

ASSESSMENT DECISION NOTICE

NO BREACH OF THE CODE

Reference:	CCN037/18 /19
Complainant:	Mr Kevin Johnson
Subject Member:	Cllr Andrew Webb, St. Cleer Parish Council
Person conducting the Assessment:	Simon Mansell, Corporate & Information Governance Manager
Date of Assessment:	11 February 2019

Complaint

On 11 February 2019 the Monitoring Officer considered a complaint from Mr Kevin Johnson concerning the alleged conduct of Cllr Andrew Webb of St. Cleer Parish Council. A general summary of the complaint is set out below:

The Complainant has alleged that the Subject Member has breached the Code of Conduct as he failed to declare an interest at a meeting of St Cleer Parish Council on 28 November 2018 when planning application PA18/10144 (the 'Application') was to be discussed, despite the fact that the Subject Member lives adjacent to the site of the Application as is confirmed by his registered home address.

Decision

That for the reasons set out in this Decision Notices there has not been a breach of the Code of Conduct and no further actions needs to be taken.

Reasons for the Decision

In assessing this complaint I have had regard to the following:

- The complaint;
- A response from the Subject Member;
- The Subject Members register of interest form;

- Views of the local of the Subject Members property from Google Earth;
- The minutes of the Parish Council meeting held on 28 November 2018;
- Comments from the Cornwall Council planning portal made on 5 December 2018;
- Decision LGS/2011/0546 of the First Tier Tribunal (Local Government Standards in England); and
- The views of the Independent Person assigned to this matter.

The Complainant has alleged that the Subject Member has breached the Code of Conduct as he failed to declare an interest at a meeting of St Cleer Parish Council on 28 November 2018 when planning application PA18/10144 (the 'Application') was to be discussed, despite the fact that the Subject Member lives adjacent to the site of the Application.

The Complainant has later added that the wife of the Subject Member, who lives with him at his registered home address posted on the Cornwall Council planning portal on 5 December 2018 that;

'...my house is at the bottom of the proposed development and I have concerns that surface water drainage using soakaway will not be adequate.Our house is again lower than the garden so there is a potential that any increased surface water could cause issues.'

The Subject Member has set out that he did not declare an interest as he did not think he had an interest in the matter but he did abstain from voting.

The clerk has confirmed that the Subject Member did abstain from voting on the matter.

The minutes for the meeting of the Parish Council held on the 28 November 2018 show that the Subject Member was present at the meeting and that no interests were declared the meeting and no one left the meeting when the Application was discussed.

Application of the Code of Conduct

I am satisfied that for the purposes of this complaint that the Subject Member was acting in their official capacity at the time of the alleged conduct and was therefore bound by the Code of Conduct as adopted by St Cleer Parish Council.

Registering an Interest

The Code of Conduct sets out, at paragraph 3.2;

3.2 Within 28 days of becoming a Member you must notify the Council's Monitoring Officer of any disclosable pecuniary interest that you have and your membership of any trade union(s) at the time of giving the notification.

This provision of the Code reflects the requirements for a member to register their interests as is set out in the Localism Act 2011 and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

The Code of Conduct (and the Localism Act and the above Regulations) require a member to register land, which is classed as a disclosable pecuniary interest.

5(b)(iv) Land

Any beneficial interest in land which is within the area of the relevant authority

And further to this Land is said to be;

5(a)(iii)

"land" includes an easement, servitude, interest, or right over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income.

In considering the Subject Member's register of interests form he has registered a property that is in close proximity to the site of the Application and that is Lamorna, Tremar Lane, St Cleer, therefore it is considered that the Subject Member has correctly identified the property concerned and has complied with paragraph 3.2 of the Code of Conduct for St Cleer Parish Council.

Declaring an Interest

Two types of interests arise under the Code of Conduct, a disclosable pecuniary interest, as it set out as paragraph 5A of the Code and a non-registerable interest, as is found at paragraph 5B of the Code.

For a disclosable pecuniary interest to arise the matter under discussion had to be something that will affect a matter on the Subject Member's register of interests form in a positive or negative manner.

The location of the Subject Member's land which is on the Subject Member's register of interests form is immediately adjacent to the site of the Application. The topography of the land means that the site of the Application is higher than the land owned by the Subject Member.

As a result it is clear that there is a potential that the land owned by the Subject Member may be affected by the Application. It is noted that the Subject Member's wife has mentioned the potential for their property to be affected by water coming onto their land but this is speculative and nothing has been presented to support this claim.

The Complainant is relying on proximity and the post by the Subject Member's wife to show there is an interest, nothing further has been presented to show the beneficial interest in the land would be affected.

