

**PRIVATE AND CONFIDENTIAL**

**Case Reference: 000849**

Report of an investigation under Section 59 of the Local Government Act 2000 by **CHRISTOPHER MOISTER**, Monitoring Officer of Chorley Borough Council into an allegation concerning Councillor Christopher France.

**DATE: 23 December 2011**

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## 1 Executive summary

- 1.1 The Standards Committee of Chorley Council, through the Monitoring Officer received a complaint from Cllr Alan Cullens concerning the conduct of Cllr Christopher France.
- 1.2 The complaint was twofold:-
  - 1.2.1 That Councillor France used his office as a councillor to mislead the public by making unsubstantiated claims and that through his actions and false claims of the Council issuing documents supporting his claims he has brought Chorley Borough Council into disrepute; and
  - 1.2.2 That Councillor France has published details of a confidential document against the Council's wishes in his undated letter to residents of Brinscall.
- 1.3 In progressing this investigation I have considered the following provisions of the Code of Conduct for members:-
  - 1.3.1 "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute." (para 5)
  - 1.3.2 "You must not attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage." (para 6(a))
  - 1.3.3 "You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
    - (i) You have the consent of a person authorised to give it
    - (ii) You are required by law to do so;
    - (iii) *..not applicable....*
    - (iv) The disclosure is
      - a. Reasonable and in the public interest; and
      - b. Made in good faith and in compliance with the reasonable requirements of the authority."(para 4 (a)).
- 1.4 I have received oral evidence from Cllr Cullens and Cllr France and have considered documentary evidence as detailed within this report
- 1.5 As a result of my investigation I conclude that Cllr France has breached the Code of Conduct.
- 1.6 Cllr France in his leaflet titled "Labour Campaign Special" is clearly acting in his capacity as a member of Chorley Borough Council.
- 1.7 In Cllr Frances leaflet titled "Labour Campaign Special" he misrepresents the content of a confidential council document. He misrepresents that a site proposed to be allocated as recreational use is allocated as housing use. He also misrepresents that a site proposed to be allocated as employment land is allocated for housing.

- 1.8 Cllr France also misrepresents the content of the document by making reference to 165 houses being built on the 3 sites when in fact the proposal is for 9.
- 1.9 These are significant misrepresentations and this is conduct that brings the Council into disrepute.
- 1.10 Cllr France failed to clarify the misrepresentation when writing to residents in his undated letter. Indeed the tone of the letter perpetuates the misrepresentation as it infers that Cllr Frances actions or those of the residents in response to his leaflet have lead to a change in position by Chorley Council.
- 1.11 Cllr France disclosed confidential information received due to his position as a councillor to the public. The copy document attached to his undated letter is clearly marked “confidential” and is different in presentation and content to the document considered by Full Council on 19 July and subsequently forming part of the public consultation exercise. Cllr France did not have authority to disclose this document neither was he required by law to disclose it. The reasons put forward for disclosure are not ones that further the public interest. In these circumstances Cllr France has no grounds for disclosure and has breached this part of the code of conduct.
- 1.12 It is the findings of this report that the allegations against Councillor France have been made out.
- 1.13 A mitigating factor is the complicated appearance of the disclosed confidential document which may have been misunderstood by Councillor France.
- 1.14 Aggravating factors are the fact that Councillor France did not
  - 1.14.1 avail himself of the offer to discuss the document with officers; or
  - 1.14.2 attend the drop in sessions arranged; or
  - 1.14.3 correct his misrepresentations in his undated letter; and
  - 1.14.4 the document disclosed is clearly marked confidential.

## **2 Councillor France’s official details**

- 2.1 Councillor France was elected to office on 7 May 2009 for a term of 3 years.
- 2.2 Councillor France currently serves on the Development Control Committee.
- 2.3 Councillor France gave a written undertaking to observe the Code of Conduct on 5 June 2009.

## **3 The relevant legislation and protocols**

- 3.1 The council has adopted a Code of Conduct in which the following paragraph[s] is/are included:

- 3.1.1 “You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.” (para 5)
- 3.1.2 “You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
  - (v) You have the consent of a person authorised to give it
  - (vi) You are required by law to do so;
  - (vii) *..not applicable....*
  - (viii) The disclosure is
    - a. Reasonable and in the public interest; and
    - b. Made in good faith and in compliance with the reasonable requirements of the authority.” (para 4 (a)).

