



Basingstoke and Deane

BASINGSTOKE AND DEANE BOROUGH COUNCIL **DECISION NOTICE**

DECISION NOTICE:

Reference: 047349/AGR

Complainant: Mr and Mrs C Elkin

Subject Member: Cllr Clare Read Chairman of Hurstbourne Parish Council

On various dates the Deputy Monitoring Officer and Independent Standards Assessor considered a complaint from the Complainant concerning the alleged conduct of the Subject Member, a member of Hurstbourne Parish Council (HPC). A site visit was made by the Deputy Monitoring Officer on the 10th December 2020 to view the crossroads at Hurstbourne Priors and photographs were taken of the blue advisory sign. The B3408 was driven as was the Harroway.

Summary of the Complainant.

The Complainant asserts that the Subject Member has failed to comply with the Nolan principles in that she has not acted with selflessness, integrity, objectivity, openness and honesty in relation to her role as Chairman of HPC when considering the planning application in relation to the former Hirst Recycling site.

He further alleges that the Subject Member did not declare her interest when the planning application was considered despite being requested to do so and that she has been rude and patronising in her email to the Complainant dated 2nd December at 19.02 when she stated that his email to her was "hysterical". Whilst not specified in the complaint this last allegation has been taken as alleging a lack of respect under paragraph 2(1) of the Code of Conduct that requires councillors to treat others with respect.

The Role of the Complaints Process

The Arrangements for Considering Complaints against Councillors (the Arrangements) are intended to uphold high standards of conduct by councillors. The Borough Council in determining complainants against councillors has no supervisory jurisdiction over decisions made by a parish council. The process cannot consider the decisions that HPC made as a corporate body. Neither does the Borough Council have any role in

determining what may or may not have been a policy of the council. If a parishioner is concerned with the legality or a procedural irregularity of a decision of HPC then the proper route to challenge such matter is by judicial review. The complaints process cannot be used to consider these matters. The Arrangements can only consider the conduct of a councillor and where a breach is found, only the sanctions set out in paragraph 6.7 of the Arrangements can be considered. The complaints process cannot be used to seek a statement from HPC on status of traffic signs on the B3048 or to obtain agreement on what may or may not have been the policy of HPC in relation to lorries using the B3048.

Both parties were offered the opportunity to deal with this matter by informal settlement but this was declined.

As the complaint is substantially more than 6 months old the complaint has been considered on the papers produced by the complainant without consideration of his interpretation of events that happened some years ago. The Complainant accepted that to do otherwise would cause injustice given the passage of time.

The Subject Member has been asked to comment upon the complaint and her comments have been taken into consideration.

Facts

The complaint relates to the consideration of a planning application 16/02664/Ful for residential development on the former Hirst recycling site in St Mary Bourne. HPC were consulted on the application and considered the application at their meeting on 30th November 2016. At the time of the meeting the Complainant was a co-opted parish councillor on HPC having joined HPC on the 29th May 2013 and having made known to the then chairman his concern about Hirst lorries using the Harroway rather than the B3408 through the village of Hurstbourne Priors. The Subject Member became the chair of HPC in May 2015.

HPC had previously commented on the application on the 28th September and it can be noted that on 10th October 2016 they minuted that it would be essential to have a speed limit reduction between the Hirst Site and the Chapmansford crossroads and along the Harroway and welcomed the applicant's willingness to make a financial contribution for the Traffic Regulation Order to achieve this.

The 30th November minutes from the HPC planning meeting record that the Subject Member as Chairman reported that *"she had received several telephone calls and emails from residents regarding trucks stopping at the St Mary Bourne Road (B3408) junction on the B3400 after seeing the "Not Suitable for Long Vehicles" sign before carrying out a multi-point turn to go back towards Andover. There have been several near misses and one minor accident. She felt it important to avoid anything worse. The chairman thought that the planners may need to be reminded that the St Mary Bourne Road through Hurstbourne Priors is not suitable for long vehicles as clearly signed at the crossroad with the B3400. HGV's from Vitacress already use the Harroway"*.

