

Appeals Tribunal Decision

Case Ref:	APE 0423
Date of Appeals Tribunal:	29 May 2009
Relevant Standards Committee:	North West Leicestershire District Council
Date of Standards Committee Decision:	12 February 2009
Name of member concerned: <i>(Appellant & his authority)</i>	Councillor Gamble of <i>Ellistown & Battleflat Parish Council</i>
Monitoring Officer:	Elizabeth Warhurst
Independent Investigator:	Margaret Taylor
<u>Appeals Tribunal Members</u>	
Chairman:	Simon Bird
Member:	Alex Rocke
Member:	Neil Pardoe

1. The Appeals Tribunal has considered an appeal from the Appellant about the above decision.
2. The Appeals Tribunal has considered written and oral submissions from Mr David Gill on behalf of the North West Leicestershire District Council Standards Committee and the Appellant and has heard evidence from Christopher Lawrence, Margaret Taylor, the Appellant and Penny Wakefield.
3. The Appellant has appealed against the determination by the Standards Hearing Sub-Committee of North West Leicestershire District Council that he had failed to comply with paragraphs 3(1) and 5 the Council's Code of Conduct and the sanction which was to require him (a) to send a suitably worded letter of apology to Mr C J Lawrence and (b) to undergo one to one training on the Code of Conduct.
4. The Ellistown and Battleflat Parish Council adopted the current model Code of Conduct on 4 September 2007.
5. Paragraph 2(1) of the Code provides:

"...you must comply with this Code whenever you:

(a) Conduct the business of you authority (which, in this Code, includes the business of the office to which you are elected or appointed)..."
6. Paragraph 3(1) of the Code provides:

"You must treat others with respect"

7. Paragraph 5 of the Code provides:

“You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute”.

8. The Standards Committee found as a fact that during a Public Question and Answer Session of a meeting of the Parish Council on 23 July 2008 (attended by the Appellant in his capacity as a parish councillor) an exchange took place between the Appellant and Mr Lawrence which amounted to a breach of paragraphs 3(1) and 5 of the Code. In its decision, the Standards Committee made no findings of fact as to what was said by the Appellant in the exchange between himself and Mr Lawrence and nor did it provide any reasoning as to why what was said amounted to a failure to comply with those paragraphs of the Code.
9. The substance of the Appellant’s grounds of appeal is that no exchange amounting to a breach of the Code in fact occurred. In the light of this and in the absence of the necessary and relevant findings of fact in the Standards Committee decision, the Appeals Tribunal has found it necessary to proceed by way of rehearing.

Background

10. The Appellant is an elected parish councillor of the Ellistown and Battleflat Parish Council (“the Parish Council”) and signed his Declaration of Acceptance of Office on 6 May 2008.
11. The Appellant gave a written undertaking to observe the Code of Conduct on 6 May 2008.
12. The Parish Council adopted the current model Code of Conduct on 4 September 2007.
13. A meeting of the Parish Council was held at The Methodist Church Hall, Whitehill Road, Ellistown on 23 July 2008. The Appellant attended that meeting in his capacity as a Parish Councillor and throughout its duration he was acting in his official capacity for the purposes of the Code.
14. Mr Lawrence, the Managing Director of T P Lawrence & Son Ltd a company which runs a vehicle repair and petrol fuel forecourt in the centre of Ellistown (“the Garage”), attended the meeting as a member of the public.
15. The Appellant had concerns about the operations at the Garage and in particular, the alleged refuelling of Heavy Goods Vehicles of a weight exceeding the limit imposed by a Road Traffic Regulation Order which sought to prevent such vehicles entering the centre of the village.
16. A Public Questions and Answer session was held as the third item on the agenda for the meeting. During this item the minutes record the following:
- “The issue of the current weight restriction was raised. Cllr Gamble stated that he had been in contact with Ian Drummond from County Council in relation to introducing a traffic regulation order. Cllr Pollard informed those present that a meeting was due to take place to discuss this matter. Mr Lawrence was very concerned about this issue and stated that if a traffic regulation order was put into place, prohibiting lorries using the garage, he would [lose] his business and livelihood.”*
17. There was a dispute of fact as to whether during this part of the meeting, the Appellant questioned Mr Lawrence’s right to be present and the Appeals Tribunal heard evidence in relation to this dispute.