#### **4 The evidence gathered**

- 4.1 I have taken account of oral evidence from Cllr Alan Cullens and Cllr Christopher France and copies of the notes of the meetings are attached to this report.
- 4.2 I have also taken account of documentary evidence obtained from Jenni Moore Head of Planning and documents extracted from council meeting agenda for 19 July 2011.
- 4.3 I have received clarification information from Planning Policy to confirm the chronology of the release of documentation.

#### **5 Summary of the material facts**

- 5.1 Chorley Council are at present reconsidering their Local Development Framework documentation. One of the exercises as part of this is a consideration of site allocations. Briefly, site allocations are the designations given to land within the borough and in simple terms means whether the Council consider the land is suitable for certain uses or for development.
- 5.2 This is always a contentious issue for authorities. There are many competing issues to include the need for development and residents expectations.
- 5.3 In June 2011 the Planning Policy team of Chorley Council circulated to members a draft Site Allocations and Development Management Policies Development Plan Document. This document was marked confidential on each page.
- 5.4 The confidentiality of the document was for 2 primary reasons. Firstly, should the document be passed to a developer this may provide them with a commercial advantage as they would have fore knowledge of any changes in allocations. Secondly, it was an early consultative draft which if it was passed to the public may cause unnecessary outcry and

concern. This would impact on the council as they are likely to receive a high number of unnecessary contacts from residents who believe – potentially wrongly – that they would be affected adversely by the site allocations.

- 5.5 On 19 July a meeting of Chorley Council considered a report headed “Local Development Framework: Site Allocations and Development Management Policies Development Plan Document – Preferred Option Stage”. It presented for approval for use in consultation with the public the Council’s “Preferred Allocations for Development”. This was a public document and considered the representations that had been made by members following the internal consultation exercise on the document circulated in June.
- 5.6 The Preferred Allocations for Development document was materially different to the June document. It provides the officer recommendations for allocation and where appropriate specifically states the numbers of houses provided within each allocation.
- 5.7 On the weekend of the 19 August (Friday) to 21 August (Sunday), Cllr France circulated a leaflet titled “Labour Campaign Special”
- 5.8 This leaflet made the following statement:-

“In Brinscall three sites have been located and are identified on the back of this flyer. CH0169 has been identified as a housing site as has CS0043. CS0030 which is currently part of Railway Park has been identified for either housing, employment land or both. This means that potentially 165 houses could be sited there if development approval was granted for 50 dwellings per hectare.”
- 5.9 At that time this statement was materially incorrect for the following reasons:-
  - 5.9.1 CS0043 was recommended to be used as employment land not for housing;
  - 5.9.2 CS0030 was recommended to be protected as public open space not as housing;
  - 5.9.3 The total number of houses allocated for development on CH0169 was 9, not 165 as suggested.
- 5.10 On 24 August, the conservative councillors for that area circulated a leaflet called “intouch”. This responds to the Labour Campaign Special. There is no need to consider in detail its content expect to confirm it disputes the statements made by Cllr France.
- 5.11 Subsequently, approximately 1 week later, Cllr France sent out a letter addressed to residents. This letter states:-

“I am writing regarding the above area of land. (*Land at Railway Park/Brinscall Nature Trail*)

In the proposal published in June by Chorley Council the above piece of land was included in sites suggested for housing development (see plan opposite).

I can confirm that no housing development will go ahead at this stage and the land will be designated as recreational open space.

I will commit to remaining vigilant over future plans for housing in our village and ensure that your views are always heard.”

Attached to this letter was a plan and extract from the June document, both were marked confidential.

- 5.12 This letter was materially wrong as the June document was not a “published proposal” as stated by Cllr France, but a confidential internal consultative draft.

## **6 Complainant’s additional submissions**

- 6.1 Cllr Cullens has indicated that the primary reasons for bringing this complaint are firstly that the actions of Cllr France have increased the burden on the planning service due to an increased level of contact from the members of the public. Cllr Cullens is able to comment on this as he is the portfolio member for Planning and he has had this reported to him. He also believes there are reputational issues as the misrepresentation of the Council’s position leads to bad feeling by the public.
- 6.2 The Council ran briefing sessions for members. These enabled members to question the process, and seek clarification of or challenge the draft proposed allocations. At the session attended by Cllr Cullens the officers stressed the confidential nature of the documents and process.