The Subject Member in responding to the complaint produced an email dated the 18th October 2016 from a resident who asked *"if we should track the number of long vehicles that park on the crossroads on seeing the advisory "unsuitable for long vehicles sign on the St Mary Bourne road B3048"*. This email records that at least 2 or 3 per day (lorries)

pull in to assess the route with a waiting time between 2-10 minutes with engines running and that she had seen east bound lorries in the bus stop area, by the telephone box or blocking the entire B3408 by parking entirely across the junction. She stated that Westbound lorries park in the no parking area approaching the Longparish road, thus affecting the sight lines from that junction. She stated that a lorry parking in the no parking area had meant that a car had remained on the main carriageway as it slowed to turn left, resulting in a dangerous situation when the car behind overtook it at speed at the junction.

The minutes of the planning meeting of the 30th November go on to record that the Complainant stated that

“he believed SG from Hampshire Highways had previously stated that there is no restriction on lorries on the B3408 and that all lorries from Hirst are free to use either the Harroway or the B3408, whichever they prefer.” The minutes further state that the Complainant suggested the Chairman *“check this out with SG and that he was totally against this and felt that the problem should not be pushed to other parts of the parish”*.

The minutes then record that the Subject Member made a proposal that

“a request be submitted to the planners for a note to be given to construction traffic for the Hirst Site as the B3408 through Hurstbourne Priors is not suitable for long vehicles”.

The minutes record that another councillor

“thought there was a condition within the outline planning to this effect and said she would check”.

The proposal was seconded by Cllr SS and the motion was carried by 5 votes to 1.

Subsequent to the meeting on the 30th November the Complainant emailed the Subject Member and other councillors and the clerk objecting to the vote taken

“that the PC will apply to Planning for Hirst construction traffic to be deterred from going through the middle of Hurstbourne Priors and instead diverted onto the Harroway, on the ground that the PC think that this route is either unsafe or inappropriate. It is an unjustified decision which contravenes the view of Highways, who confirmed to me in 2013 that there is no traffic or safety reason to do this. Furthermore, Highways have made it clear to me that they will not support such a policy.”

He identifies the safety issues on the Harroway and urges the PC to *“drop this policy”* advising that if it is not dropped that he will lobby planning in a personal capacity as a member of the public which he subsequently did by letter dated the 5th December 2016.

In the event there was no planning condition requiring the construction traffic management plan to route lorries away from the B3408 going to and from the Hirst Site meaning that lorries can select which route they prefer to take.

On the 2nd December the Subject Member responded to the Complainant’s email of the 30th November stating that he had misunderstood the basis of the discussion at the planning meeting. She stated

“what we were talking about was ensuring that long vehicles engaged by the contractors – both those dismantling the Hirst site and those of Cleanslate- are aware of the already

designated and established route for lorries via the ongoing planning process for the site. We are not seeking to re-designate or re-assign roads as being lorry routes. The B3408 is not suitable for long vehicles as clearly indicated by the sign at the crossroads with the B3400. Our discussion was based around the danger of such lorries stopping at the junction discovering that they cannot turn and then, on a very busy road, having to undertake a dangerous manoeuvre to go back up the hill"....."we are not discussing traffic in general, just large lorries that are already restricted being given clear instructions as to the safest route to approach and leave the site".

The email concluded by saying

"that it is the PC's job to listen to, and where possible, act upon the concerns of its residents. This was something that has been brought to my attention on a number of occasions by several different residents and that is why I shared it with the PC, particularly in light of the conditions contained within the outline planning application that has been granted for the Hirst site. I am not sure that your hysterical email is helpful to anyone".

