

BRECKLAND COUNCIL

At a Meeting of the

STANDARDS COMMITTEE

**Held on Tuesday, 28 April 2009 at 2.15 pm in
Anglia Room, Conference Suite, Elizabeth House, Walpole Loke, Dereham**

PRESENT

Mr M.D. Eveling JP	Mr G. Ridgway
Mrs J. Jenkins (Chairman)	Mr F.J. Sharpe
Mrs M. Oechsle	Mr D.R. Williams JP
Mr B.D Rayner	Mr M. Whittley

Also Present

Lady Fisher

In Attendance

Susan Allen	- Standards Officer
John Chinnery	- Solicitor & Standards Consultant
Ian Vargeson	- Member Services Manager
Elaine Wilkes	- Senior Member Services Officer

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6/09 MINUTES

The minutes of the meeting held on 13 January 2009 were confirmed as a correct record and signed by the Chairman.

7/09 APOLOGIES

An apology for absence was received from Mr. D. Myers.

8/09 URGENT BUSINESS

The Chairman announced the following item of urgent business, details of which had been circulated prior to the meeting, to be taken under Part B of the agenda as item number 16:

- Report of the Monitoring Officer into an investigation under Section 59 of the Local Government Act 2000.

The reason for the urgency was to avoid any undue delay in reaching a decision within the statutory period.

9/09 DECLARATION OF INTEREST

Mr. F. Sharpe declared a personal interest in agenda item 8 as a member of the Development Control Committee.

10/09 NON-MEMBERS WISHING TO ADDRESS THE MEETING

Lady Fisher, Executive Member for Governance, was in attendance for item 9.

11/09 APPLICATION FOR DISPENSATION - HOLME HALE PARISH COUNCIL (AGENDA ITEM 6)

A correction was noted in the report to refer to Former Highway Surveyor's Land (not Lane).

The Solicitor explained that this application was very similar to applications from other Parish Councils allowed by the Committee.

It was made clear, however, that the grant of such a dispensation did not confer a dispensation on a member where he or she had another personal or prejudicial interest in the land. The dispensation applied only when the members were acting as the appointed Trustees for the charity. The Standards Officer confirmed that the formal letter of grant of dispensation included a caveat to this effect.

RESOLVED that a dispensation be granted until May 2011 to the following named members of Holme Hale Parish Council to enable them to speak and vote on all matters in connection with the Former Highway Surveyor's Land to ensure the smooth running of the business of the Parish Council:

- Simon Broke, Geoffrey Clough, Arthur Bailey, Harold Morgan, Solomon Bowers, Patricia Kerr and Robin Norman.

12/09 ANNUAL ASSEMBLY OF STANDARDS COMMITTEES (AGENDA ITEM 7)

The Chairman invited nominations from two members of the Committee to attend the Annual Assembly of Standards Committees to be held in Birmingham on 12-13 October 2009. The theme for this year's Assembly was "Bringing Standards into Focus".

The Committee highlighted the importance of members' attendance at the Annual Assembly as a key part of their ongoing training and development and it was agreed that the places should be offered to those members who had not yet had the opportunity to attend the event.

RESOLVED that Mr. B. Rayner and Mr. M. Whittle be nominated to attend the Annual Assembly of Standards Committees at Birmingham on 12-13 October 2009.

13/09 PLANNING PROTOCOL (AGENDA ITEM 8)

The Solicitor presented this item and explained that the Council had not previously had such a protocol but that it was a fairly standard means adopted by most other Councils to provide extra guidance on certain aspects of members' conduct in relation to planning not covered in other documents.

The protocol, in particular, provided advice on a number of points of law, for example in regard to the issue of predetermination and procedural issues that it was advisable in law to do.

The protocol in regard to site visits had been updated to take account of

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changes made over the years.

In regard to site visits, it was clarified that non-attendance at a site visit need not necessarily mean that a member was precluded from speaking on a matter in Committee because some members may already know the site. Equally, however, some members may feel they did not have sufficient information. This provision was covered under paragraph 10.4 of the protocol.

It was also confirmed that, potentially, a member could be challenged on this point. The key question in such an instance would be whether or not the member was ignorant of significant aspects of an application. It was thought this would normally not be the case but was something members needed to bear in mind.

