

Standards Committee - Local Hearing Sub-Committee

Tuesday, 20 March 2007

Present: Mr Ellwood (Independent Chair) and Councillor Thomas Bedford and Darren Cranshaw (Parish Council representative)

Also in attendance: Kathleen Berry (Wheelton Parish Councillor), Richard Scambler (Wheelton Parish Councillor) and Terry Dickensen (Wheelton Parish Councillor)

Officers: Peter Hassett (Principal Solicitor, Wigan Metropolitan Borough Council), Ruth Hawes (Assistant Democratic Services Officer) and Andrew Docherty (Investigating Officer (Director of Customer, Democratic and Legal Services))

07.SSC.01 WELCOME AND INTRODUCTIONS BY THE CHAIRMAN

The Chair welcomed everyone to the meeting of the Local Hearing Sub-Committee and introduced each person present.

The Chair outlined the purpose of the Hearing and explained the process that would be followed.

The Investigating Officer and Councillors Scambler and Berry all confirmed that they were in agreement that the hearings in relation to allegation two against the two Councillors be heard together by the Sub-Committee. The Sub-Committee therefore RESOLVED to hear the two cases together.

The Sub-Committee RESOLVED (on ground 7C) to exclude the public from the hearing at such times when they were deliberating to reach a finding on the matters before them.

07.SSC.02 APOLOGIES FOR ABSENCE

No apologies for absence were submitted.

07.SSC.03 DECLARATIONS OF ANY INTERESTS

None of the Sub-Committee Members declared any interest in relation to matters under consideration at the meeting.

07.SSC.04 REPORT INTO ALLEGED BREACHES OF THE CODE OF CONDUCT

The Chair noted that all of the parties had received the pre-hearing summary and the report of the Investigating Officer.

The Sub-Committee noted that on 20th July 2006 an Ethical Standards Officer (ESO) of the Standards Board for England referred for local investigation allegations made against Councillor Richard Scambler and Councillor Kathleen Berry

The allegations were:

1. Councillor Richard Scambler failed to record in the Council's register of interests his ownership of a plot of land adjoining a local sand quarry.
2. Councillor Richard Scambler and Councillor Kathleen Berry (who are brother and sister) participated in discussions and decisions about the quarry at a meeting of the Parish Council held on 5th June 2006 without declaring their interests.
3. Councillors Kathleen Berry and Richard Scambler used their position improperly to secure a disadvantage for the owner of the quarry in question.

The investigation was conducted by Mr Andrew Docherty, Director of Customer, Democratic and Legal Services and Monitoring Officer of Chorley Borough Council (Investigating Officer). The Investigating Officer submitted his final report dated 8th January 2007 to the Standards Committee – Local Hearings Sub-Committee for its consideration.

(a) Findings of Fact

The following facts in the Investigating Officer's report were undisputed:

Allegation One:

The "pink land" is not in the area of Wheelton Parish Council

The "pink land" is owned by Councillor Scambler's mother.

Councillor Scambler does not have a beneficial interest in the "pink land".

Allegation Two:

The land is not within Wheelton Parish.

There is no real possibility of a vehicular access being created to the quarry across the pink land and it has no separate development value.

The pink land has never been part of the quarry land. Although people have walked across the pink land to get to the quarry site, there is no public right of way and there is now a fence separating the land from the quarry.

Councillor Scambler believed he had as much as anyone to contribute to the debate. Having a farming background he understands the amount of work that will be required to drain and level land to create usable pitches.

Allegation Three:

The Wheelton Parish Council invited a member of the public to advise it in relation to the sand quarry.

That member of the public was in dispute with the current owner of the quarry.

The following facts in the Investigating Officer's report were disputed:

Allegation One:

None.

Allegation Two:

"7.10 It is the wish of the Parish Council that the land should be used to a greater extent than it is currently. It is very likely that increased use of the land would lead to an increase in use of the paths across the pink land. Mrs Scambler would either have to take active steps to control the use or accept the use. If she accepted the use she would either have to accept that the paths would become dedicated eventually as public rights of way or take steps to prevent that happening. As the landowner she would owe legal duties to those coming on to her land. While the burden of those duties might still be light they would clearly be greater the more the land is used. The Investigating Officer does not suggest that any of this would be especially burdensome but, taking the broad interpretation of well being that the case law and guidance suggests, he does think that it is enough to suggest that her well being would be affected to a degree."

Councillors Scambler and Berry's reasons for disagreeing with paragraph 7.10 of the Investigating Officer's report are "As there are no officially designated footpaths on the land this would not produce a burden on Mrs Scambler".

Councillors Scambler and Berry suggestion that paragraph 7.10 should read "This would not produce a burden on Mrs Scambler as there are no footpaths for access on the "pink land".

Whether there was a need to declare an interest given that the land is not in Heapey Parish.

Allegation Three:

None.