In summary the Complainant's reply of the 2nd December stated that

- The Subject Member's email was rude, patronising, sneering and more importantly misguided and that her conduct was not becoming in her role as Chair
- That the incidents referred to involving lorries were not accurate
- That the discussion at the meeting was curtailed and put to the vote without adequate discussion
- That the impact of shuffling traffic from the B3408 to the Harroway was not considered, nor the accidents on the Harroway
- That her assertion that long vehicles "both dismantling the Hirst Site and those of Cleanslate are aware of the already designated and established route for lorries is incorrect and misleading
- He was resigning from the PC with immediate effect

The clerk to the PC wrote to the planning officer on the 4th December attaching supplementary comments in respect of the pending planning application at the Hirst site. Paragraph 2 of these comments stated:

-

Outline planning has been granted in respect of this site. Paragraph 24 of the notice of approval refers to the need to ensure that there is a Construction Method Statement in place before any development begins at the site. The Method Statement is to demonstrate safe and coordinated systems of work affecting or likely to affect the public highway. Similarly, sub paragraph x of paragraph 24 stated that the CMS shall include reference to "the routes to be used by construction traffic to access and egress the site so as to avoid undue interference with the safety and operation of the public highway and adjacent roads, including construction traffic holding areas both on and off the site as necessary."

In relation to this, it is our view that it would be appropriate for the approved CMS to take account of the following two facts:-

- (a) *When headed north from the junction of the B3408 with the B3400 there is a blue rectangular information sign that states that the B3048 is unsuitable for long vehicles*

- (b) *HGV traffic to and from the nearby Vitacress is obliged to follow a designated HGV route which is secured through a s 106 agreement attached to permission BDB/69802 to avoid passing through the villages of St Mary Bourne to the north and Hurstbourne Priors to the south of the site. The approved HGV route follows the B3048 south from the site to the Harroway crossroads and the either eastwards to the A324 north of Whitchurch or westwards to the A303 east of Andover. The HGV route is fully signed using white – on – black DfT approved signage expressly stating Vitacress.*

In the Complainants letter of the 5th December to the planners he pointed out that the reminders in the PC letter to planning were irrelevant to Hirst because

- (a) The blue sign is advisory only and refers only to the small bridge in St Mary Bourne. Highways are clear that it does not imply that the B3408 between Hurstbourned Priors and the Hirst site is unsuitable for long vehicles. We had been told by Highways that the B3048 **is** suitable for long vehicles.
- (b) The designated route for lorries using the Harroway in a planning condition specific to Vitacress only and does not apply to any other site

Decision

In accordance with the Arrangements the Subject Member has not breached the Nolan principles or failed to declare an interest or treated the Complainant with a lack of respect.

Reasons for decision

Allegation of breach of the Nolan principles

The meeting of the 30th November record that the Subject Member reported that she had received several telephone calls and emails from residents regarding trucks stopping at the St Mary Bourne Road junction after seeing the “not Suitable for Long Vehicles “ sign. Whilst this sign is an advisory sign the effect of it seems to be that lorry drivers stop their vehicles somewhere around the junction to consider whether or not to proceed along the B3408 towards St Mary Bourne and this may create safety issues at this crossroads. This view is supported by the email from the local resident supplied by the Subject Member dated the 18th October.

The Complainant has stated at various times over the years that this advisory sign has been placed at the Hurstbourne Priors junction because of the narrow bridge in St Mary Bourne which cannot be used by Lorries and has obtained confirmation of this from the County Highways team. This is factually correct. He has reported this to HPC in the past.

That said, a lorry driver approaching this junction would not know the reason for the sign or where the problem lies along the route to St Mary Bourne. The effect of the sign is to make the driver consider whether he wishes to drive along the route and this was the

context within which the Subject Member commented that “the St Mary Bourne Road through Hurstbourne Priors is not suitable for long vehicles as clearly signed at the crossroad with the B3400”. She did not say that there was a restriction that prevented Lorries from using this road. It was her opinion and ultimately that of HPC, in responding to the planning consultation from the Borough Council, that the road was unsuitable due to the safety issues that arose with Lorries stopping at the junction. Parish councillors will frequently hold such opinions even though they are not and are not expected to be, experts in the field of highway safety. The point of the consultation is to allow consultees to voice such opinions to the Borough Council who will be seeking their own highways advice on planning applications from County Highways. This then allows the planning officer dealing with the case to decide what weight should be given to the consultee comment when weighing the planning considerations and making their recommendation on any given application and the conditions that should apply where planning permission is recommended to be granted.