The Solicitor advised that the main change was that there should not be any discussion of the merits or otherwise of the application at the site visit, which was the opportunity for members to see the site and for essential aspects of the site to be pointed out to them.

The Committee agreed with a suggestion that paragraphs 2 to 5 should equally apply to supporters as well as applicants, developers and objectors.

There was a concern that the wording in paragraph 2.1 appeared to restrict the role of a member to carry out their normal ward duties. It was explained that this was not the intention of the paragraph and the wording could be revised to clarify this point.

So far as the issue of predisposition was concerned in relation to the above point, it was explained that the revised 2007 Code made clear that being politically for or against the generality of a proposal was not a breach of the Code. The question of predetermination would depend on the individual circumstances of a case. A member must have an open mind; if not, a Committee's decision could be put at risk.

It was also explained that the point of having an officer presence at any meetings attended by a ward member with one or other sides to an application was to provide a record of what was said or not said and to report salient points to the Committee.

The Committee concluded that it would be helpful if the protocol could be amended to incorporate supporters within the meaning of paragraphs 2 to 5 and also to clarify that paragraph 2.1 did not preclude a member's usual discussions with his or her constituents as their Ward Representative.

John
Chinnery

RECOMMEND TO COUNCIL that the Planning Protocol for Members is amended by the addition of the words shown in bold type as follows:

"..... **2 to 5 APPLY TO ALL MEMBERS**

2. **Lobbying of Members by Applicants/Developers/Objectors/Supporters**

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2.1 If you are contacted by applicants, developers, objectors or **supporters**:

- Consider referring those who approach you for planning, procedural or technical advice to the officers.
- **Apart from usual discussions with your constituents as Ward Member**, you should not normally agree to **private briefings** with applicants, developers, objectors or **supporters** unless there are very good reasons to see them – if you do wish to attend such a meeting, then an officer should also be present to take a record of what went on for the planning file.
- Members of the Development Control Committee should reveal at the discussion in Committee any meetings with or written material from applicants, developers, objectors or **supporters**.

14/09 TRAINING (AGENDA ITEM 9)

The Solicitor advised that he proposed there should be training on the new amended Code of Conduct for the Committee, the Council and Parish Councils, although the dates for this were dependent on when details of the new Code were received. Although the new Code had been expected to come into effect in May 2009, no details had yet been received but were expected in the next couple of months.

Members agreed that their training should continue to be provided as part of the normal meetings process as issues arose. It was felt this had worked well and was a practical way of meeting their needs.

The Committee also endorsed the need for its members to be able to continue to attend the Annual Assembly of Standards Committees as complementary to ongoing training and development.

RESOLVED that the Committee's training requirements for the year be as noted above.

15/09 COMPLAINTS (AGENDA ITEM 10)

Mrs. Oechsle explained that she had raised a question arising from this report about why certain items were included and others were not and asked how complaints were defined and how they were dealt with.

The Member Services Manager presented the report which had been considered by the Overview and Scrutiny Commission and outlined the results of its discussions on the matter, which had highlighted the potential for some complaints to be missed being formally logged as such into the system. The Commission had concluded by making a recommendation to the Cabinet to require a clear protocol for all staff to refer complaints through senior managers to ensure they were logged into the system.

By way of background, the Member Services Manager explained that the Council had always noted and dealt with complaints, concerns and

Ian Vargeson

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requests for service. Previously each department had its own arrangements. To ensure that these were treated consistently across the authority, the Council introduced a corporate system for logging formal complaints and compliments. This ensured that a complaint was dealt with and that service issues highlighted by complaints could be addressed. It also enabled the Council to meet the requirements of the Commission for Local Administration in demonstrating that an issue that may subsequently be referred to the Local Government Ombudsman had been thoroughly investigated in-house beforehand.

The Commission for Local Administration produced guidance on best practice on various activities. In setting up the Council's scheme, Breckland took account of the Commission's guidance on good practice in running a complaints system.

