

BRECKLAND COUNCIL

At a Meeting of the

STANDARDS COMMITTEE

**Held on Wednesday, 14 November 2007 at 2.15 pm in
Norfolk Room, Conference Suite, Elizabeth House, Walpole Loke, Dereham**

PRESENT

Mr D.R. Williams JP (Chairman) Mrs J. Jenkins
Mr R.P. Childerhouse JP Mrs M. Oechsle JP

Also Present

Mr M.D. Eveling JP Mr M. Whittley
Mr J.P. Labouchere Mr K.S. Gilbert
Mr B.D Rayner

In Attendance

John Chinnery - Solicitor & Standards Consultant
Elaine Wilkes - Senior Committee Officer

Action By

49/07 NON-MEMBERS WISHING TO ADDRESS THE MEETING

The following members were present:

- Mr. K. Gilbert (as observer for items 5 and 6 and, if required, to answer any questions)
- Substitute Standards Committee Members (as observers for items 5 and 6, and for item 7):
 - Mr. J.P. Labouchere
 - Mr. M. Eveling
 - Mr. B. Rayner
 - Mr. M. Whittley

**50/07 COMPLAINT AGAINST COUNCILLOR J.P. MCCARTHY,
WATTON TOWN COUNCIL (AGENDA ITEM 5)**

The following persons were present for the hearing into this matter:

Member Concerned	Councillor J.P. McCarthy
Ethical Standards Officer's Representative	Natalie Birtle
Investigating Officer	Alex Oram
Legal Adviser to the Committee	John Chinnery, Solicitor & Standards Consultant

Action By

Attending Officer	Miss E. Wilkes, Committee Officer
Observers	<u>Watton Town Councillors:</u> Mrs. L. McCarthy Mr. J. Craigie Mr. K.S. Gilbert Mrs. J. Seal, Clerk to Watton Town Council <u>Substitute Members of Standards Committee:</u> Mr. J.P. Labouchere Mr. M. Eveling Mr. B. Rayner Mr. M. Whitley

Summary of the Allegation

That Councillor Paul McCarthy, a member of Watton Town Council, failed to declare a prejudicial interest and withdraw from the chamber during the consideration of a planning application on 30 January 2007. Further, that Councillor McCarthy voted against the planning application and then used his casting vote as chairman of the Watton Town Council's planning committee to ensure that the council objected to it.

Procedures for the Hearing

The Chairman introduced the Committee and attending Officers and the Legal Adviser to the Committee explained that the hearing would be conducted as follows:

1. To consider the findings of fact as submitted in the Ethical Standards Officer's (ESO) Report.
2. To consider whether, in the light of the facts as found, the Member had failed to follow the Code.
3. If it was found that there had been a breach of the Code, to determine what, if any, penalty there should be.

At the end of each stage, following consideration of the report and any other information supplied by the Member concerned and the ESO's Representative, the Committee would retire to consider its decision, which would then be announced.

Consideration was given to whether the appendices to the ESO's Report should remain exempt or be released into the public domain.

Councillor McCarthy expressed his concern that the report had been made public before the hearing had taken place. He felt this was unfair and prejudiced public opinion against him before the Committee had considered the facts. However, he had no objection

Action By

to the release of documents after the hearing.

The Legal Adviser explained that it was standard procedure to release as much as information as possible in the interests of transparency. The ESO's Representative raised no objection to the release of the documents and stated that the Standards Board for England supported the aim of transparency and that no rule was laid down about when documents should be released. Some Committees released reports early, while others did so either on the day or after a hearing. Either practice was acceptable. However, any prior press reports should be disregarded.

The Chairman indicated that the Council would review its procedures in the light of the concerns raised by Councillor McCarthy to ensure that respect for the individual was maintained.

RESOLVED that the appendices to the ESO's Report may be released into the public domain.

Findings of Fact and Reasons

Councillor McCarthy was asked whether he accepted the summary of findings of fact as set out in the ESO's report, to which he replied in the affirmative.

On that basis, Councillor McCarthy was asked whether he accepted the ESO's conclusion that the findings of fact led to his having a personal and prejudicial interest in the meeting concerned.

Councillor McCarthy replied that he did accept the ESO's conclusion but wished to explain his reasons for declaring a personal interest only.

Before presenting the report, the ESO's Representative referred to Councillor McCarthy's written submissions on the final report (Form A, appendices pages 1-2), and stated that she considered there was nothing in those submissions which altered the ESO's findings and accordingly accepted that the amendments in Form A be incorporated as findings of fact.

The Committee retired, and on their return, the Chairman indicated that the Committee had decided that the facts were as stated in the ESO's Report, as amended by Councillor McCarthy's comments in Appendix 1 (Form A).