## **7 Cllr France’s additional submissions**

- 7.1 Cllr France accepts that the papers received in June were confidential. However, he believes that the confidentiality was lost when the “Preferred Options” paper was published for the Council meeting in July.
- 7.2 Cllr France believed that the June document and July paper contained the same information, although when challenged on this he acknowledged that they were in fact different.
- 7.3 Cllr France now accepts that the content of his campaign leaflet is in fact incorrect and in part misrepresents the June document.
- 7.4 The subsequent letter was sent to correct his mistake.
- 7.5 The attachment to the letter was marked confidential but Cllr France believes this confidentiality was lost by the publication of the Preferred Options Paper. If confidentiality was not lost by that publication then Cllr France believes it was in the public interest for the June document to be published. He confirms his reasons for this belief were that he was being accused of misrepresentation whereas in his view the June document confirmed that he was correct in his statements. It is Cllr France’s position that the public interest was served by him clarifying what was stated in June.

## **8 Evidential Issues**

- 8.1 One of the major issues in this investigation has been what information has been disclosed to who and when.
- 8.2 To be clear to members of the Standards Committee. The document attached to the complaint and marked as confidential will not have been the document circulated to Cllr France.
- 8.3 The document attached to the complaint was marked "Confidential – Member Working Group Version 1.1 08/06/2011". The document which was circulated to Cllr France in June 2011 was "Confidential – Version 1.2 13/06/2011".
- 8.4 However, the documents are materially the same and the information relied on by Cllr France in his campaign leaflet is contained in both version 1.1 and version 1.2. Both are marked confidential and the same obligations relate to both.

## **9 Reasoning as to whether there have been failures to comply with the Code of Conduct**

Allegation 1 - That Councillor France used his office as a councillor to mislead the public by making unsubstantiated claims and that through his actions and false claims of the Council issuing documents supporting his claims he has brought Chorley Borough Council into disrepute.

- 9.1 Cllr France received the information relied on within his campaign leaflet due to his position as a Councillor.
- 9.2 The campaign leaflet misrepresented the information Cllr France had received. It neither reflected the content of the June consultation document nor, failed to reflect the content of the July Preferred Options document which was in the public domain.
- 9.3 Cllr France was either wilful, negligent or reckless in his campaign leaflet statement. The content was wrong. The site identified as CS0030 was allocated as public space not housing or employment as stated. The site CS0043 was allocated as employment land not housing as stated. Any confusion that may have been caused by the June document is overridden by the Preferred Options Paper which is clear.
- 9.4 The statement that 165 houses could be built across the 3 sites if approval were granted at a density of 50 dwellings per hectare is factually correct as per the June document. However, this figure is misleading. Even on the June document which was superceded by the Preferred Options paper, only 9 properties are suggested for build on site CH0169 only.
- 9.5 The leaflet is titled "Labour Campaign Special" and by its nature is a political document. There is an expectation that such a document will contain some hyperbole. However, the context of the statements misrepresents confidential information he held and fails to reflect updated information he received. It is reasonable to consider that the campaign leaflet was a deliberate attempt to misrepresent the position in relation to these sites to the public in order to make political gain.



- 9.6 Cllr France subsequently issued a letter which failed to state that his earlier campaign leaflet had been in error. The letter infers that he was responsible for the removal of the allocation of CS0030 as Housing and Employment. The July Preferred Options document had already indicated a proposed allocation of open space.
- 9.7 It is acknowledged that Cllr France contributed to the Labour Group representations brought to Council in July and that he opposed development on CS0030. (this comment is not allocated in the objections but is in accordance with Cllr France's statement and it is reasonable to attribute it to him).
- 9.8 Had the letter contained an admission of fault and confirmed the correct position it would be reasonable to conclude that Cllr France had in fact mistaken the content both of the June document and the Preferred Options paper. However, as stated above it does not. As the letter appears to perpetuate the belief that site CS0030 was at the time of the leaflet to be allocated as housing, it is reasonable to conclude that Cllr France was wilfully attempting to mislead the public.