Summary of the Evidence

18. Mr Lawrence's evidence was that he had been made aware of the meeting by a leaflet put through his letter box and had attended because he was interested in two development proposals; one for an incinerator, the other a proposal by UK Coal and also in knowing what stage had been reached in attempts to enforce the lorry weight restriction which would affect his business. There were at least 50 parishioners in the meeting.
19. In the Public Question and Answer session, Mr Lawrence asked where he stood with lorries coming into the garage forecourt and the Appellant had stood up and replied "It will be finished in the autumn". Mr Lawrence recalled the Appellant holding up an email and referring to it. At the end of saying this, the Appellant had said "What are you doing here?" The Appellant had been quite calm. Mr Lawrence replied "the same as everyone else". Mr Lawrence was upset and embarrassed by the question and the more he thought about it, the more he considered that he should not have been asked it. It was the fact that he had been asked the question rather than the tone of it which angered him. This was a public meeting and it should not have mattered why he had gone. He had complained because he felt angry. The Appellant had said nothing else to him. Mr Lawrence did not recall any interruption to this part of the meeting occasioned by the arrival of and/or conduct of Mr Smith. When the UK Coal application was discussed the meeting became disorderly because the Chairman failed to say whether he was for or against the proposal.
20. Mrs Taylor had undertaken the investigation on behalf of the Monitoring Officer. In her evidence she said that she had asked the Parish Clerk for the minutes of the meeting of 23 July 2008 and also whether the Clerk could add anything about the exchange between the Appellant and Mr Lawrence. The Clerk stated that she could not add to the minutes. Councillor Burton had been interviewed on 1 October 2008 in a pre-arranged telephone interview because Councillor Burton had her own complaint about the Appellant. This had been made in a letter received by the District Council on 25 July 2008 which alleged that the Appellant "was very rude & abrupt to me & the residence (sic) of Ellistown at the meeting". During the course of the telephone interview Councillor Burton volunteered evidence that there was altercation between the Appellant and Mr Lawrence about Mr Lawrence's garage business. Mr Lawrence had sought to speak and the Appellant was rude and would not allow him to make his point and speak. Mr Lawrence had been cut off. Councillor Burton had been "gobsmacked" by the Appellant's behaviour towards Mr Lawrence and others were shocked by it. Mrs Taylor confirmed that no other members of the public present at the meeting had complained about this alleged behaviour.
21. The Appellant gave evidence that, in response to Mr Lawrence's question, he had moved down the hall to where Mr Lawrence was sitting to show him an email which had had received from Ian Drummond, the Assistant Director of Transportation of Leicestershire County Council addressing the refuelling of lorries at the garage. He had also shown this to the County Councillor who was present at the meeting. He had said in response to Mr Lawrence's question and in reliance on this email, words to the effect of "it will all be over by the autumn". He had not said "What are you doing here?" and it would have been illogical for him to have done so given that he and Councillor Truman had been responsible for the summoning of what was an Extraordinary General Meeting and he had personally delivered over 1000 leaflets advertising it. Mr Lawrence had not been happy about the Appellant's response to his question. The Appellant was calm throughout the exchange. It was at this stage that Mr Smith's entrance briefly interrupted the meeting.
22. Penny Wakefield's evidence was that she had attended the meeting throughout and, given the size of the hall would have heard all that had been said. At the time she

knew of the Appellant from her recently commenced attendance of parish council meetings but did not know him. She recalled quite a heated exchange about lorries using the garage with feelings running high on both sides and extending beyond the Appellant and Mr Lawrence however, given the passage of time she did not recall a lot of detail. She did not recall the Appellant moving from his seat to approach Mr Lawrence but did recall an exchange of views. She was hard pushed to say at this juncture what was said but she did not recall the Appellant being abusive or swearing. She did not recall the Appellant questioning the Appellant's right to be present. She did recall an elderly resident (whose name she did not know) coming in and disrupting the meeting quite early on.

