Cllr Snook states he remembers very well Cllr Lissmann's words, yet according to the official approved minutes he had declared an interest and was outside the room at the time. Cllr Kingston merely states his belief, rather than what he actually heard, but again he could not have given evidence as to what Cllr Lissmann said at the meeting, as he also was outside at the time.

At best, the additional evidence presented suggests (according to those Parish Councillors giving it) that at the meeting on 11 March, Cllr Lissmann admitted that he was acting as a Parish Councillor.

I am minded to prefer the accounts of those who were present at the conduct in question, rather than second-hand evidence (such as it is) as to what one of those parties subsequently is said to have told the Parish Council six months later.

My conclusion therefore is that in discussing the matter with Mr. Cullum and the Environment Agency, Cllr Lissmann was acting in a personal capacity as a friend/associate, rather than as a Parish Councillor. That being the case, he did not breach the provisions of the general obligation at paragraph 5 of the Code.

Even if he were to have been so acting, I see no evidence that in reporting the matter to the Environment Agency, Cllr Lissmann could be said to have been seeking to improperly confer on himself or another person (e.g. Mr. Cullum) an advantage, or a disadvantage on another person (such as owner of the land alleged to be the source of the contamination). It seems to me that both were concerned about the possibility that a valuable natural asset in the Parish was being threatened, and therefore sought, quite properly in my view, to bring it to the attention of the statutory agency concerned so that they could take appropriate action to protect that asset. Although I do not consider that this was the case, had Cllr Lissmann indicated that he was a parish councillor when he contacted the Environment Agency, I do not consider that that would

constitute Cllr Lissmann using that position improperly, when he was merely reporting, to the appropriate agency, a concern of harm occurring.

A breach of the Parish Council's Standing Orders is not in itself a breach of the Code of Conduct, and therefore is not a matter which can be considered under this appeal.

The final part of the complaint is that in the complainant's view, Cllr Lissmann is acting solely for his own agenda and not in the interest of the entire parish. I have been presented with no evidence to support this part of the complaint, and I therefore reject that part of the appeal.

This complaint is essentially alleging that Cllr Lissmann took action (reporting a concern about the natural environment to the relevant statutory agency) without consulting the Parish Council first. The appeal fails because, like the Assessment Team, I find that in doing so, Cllr Lissmann was not acting as a Parish Councillor, nor was he purporting to act on behalf of the Parish Council. It would have been open to the Parish Council to have retrospectively endorsed Cllr Lissmann's actions, if it so wished.

It appears that at least some of those Parish Councillors who submitted evidence in support of the complaint were unhappy with Cllr Lissmann acting (in their view) without their authority. Had Cllr Lissmann brought the matter to the Parish Council's attention before reporting it to the Environment Agency, the Parish Council could of course have considered whether to make a report in its own name (with the additional force that might have had) or to have declined to report the matter (assuming it had proper reasons for doing so). It could not of course have prevented Cllr Lissmann in his personal capacity from making such a report, which is what, in my view, he did.

I note the comments of the Assessment Team in the Decision Record concerning the report of the Committee on Standards in Public Life entitled Local Government Ethical Standards dated January 2019, and the proposal to extend the code of conduct to apply when a councillor claims to act, or gives the impression of acting, in their capacity as a councillor. I also note the Assessment Team's recommendations that Cllr Lissmann should be mindful of the fact that residents in the parish might well approach him because he is a councillor, and he should assume that this is the basis on which he is being asked to help and clarify the basis of his assistance with them. When he does act as a parish councillor then he needs to inform the clerk to the parish council of any action that he has taken at the first opportunity to ensure that difficulties do not arise between him and his fellow councillors due to a lack of clarity for all concerned.

I would support and endorse this as an approach. Whilst Parish Councillors clearly have a role as a representative of residents, they function best when Parish Councillors co-ordinate their work and keep their colleagues and the clerk informed of matters of interest.

Signed

*H N Bone*

Howard Bone  
15 June 2020