Allegation 2 - That Councillor France has published details of a confidential document against the Council's wishes in his undated letter to residents of Brinscall.

- 9.9 There is no definition within the Code of Conduct as to what constitutes a confidential document. However, the document attached to Cllr France's rebuttal letter is clearly marked confidential. Cllr France has acknowledged that the document (whether the one attached to the complaint is the correct version or not) he attached to his letter was marked confidential.
- 9.10 The marking of the document does not in itself make it confidential and confidentiality can be lost due to changes in circumstances and the passing of time.
- 9.11 In this instance the document was a consultation paper and was marked confidential for 2 reasons  
- it contained commercially sensitive information that if obtained by a developer may provide a commercial advantage; and  
- the content was not final recommendations and was very likely to change, release may have lead to unfounded public concern.  
The site allocations process of which this document is a part has not been concluded and as such these early documents remain confidential and have not been published by the Council.
- 9.12 The Preferred Options paper was published and made public in July. However, this did not negate the confidentiality of the June document. The content of the 2 documents is materially different with the June document containing illustrative workings and figures.
- 9.13 It is a reasonable conclusion therefore to decide that the document disclosed was confidential.
- 9.14 Cllr France has suggested that it was in the public interest that the June document be disclosed as he felt that the conservative group were misleading the public in the allegations they had made against

- him. Cllr France has to show that the disclosure is reasonable, in the public interest and made in good faith.
- 9.15 The statements made by the conservative councillors in the intouch publication were correct whereas the statements made by Cllr France in his leaflet were not. The disclosure does not support Cllr France's statement and therefore it is extremely difficult to see how this disclosure of a clearly marked confidential document is in the public interest.
- 9.16 It is also relevant to consider whether Cllr France took any advice prior to disclosure either from the document author or the council's legal service. He did not.
- 9.17 The public interest defence is not made out in this matter.

## 10 Finding

- 10.1 **You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute. (para 5)**
- 10.2 Cllr France received information in his role as a Councillor. In his role as a Councillor he issued a campaign leaflet which misrepresented that information. In particular, this misrepresentation related to the position of the Council as a body rather than concerning individual members.
- 10.3 Cllr France then issued a letter to residents which failed to correct his misrepresentation and included with the letter a document marked confidential.
- 10.4 As a result of Cllr France's actions the Council experienced an increase in telephone contact from residents in that area who were misled by Cllr France's leaflet.
- 10.5 **Finding** – Cllr France breached the code of conduct by his actions and brought the authority into disrepute.
- 10.6 **You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:**
- (ix) **You have the consent of a person authorised to give it**
  - (x) **You are required by law to do so;**
  - (xi) ***..not applicable....***
  - (xii) **The disclosure is**
    - a. **Reasonable and in the public interest; and**
- Made in good faith and in compliance with the reasonable requirements of the authority. (para 4 (a)).**
- 10.7 Cllr France received a document that was clearly marked confidential. He subsequently not only disclosed some of the content but appended an extract from the document to a letter he sent to the public.
- 10.8 Cllr France neither sought the consent of someone authorised to disclose the document, nor was he required to disclose it by law.

- 10.9 It has been considered whether the disclosure was reasonable and in the public interest. As the content was misrepresented by Cllr France it cannot be seen to be in good faith. Neither was it in compliance with the reasonable requirements of the authority as the grounds for maintaining the documents confidentiality existed at the time of the disclosure indeed they continue to exist now. The reason for disclosure provided by Cllr France was to protect his own personal interests in a situation he had created himself and is not in the public interest.
- 10.10 **Finding** – Cllr France breached the code of conduct by disclosing confidential information.

# Appendix A

1. Assessment Sub Committee Papers to include the complaint and supporting documents
2. intouch Conservative Publication
3. Interview Attendance Note – Complainant – 18 October 2011
4. Interview Attendance Note – Respondent – 25 October 2011
5. Email exchange Monitoring Officer and Jennifer Moore – 2 November 2011
6. Member Contact record held by Planning concerning LDF
7. Letter to Councillors 14 June 2011
8. Document marked Confidential – version 1.2 dated 13 June 2011 relating to Brinscall / Withnell
9. Extract from Proffered Options Paper taken from Full Council Agenda – dated 19 July 2011