In this guidance, the benefits of a system were described as being:

- better for the public – everyone knows how to complain and how their complaint will be handled
- better for staff – officers can be confident about what to do when they receive a complaint
- fairer – everyone is treated equally
- helpful to councils in improving services – analysis of complaints that have gone through the system can help us make services better and more responsive

The Commission's guidance also said that councils needed to be clear about whether they had received a complaint, rather than a request for a service or a request for an explanation of a decision. It was therefore helpful to define and publicise what was meant by a complaint. In setting up its system, Breckland took account of the advice and following definition suggested by the Commission:

“A complaint is an expression of dissatisfaction by one or more members of the public about the Council's action or lack of action or about the standard of a service, whether the action was taken or the service provided by the Council itself or a person of body acting on behalf of the Council.”

The Commission suggests that the Constitution should include the complaints system. In Breckland, the system is not incorporated as one of the articles of the Constitution; however, the terms of reference of the Standards Committee, as set out in the Constitution, cover advising the Council on the operation of a policy for handling complaints and also investigations by the Ombudsman.

Breckland's system is based on the principles and definitions described above. The system is accessible through the Council's website or by way of a leaflet obtainable from Breckland offices. Complaints that do not follow the formal route are not overlooked because they are not formally presented as such.

The Breckland system also covers compliments.

The introduction to the form makes it clear that this process is for residents who want to formally compliment a service, department or

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staff, complain about the Council's services, action or inaction or the standard of service, or complain about a district town or parish councillor.

Two issues had come to light in recent weeks, following the submission of the annual report to the Overview and Scrutiny Commission on complaints.

The first issue related to the definition of a complaint and whether this needs to be reviewed and whether the Council's definition of a complaint was too restrictive and that therefore the figures presented to the Overview and Scrutiny Commission were inaccurate, with an unknown quantity of complaints going unrecorded as such and unreported.

The second point related to the identification of a complaint and directing it to the formal procedure. There is a process whereby officers within each department are asked to route formal complaints through the Standards Officer, who is responsible for administering the system. It was possible that there were instances where this might not be happening, for two reasons:

- Letters opened in the post room were not read and where appropriate identified as complaints and then re-routed for the Standards Officer's attention in the first instance.
- Where a letter was received by a department and then found to be a formal complaint, the nature of the complaint was usually investigated and explained, with the provision of a remedy where necessary; however, in concentrating in finding out what has happened and dealing with it, the formal recording of the complaint may be overlooked. This is what had happened in the case of certain complaints relating to Yaxham, as raised by Mrs. Oechsle.

As a result, all staff had been made aware of the need to refer complaints to the Standards Officer and Cabinet would be considering the request for a protocol from the Overview and Scrutiny Committee at its meeting on 12 May.

There was also a need, however, to ensure that all staff and departmental complaints officers were clear about what constitutes a complaint and this would be defined in the protocol.

The Member Services Manager suggested the definition should still be in line with that of the Local Government Ombudsman but making clear that a complaint is not a request for a service or about how a decision was reached.

During discussion, it was acknowledged that a balance needed to be drawn to prevent the process becoming overly bureaucratic and it was noted that members received the annual report of the Local Government Ombudsman each year, which gave details of the background to complaints being dealt with by his office.

It was also noted that under Breckland's system, complaints relating to

planning decisions would not be included and there were also some distortions in the process in that some people used the complaint form to raise an issue that was not, in fact, a complaint.

Mrs. Oechsle wished to formally record her thanks to the Council for the efforts taken to remedy the situation at Yaxham.

RESOLVED that the position be noted.

16/09 TOWN AND PARISH STANDARD NEWSLETTER ISSUE 4 (AGENDA ITEM 11)

The Chairman explained that this item was presented for information as she felt it was a useful way of keeping parishes and members informed of matters.

The Solicitor's views were sought on the article regarding notifications to parish councils concerning complaints.

The Solicitor replied that he felt that it would be an undue burden on parish clerks to have to produce complex procedures which may never be required or would get out of date. However, it was important that they received the necessary information and advice on the appropriate procedures to be followed. Provided this was given each time a case was referred to them, there should not be a need for them to have a formal procedure. This was the process currently being practised by Breckland.