The Code of Conduct sets out at paragraph 3.5;

3.5 If you are present at a meeting and you are aware that you have a non-registerable interest, a disclosable pecuniary interest or an interest by virtue of any trade union membership in any matter being considered or to be considered at the meeting you must disclose that interest to the meeting if that interest is not already entered in the register and, unless you have the benefit of a current and relevant dispensation in relation to that matter, you must:

(i) not participate, or participate further, in any discussions of the matter at the meeting;

- (ii) not participate in any vote, or further vote, taken on the matter at the meeting; and*
- (iii) remove yourself from the room in which the meeting is taking place in while any discussion or vote takes place on the matter, to the extent that you are required to absent yourself in accordance with the Council's standing orders or other relevant procedural rules*

Paragraph 3.5 of the Code reflects the requirements of the Localism Act to not participate or vote, though the Localism Act does not make it mandatory for a member to leave the room but puts the onus of the authority to make this a requirement in their standing orders, and this requirement is reflected in St Cleer Parish Councils Standing Orders.

Both the Localism Act 2011 (at section 31(1)(b)) and the Code, paragraph 3.5 set out if the member has an interest/disclosable pecuniary interest in any matter they may not participate in the discussion or vote on the matter.

However, there has to be an interest to declare and I am guided by decision LGS/2011/0546 of the First Tier Tribunal (Local Government Standards in England) as to whether an interest exists.

This case concerned a parish councillor who attended a site meeting as well as a Parish Council Planning Committee meeting and the parish councillor failed to declare an interest at either meeting despite the fact his property had an adjoining boundary with the development site.

The Tribunal noted that the complainant in the matter concerned was hostile to the parish councillor and lacked objectivity with regards to the presentation of evidence; in this case the Tribunal treated the evidence from the complainant with extreme caution.

The Tribunal noted that the parish councillor reasonably believed they did not have an interest and did not accept that a common boundary with land would give rise to an interest and in this case the likelihood of impact on the land owned by the parish councillor was remote. There was no evidence that the parish councillor's well-being or financial position would be affected to a greater extent than the majority of other council tax payers affected by the decision.

In making this assessment the Tribunal reiterated the objective test, that is would a reasonable person who was aware of all the material facts and ignoring immaterial factors, consider that the parish councillor had an interest.

Findings of Fact

It is a fact that the Subject Member shares a common boundary with the site of the Application and that his wife posted on the Cornwall Council planning site portal that there were concerns about flooding.

It is also a proven fact that the Subject Member did not declare an interest when the Application was considered by the Parish Council as he did not consider that he had an interest.

In comparing this complaint to LGS/2011/0546 there has been nothing presented as part of this complaint that would support the claim that the beneficial interest the

Subject Member has in his land would be affected by the Application. As with the Tribunal case the Complainant is hostile towards the Subject Member and the Parish Council as a whole and therefore can be considered to lack objectivity in the way the complaint is presented.

I have noted the posting by the Subject Member's wife, but this also has to be considered as lacking objectivity but for different reasons and, whilst the topography of the land may cause water to run down to the Subject Member's property, there is nothing to indicate this would be more or less so than it is without out the development on the site of the Application.

In considering if there has been a breach of the Code of Conduct I find the determinations of the Tribunal in LGS/2011/0546 (which was a Cornwall Council matter) to be persuasive. In this case there was a common boundary with a site that was subject to a planning application. Whilst not recorded by the Tribunal the parish councillor spoke against the application at both meetings and voted at the planning committee meeting the parish council held, but no interest was found as it was not demonstrated that, objectively, the financial position of the parish councillor would be affected.

Given the facts I have reached the same conclusion in this matter. Whilst there is proximity to the site of the Application there is nothing to show that the beneficial interest the Subject Member would have in the land would be affected, therefore there can be no breach of the Code of Conduct or of the requirements of section 31 of the Localism Act 2011 as no interest in the consideration of the Application has arisen.

No other breaches of the Code of Conduct have been found in undertaking the assessment of this complaint.

Actions to remedy the breach

As there has been no breach of the Code of Conduct no further action needs to be taken.

However, the Subject Member should exercise caution when considering if an interest exists or not and should take advice if at any point in the future a similar situation should occur.

What happens now?

This decision notice is sent to the Complainant, the member against whom the allegation has been made and the Clerk to St. Cleer Parish Council.

Right of review

At the written request of the Complainant, the Monitoring Officer can review and is able to change a decision not to refer an allegation for investigation or other action. To ensure impartiality in the conduct of the review different officers to those involved in the original decision will undertake the review.

We must receive a written request from the Complainant to review this decision within 15 days from the date of this notice, explaining in detail on what grounds the decision should be reviewed.