Written evidence

The Sub-Committee considered Councillors Scambler and Berry's written response to the evidence set out in the Investigating Officer's Report set out on Form A.

Summary of submissions by Councillor Richard Scambler and Councillor Kathleen Berry:

- The quarry and the "pink land" are not situated within Wheelton Parish.
- It is public knowledge that their mother Mrs Scambler owns the "pink land"
- There is no vehicular access to the quarry through the "pink land"
- There are no public footpaths over the "pink land"
- The "pink land" is fenced off from the quarry land
- Any development of the quarry land is unlikely to include the "pink land"
- If the quarry land becomes used for public recreation then Mrs Scambler may decide to give the "pink land" to the Council.
- Wheelton Parish Council and two other Parish Councils wish there to be community recreational use of the quarry land. The owner of the quarry land wishes it to be used for a small number of houses, a fishery, possible allotments and a possible refreshment area.
- The Wheelton Parish Council will require a minimum 25 year lease of the quarry land to enable it to attract grant money.
- The "pink land" cannot be built upon because it has a sewer running beneath it.
- The District Valuer has valued the "pink land" at £25,000.
- Since May 2006 Heapey Parish Council has begun to lose interest purchasing or leasing the quarry land to allow public recreational use.
- Councillor Scambler said that he had informed the meeting of Wheelton Parish Council that in his experience it would take a lot of work and expense to bring the quarry land up to the required standard for sports pitches and to provide a car parking area. The expense and amount of work involved would not be justified if the three Parish Council's only had a five year lease of the quarry land.
- The person in dispute with the owner of the quarry land had offered to attend a meeting of Wheelton Parish Council. The Vice Chairman of Wheelton Parish Council had said that he would offer the quarry land owner the same opportunity.
- They do not dispute the accuracy of the first sentence of paragraph 7.10 of the Investigating Officer's report.
- They accept that the public do walk along the path that crosses the south east of the "pink land" to obtain access to the quarry land.
- The advice that they had been consistently given was that Parish Councillors only need to register an interest in land that they own within the Parish and only need to declare an interest at meetings of the Parish Council in relation to land that is situated within the Parish.
- They had asked Chorley Borough Council to attend a meeting of Wheelton Parish Council to provide training in relation to the Code of Conduct, although there is no record of this.

- They had checked three times with Chorley Borough Council as to whether they needed to register ownership of land outside of Wheelton Parish and on each occasion they were advised that they did not
- The discussion was in the public interest and they had done everything possible not to contravene the Code of Conduct.
- Wheelton Parish Council now has a standing item on the agenda for each of its meetings in relation to declarations of interest.
- The delay in the completion of the investigation has caused problems for them and the recent newspaper article regarding the hearing was prejudicial to them.

Summary of Submissions by the Investigating Officer:

- The path shown on the map at Appendix 4 of his report to cross the north west of the "pink land" appears to be infrequently used by the public
- The path shown on the map at Appendix 4 of his report to cross the south east of the "pink land" appears to be frequently used by the public, is clearly walked and the fence trampled down where the "pink land" meets the quarry land.
- He accepts that there are no public footpaths across the "pink land"
- There is no car parking on the "pink land"
- The public appear to park their cars on the car park of the public house on Kenyon Lane and walk across the "pink land" to access the quarry land.
- The Highway Authority are likely to object to development on the "pink land"
- Should the quarry land become more frequently used Mrs Scambler, the owner of the "pink land" will either have to accept increased public use of the "pink land" for accessing the quarry land or take action to prevent the public crossing the "pink land". Either way increased use of the quarry land would affect the well being of Mrs Scambler.
- He has not given any advice to Wheelton Parish Councillors since he took up his post
- The duties within the Code of Conduct in relation to registration and declaration of interests are separate and different
- The Code of Conduct places a duty on Parish Councillors to register any land that they own within the Parish
- The Code of Conduct places a duty on Parish Councillors to declare an interest at a meeting if they (or a relative or friend) own land (irrespective of its location) and their wellbeing will be affected by a decision of the Parish Council more than other inhabitants of the area.
- In his view Councillors Scambler and Berry had a personal and non-prejudicial interest in the matter under discussion at the Parish Council meeting.
- Councillors Richard Scambler and Kathleen Berry have not been provided with any training in respect of the Code of Conduct.

In relation to allegation 1 the Investigating Officer found that Councillor Scambler had not breached paragraph 12 of the Code of Conduct in respect of the register of interests.

In relation to allegation 3 the Investigating Officer found that Councillor Scambler and Councillor Berry had not used their position improperly to secure a disadvantage for Mr D and thereby did not breach paragraph 5 of the Code of Conduct.

The Standards Committee - Local Hearing Sub-Committee considered the Investigating Officer's findings in relation to allegations 1 and 3 and, based on the facts set out in the Investigating Officer's report in relation to those two allegations, agreed with the findings of the Investigating Officer in relation to allegations 1 and 3.