The minutes make it clear that the meeting had received representations from the Complainant that there was no restriction on Lorries on the B3408 and that all Lorries from the Hirst site could use either the Harroway or the B3408. The word restriction is used in the context of a traffic regulation order prohibiting Lorries from using the route and were this to be the case, then the sign would have been red rather than a blue advisory sign. There is nothing in the minutes to suggest that HPC disputed that the Lorries could take either route but the Complainant suggested the Chairman check with County Highways that Lorries were free to use either the Harroway or the B3408 as he felt the effect of such a representation would be to increase the usage of the Harroway rather than the B3408.

The Chair made the proposal that a request be submitted “*to the planners for a note to be given to construction traffic for the Hirst Site as the B3408 though Hurstbourne Priors is not suitable for long vehicles*”. The minutes show that another councillor thought there was a planning condition on the outline consent to this effect (i.e. restricting the Hirst lorries from using this route) and said she would check.

The proposal was seconded and HPC took the decision to raise the issue as suggested in the proposal by the Subject Member. The Chair did not make and had no power to make an individual decision on this matter. At the time HPC made this decision they did not know whether there was a condition on the outline consent of the Hirst site requiring Lorries to use the Harroway rather than the B3408 but this did not matter as HPC in accepting the motion did so for the reasons that were set out by the Chair as the proposer. These safety concerns seem to be borne out by the email from the resident as set out above who suggested that HPC should consider asking for the advisory sign to be removed for a trial period to see whether this would stop lorries stopping at the Hurstbourne Priors junction.

By the time that the clerk had written her letter to the planning officer on the 4th December setting out the views of HPC, clarity must have been obtained on whether the

Hirst site had a condition on the outline consent to stop Lorries from using the B3408 as there is no mention of this in the representation that was sent.

On a straight reading of this representation it sets the context for making the representation, namely the Hirst outline consent and the Construction Method Statement and the purpose of the CMS in demonstrating safe and coordinated systems of work affecting or likely to affect the public highway. It then sets out two “facts” which are asked to be taken account of in the CMS as referred to above. Paragraph (a) refers specifically to there being a blue information sign to the effect that the B3048 is unsuitable for long vehicles. HPC were not therefore suggesting that the B3408 was a restricted route. Paragraph (b) refers to the designated route for HGV’s to and from the Vitacress site secured by a legal agreement. It cannot be inferred from this representation that HPC were suggesting a routing agreement for the Hirst site along the Harroway. Similarly, it is not right to say that the Subject Member as Chairman was suggesting this either as her proposal became the adopted position of HPC.

All the allegations of breach of the Nolan principles by the Chair in fact relate to the Complainants complaint about the issues that he thought HPC should have taken into account in reaching its decision such as the impact of any additional traffic upon the Harroway and the residents who live along it; whether HPC had taken sufficient notice of status of both roads as confirmed by County Highways and the history of how HPC had encouraged Lorries to take routes other than passing through the village. These are not matters that can be attributed individually to the Subject member as Chairman and to the extent that they are criticism of the decision taken by HPC to make representations in the form that they did, a Code of Conduct Complaint is not the right forum to question the decision.

Failure to declare interest at the 30th November meeting.

The Complainant states that the Subject Member should have declared that she had an interest in the planning application under consideration as she lives and owns a property on the crossroads in Hurstbourne Priors. The planning application under consideration was the Hirst site in St Mary Bourne. The complainant argues that the Subject Member had an interest as she made of proposal suggesting that the B3408 would be unsuitable for Lorries to access the Hirst Site.

There is no evidence that the Chairs purpose in making this proposal was to protect the value of her property from the effects of additional HGV’s passing through the village but rather that there were concerns about Lorries stopping at the crossroads. Similarly it could be argued on this basis that the Complainant should have declared an interest as his purpose was to ensure that additional traffic was not put on the Harroway route past his own property. Other members of HPC would have been similarly affected, most living in the village.