Findings of Fact

23. In making its findings of fact the Appeals Tribunal has applied the civil standard of proof, the onus being on the Standards Committee to prove that it is more likely than not that the Appellant uttered the words in dispute.
24. The Tribunal find the following facts:
 - 24.1. The meeting of 23 July 2008 was a well attended meeting of the parish council attended by approximately 50 members of the public;
 - 24.2. The meeting, an Extraordinary Meeting of the Parish Council, had been called at the Appellant's and Councillor Truman's request and the Appellant had advertised the meeting by leafleting;
 - 24.3. The progress of the meeting followed the published agenda and had two principal items of business (a) a Public Question and Answer Session limited to 15 minutes which enabled the public present to ask questions generally on matters of local interest and (b) discussion of the UK Coal planning application for which the Council's standing orders were suspended to allow the public to address the Council;
 - 24.4. Although there were some strong feelings on some issues, the mood of the meeting remained calm during the Public Question and Answer Session, whilst during the debate of the UK Coal application it became disorderly;
 - 24.5. During the Public Question and Answer Session Mr Lawrence asked a question about the likely effect on his business of the weight restriction on lorries with Ellistown;
 - 24.6. The Appellant responded by (a) saying that the business of refuelling lorries would be over by the autumn; (b) making Mr Lawrence aware of the content of an email from Leicestershire County Council's Assistant Director of Transportation (Ian Drummond). Whilst there is a dispute as to whether the Appellant moved down the hall to show Mr Lawrence the email or whether he simply waved it and referred to it, the Appeals Tribunal sees no need to resolve that dispute as it has no material bearing on the key issue in dispute which was what was said between the Appellant and Mr Lawrence. The difference in recollection is likely to reflect the passage of time since the meeting and the short duration of the exchange;
 - 24.7. The Appeals Tribunal is not satisfied that it is more likely than not that the Appellant did utter the words "What are you doing here". The Appeals Tribunal consider that it is inherently unlikely that he would have done so given the context in which the meeting was called and the efforts the Appellant had taken to advertise it. It would also be surprising that if the words had been said, they were not recalled by Ms Wakefield given her evidence that she

would have heard all that was said at the meeting. The Appeals Tribunal does not for a moment doubt that Mr Lawrence believed he heard what he said he had heard the Appellant say but the Tribunal consider that it is more likely than not that this belief arose from a misunderstanding as to what was said in the context of a brief encounter in a difficult meeting.

Whilst the evidence of Councillor Burton provides some support for the words being used by the Appellant, the Appeals Tribunal attaches little weight to that evidence. It notes that there is no reference in her original letter of complaint to the alleged words being uttered and although there is reference to them in her interview of 1 October 2008, her version, as explained by Mrs Taylor is not consistent with Mr Lawrence's recollection. Councillor Burton claimed that the Appellant had sought to cut Mr Lawrence off and thereby to restrict his contribution to the meeting but Mr Lawrence's evidence was that the Appellant's comment came at the end of the exchange and he made no complaint that any attempt was made to prevent him speaking. The Appeals Tribunal also considers that had the exchange been as shocking as Councillor Burton contends, it is surprising that the Clerk had no recollection of it when asked during the course of the investigation and that there was no other public reaction to it;

- 24.8. The Appeals Tribunal is satisfied that it is more likely than not that there was an interruption of the meeting at an early stage by the arrival of Mr Smith, but it does not find that this had any bearing on the exchange between the Appellant and Mr Lawrence.

Findings as to whether the Appellant failed to follow the Code

25. Because the Appeals Tribunal is not satisfied on the balance of probabilities that the conduct which the Standards Committee determined amounted to a failure to follow the Code did in fact occur and because there is no other aspect of the Appellant's conduct towards Mr Lawrence complained about, there is no factual basis to support the finding of a breach of the Council's Code of Conduct. The Appeals Tribunal therefore finds that the Appellant did not breach the Code of Conduct at the meeting of 23 July 2008.
26. In consequence the Appeals Tribunal has rejected the finding of the Standards Committee.
27. The decision of the Standards Committee ceases immediately to have effect.
28. A copy of this determination is being given to the Appellant, the Standards Board, the Standards Committee, any parish council concerned and any person who made the allegation that gave rise to the investigation.
29. This determination will be published in a newspaper circulating in the area of the relevant local authority and also published on the Adjudication Panel's website at www.adjudicationpanel.tribunals.gov.uk.

Simon Bird
Chair of the Appeals Tribunal

29 May 2009