After considering the submissions of the parties and the evidence before it the Standards Committee – Local Hearing Sub-Committee found the facts within

paragraph 7.10 of the Investigating Officer's report to be accurate. The Sub-Committee RESOLVED to accept the facts set out in the Investigating Officer's report.

Reason for Decision

Councillors Richard Scambler and Kathleen Berry both agree that Wheelton Parish Council would like to see increased use of the quarry land and accept that the path across the south east of the "pink land" is used, rightly or wrongly, to access the quarry land. The Investigating Officer's analysis within paragraph 7.10 of his report inevitably follows after these two facts have been found.

(b) Breach of the Code

Councillor Richard Scambler and Councillor Kathleen Berry both conceded that they had inadvertently breached paragraph 8 of the Code of Conduct as alleged in allegation 2.

The relevant sections of the Code of Conduct are:

Paragraph 7

"A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 12 and 13 of the Code, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other Council Tax payers, ratepayers, or inhabitants of the authority's area, the well-being or financial position of himself, a relative or friend or....."

Paragraph 8

"A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent."

Paragraph 9

"A member with a personal interest in a matter also has a prejudicial interest in that matter if 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 member's judgement of the public interest".

Paragraph 10

"A member with a prejudicial interest in any matter must –

- (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from the standards committee of the responsible authority, and
- (b) not seek improperly to influence a decision about that matter".

Paragraph 5

"A member - must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage."

Paragraph 12(f):

"A member must register his financial interests [including] the address or other description ... of any land in which he has a beneficial interest and which is in the area of the authority."

The Standards Committee – Local Hearing Sub-Committee decided that Councillor Richard Scambler and Councillor Kathleen Berry had failed to comply with paragraph 8 of the Code of Conduct as alleged in allegation 2.

Summary of submissions by Councillor Richard Scambler and Councillor Kathleen Berry:

- They accepted that they had inadvertently failed to comply with the Code of Conduct
- They had written a letter to the Standards Board for England to say that they were disappointed that a complaint had been made when the breach was inadvertent
- They accepted that the Investigating Officer had been very fair with them and had fully co-operated with his investigation
- Because the failure to comply with the Code of Conduct was inadvertent they suggested that there should be no penalty imposed for their breach of the Code.

Summary of submissions by the Investigating Officer:

- The fact that the Standards Board for England had referred the matter to Chorley Borough Council for local investigation showed that the Board considered the matter to be at the lower end of seriousness
- No breach of the Code of Conduct had been found to have occurred in relation to allegations one and three
- There is a lack of awareness within Parish Council's regarding the provisions of the Code of Conduct
- A new Code of Conduct is expected to be issued within the next few months to replace the current Code
- There will then be an opportunity for Parish Councillors to be provided with the training they need or deserve regarding the provisions of the new Code.

(c) Decision of the Committee

The Standards Committee – Local Hearing Sub-Committee reached the following decision after carefully considering the written evidence and submissions of the parties.

RESOLVED – That Councillor Richard Scambler and Councillor Kathleen Berry shall both be censured and both required to send a written apology to the Clerk of Wheelton Parish Council in respect of their failure to comply with paragraph 8 of the Members Code of Conduct.

The above penalties will take effect from the date of the decision, namely, 20th March 2007.

The Standards Committee – Local Hearing Sub-Committee decided to impose the above penalties because:

- The Sub-Committee accepted that Councillor Richard Scambler and Councillor Kathleen Berry's failure to comply with the Code of Conduct was made unknowingly and without malice
- The Sub-Committee accepted that there was no financial impropriety on the part of Councillor Richard Scambler and Councillor Kathleen Berry
- There was clearly a lack of awareness on the part of Councillors Richard Scambler and Kathleen Berry
- The Sub-Committee noted that Councillor Richard Scambler and Councillor Kathleen Berry had co-operated fully with the investigation
- All the facts of the case show Councillor Richard Scambler and Councillor Kathleen Berry's failure to comply with the Code of Conduct to be at the lower end of seriousness
- Although Councillor Richard Scambler and Councillor Kathleen Berry's failure to comply with the Code of Conduct was inadvertent the Sub-Committee concluded that there is a duty on all Councillors to make themselves aware of and understand the provisions of the Members Code of Conduct.

- The Standards Committee – Local Hearing Sub-Committee therefore considered that the penalty imposed was appropriate.

Right to Appeal

Councillor Richard Scambler and Councillor Kathleen Berry have the right to apply in writing to the President of the Adjudication Panel for England for permission to appeal the Standards Committee's finding. Written notice requesting permission to appeal must be received by the President of the Adjudication Panel within 21 days of the Member's receipt of notification of the Standards Committee's finding.

Recommendations to the Authority

The Standards Committee – Local Hearings Sub-Committee made no recommendations in relation to the promotion and maintenance of high standards of conduct by the Members of the Wheelton Parish Council.

Chair