It was also pointed out that the regulations governing the handling of parish councillor complaints required them to be dealt with in a partially confidential and non-confidential way, which could cause confusion. It was important therefore to say at each stage whether the matter was still confidential or open to the public. This was further complicated by the fact that, on dismissal of a complaint, a parish councillor had an option to choose not to have the decision published but the regulations still required the parish council to be notified of the decision.

The Committee endorsed the approach taken by the Solicitor as a practical solution.

17/09 NEXT MEETING (AGENDA ITEM 12)

The Committee agreed that, as that day's meeting had been put back from 7th April, there was no longer a need for the meeting scheduled for 12 May. If the regulations on the new Code were received before the next ordinary meeting scheduled for 23 June, a special training meeting would be arranged.

RESOLVED that the meeting scheduled for 12 May 2009 be cancelled and the next ordinary meeting be as scheduled for 23 June 2009, unless the regulations on the new Code of Conduct are received in the meantime, in which case a special training meeting will be arranged.

18/09 EXCLUSION OF PRESS AND PUBLIC

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John
Chinnery,
Elaine Wilkes

RESOLVED that under Section 100(A)(4) of the Local Government Act 1972, the Press and public be excluded from the meeting for the following items of business on the grounds that they involve the disclosure of exempt information as defined in the paragraphs of Schedule 12A to the Act as follows:

<u>Agenda Item</u>	<u>Paragraph No. of Schedule</u>
	<u>12A</u>
14	1 & 2
15	1 & 2
16 (Urgent Business)	7C

19/09 WEETING PARISH COUNCIL (AGENDA ITEM 14)

The Solicitor reported the details of this case as outlined in the letter from the Chairman of Weeting with Broomhill Parish Council and in the supplementary report of the Deputy Chief Executive.

The complaint concerned remarks made at a meeting of the Policy Development and Review Panel 1 in September last year during consideration of matters under the Local Development Framework.

A letter of apology had already been sent by the Chief Executive on behalf of the Council.

The views of the Committee were requested, bearing in mind that this was not a formal complaint against any named councillor under the statutory procedures.

Following discussion, the Committee was concerned that, albeit they had been unintentional, remarks had been expressed during a meeting which were considered to be insensitive and disrespectful.

Accordingly, the Committee

RESOLVED that

- (1) a letter be sent to the Parish Council expressing the Committee's concerns and to assure the Parish Council that it was taking the matter seriously and would be asking members to be more sensitive and respectful of others in the future;
- (2) a reminder be given to members of the need to be sensitive to the effects of their remarks or actions on members of the public present at meetings and asking Chairmen to inform the meeting of who is in attendance.

20/09 STANDARDS SUB-COMMITTEES - SUMMARY OF DECISIONS (AGENDA ITEM 15)

The report was welcomed by members as giving a good overview of cases being dealt with. Members agreed that the report be made on an annual basis in future.

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Susan Allen,
John
Chinnery

21/09 REPORT OF AN INVESTIGATION UNDER SECTION 59 OF THE LOCAL GOVERNMENT ACT 2000 (AGENDA ITEM 16 - URGENT BUSINESS)

The report had been circulated to the Committee prior to the meeting and was referred under Section 17 of the Standards Committee (England) Regulations 2008, under which the Committee was required to consider the report to decide: a) whether it accepted the Monitoring Officer's finding of no failure, or b) whether the matter should be referred to a full hearing.

If the decision was to refer the matter for a full hearing, the Committee needed to decide if the maximum remedy open to the Committee was sufficient or, if not, whether the matter should be referred on to the Adjudication Panel.

The Solicitor proposed that, in future, such Monitoring Officer reports should be considered by a Sub-Committee of the Committee.

The background to the matter and the conclusions of the Monitoring Officer were as set out in the report.

Members of the Committee were satisfied with the Monitoring Officer's finding of no failure and accordingly

RESOLVED that

- (1) the Monitoring Officer's finding of no failure be accepted; and
- (2) future reports under Section 17 be dealt with by a Sub-Committee, to be called the "Considerational Sub-Committee", to be constituted in the same way as other Sub-Committees of Standards Committee.

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The meeting closed at 4.25 pm

CHAIRMAN