The test is an objective test, namely whether the reasonable man in the street would think that the Subject Member might be influenced in commenting upon the planning application in another village just because Lorries might drive past her property to reach the development site. A reasonable man is unlikely to think this- it is not the same as a property being directly affected by development taking place in close proximity to a property owned by a councillor.

Did the Subject Member show a lack of respect to the Complainant in her email of the 2nd December?

The issue is whether referring to the Complainants email to the Subject Member on the 30th November as “hysterical” when replying on the 2nd December showed a lack of respect to the Complainant.

The term “respect” is not defined in the Code, however the requirement to treat others with respect must be viewed objectively.

In the case of R (Mullaney) v Adjudication Panel for England (2009) EWHC 72, the High Court stated that:

"The concept of respect is perfectly capable of being applied by a reasonable person. The definition of respect ... is straightforwardly stated as 'failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another'. The circumstances are also relevant and can include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged act of disrespect".

The conduct must be unreasonable, unwarranted and personalised to breach the Code. It should also be set within the context of who was involved and the totality of the complaint and its previous history.

The Subject Member has the right of freedom of expression under Article 10 ECHR. Political expression – what is said or published by elected representatives such as councillors – is of particular importance and in accordance with the law, receives enhanced protection under Article 10. The Complainant was a fellow Parish Councillor at the time of this email not a member of the public.

The case of Heesom v Public Service Ombudsman for Wales (2014) EWHC 1504, considered a councillor's right to free speech in some detail and set out the following principles:-

- (a) While freedom of expression is important for everyone, it is especially so for an elected representative of the people;
- (b) The enhanced level of protection applies to all levels of politics, including local;
- (c) Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-

rational and aggressive language, that would not be acceptable outside that context, is tolerated.

(d) Article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false;

(f) There is a distinction between facts, and comment on matters of public interest involving value judgment. Comments in the political context amounting to value judgments are tolerated even if untrue, as long as they have some factual basis. Even where something expressed is not a value judgment but a statement of fact that will be tolerated if what is expressed is said in good faith and there is some reasonable (even if incorrect) factual basis for saying it.

It is clear that emotions between two Parish Councillors were running high as shown by the equally strong language used by the Complainant to the Subject Member in his resignation email of the 2nd December. Both Councillors expressed their opinions in strong terms but the Subject Member was entitled to do by virtue of her right of free speech used in a the political arena. The Subject Member therefore did not show a lack of respect to the Complainant as a fellow Councillor.

This decision notice is sent to the person making the allegation, the Member against whom the allegation was made and the clerk to the parish council

Right of Appeal

There is a right of Appeal to the Monitoring Officer within 10 working days of the date of this notice

Additional Help

If you need additional support in relation to this or future contact with us, please let us know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Disability Discrimination Act 2000.

We can also help if English is not your first language.

Access to the complaints process

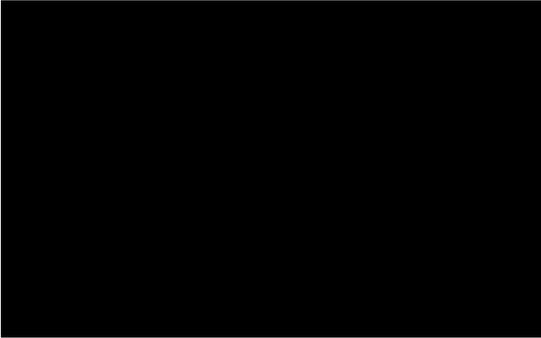
Certain groups of customers may find it more difficult to make a complaint for example due to English not being their first language, sight impairment etc. It is our duty to assist the complainant in gaining access to the complaints procedure but we must not make the complaint for them or misrepresent their complaint. The Council do not insist that a complaint is made in writing, particularly where this would hinder an individual in making their complaint.

The following services are available to assist customers in making their complaint.

Translation
Interpreting
Braille/Large Print
Minicom
Text
Online form

Signed

Date 16th February 2021



**Ann Greaves
Monitoring Officer/Deputy Monitoring Officer**