Findings on whether any contravention of the Breckland Code of Conduct has occurred

The ESO's Representative then summarised the findings of fact as detailed in the report and the reasoning as to whether Councillor McCarthy had a personal and prejudicial interest in the matter concerned. From the facts, she believed that a personal interest existed on a number of counts and that there was a cumulative effect from the various counts of personal interest which led to the conclusion that a prejudicial interest also existed.

Action By

Councillor McCarthy was afforded the opportunity to respond and explained that he had been taking into account the concerns of two other site owners whose interests he felt needed protection, not just his own.

Answering a question from the Legal Adviser, Councillor McCarthy confirmed he accepted that he not only had personal interests for the reasons as explained but that those interests were also prejudicial.

Asked why, in agreeing on that point, if he was representing other interests as well, he had not declared such interest, Councillor McCarthy explained that he felt that there were other Councillors at the meeting who had opposing interests and that he considered that WECO's views would not have been considered fairly. In the circumstance, as the other Councillors remained in the meeting, he felt he could do so as well.

He confirmed he had not made that point at the meeting in question and that he had declared a personal interest but not a prejudicial interest.

The Committee retired to consider whether there had been a breach of the Code.

The Committee found the following:

- (a) Councillor McCarthy had a personal interest for the reasons set out in paragraph 7.9 of the ESO's Report.
- (b) The interest was clearly also prejudicial, for the reasons set out in paragraph 7.11 of the ESO's Report.
- (c) The Committee found that Councillor McCarthy had failed to comply with paragraph 10(a) of the Code of Conduct in that he did not withdraw from the meeting during consideration of the matter in question.

With regard to the question of whether Councillor McCarthy improperly influenced the decision about that matter in contravention of paragraph 10(b) of the Code of Conduct, the Committee concurred with the ESO's findings, as agreed by Councillor McCarthy, that Councillor McCarthy had clearly influenced the decision but invited Councillor McCarthy to respond further to the ESO's finding that he had improperly influenced the decision.

Following clarification of the definition of the term "improper" in this context, Councillor McCarthy accepted he had improperly influenced the decision in the matter.

The Committee accordingly found that Councillor McCarthy had breached paragraph 10(b) of the Code of Conduct.

Action By

Findings on penalty, if any, for contravention of Code

The possible penalties available to the Committee were outlined by the ESO's Representative.

In the view of the ESO's Representative, in mitigation, Councillor McCarthy appeared genuinely to have had concern about the participation of members of his committee and it was recognised that for many Councillors, the question of declaration of interests was a difficult issue. However, aggravating factors existed from the fact that Councillor McCarthy was the chairman of the committee responsible for the conduct of the meeting and from the fact that he used his casting vote, although Councillor McCarthy had since said he would behave differently in the future if faced with the same situation.

Councillor McCarthy explained that there appeared to be little clear and precise guidance on when and where a personal or prejudicial interest existed and that members could not know all the rules inside out. He understood that this had proved to be a good working experience for him and that training was needed. He felt there should be more training workshops for people in his position. He stated he had not been aware of all the facts regarding interests but would not plead ignorance and felt that it was something he would not normally have done.

The Committee then retired to determine its findings on penalty.

Decision

The Committee's decision was announced by the Chairman as follows:

RESOLVED that the Committee accept that Councillor McCarthy has learned his lesson but they believe that the use of his casting vote elevated the seriousness of the matter in that it changed the decision of the Watton Town Council Planning Committee. The Standards Committee decision is therefore that Councillor McCarthy should be suspended from being a member of Watton Town Council for three months commencing from the date of this meeting.

The Chairman concluded by saying that the Committee appreciated that in regard to training, this had been a learning curve for Councillor McCarthy and reiterated the importance for members to undertake training.

Copies of the decision summary were made available at the close of the hearing.

**Standards
Officer**

Action By

51/07 COMPLAINT AGAINST COUNCILLOR L. MCCARTHY, WATTON TOWN COUNCIL (AGENDA ITEM 6)

The following persons were present for the hearing into this matter:

Member Concerned	Councillor L. McCarthy
Ethical Standards Officer's Representative	Natalie Birtle
Investigating Officer	Alex Oram
Legal Adviser to the Committee	John Chinnery, Solicitor & Standards Consultant
Attending Officer	Miss E. Wilkes, Committee Officer
Observers	<u>Watton Town Councillors:</u> Mr. J.P. McCarthy Mr. J. Craigie Mr. K.S. Gilbert Mrs. J. Seal, Clerk to Watton Town Council <u>Substitute Members of Standards Committee:</u> Mr. J.P. Labouchere Mr. M. Eveling Mr. B. Rayner Mr. M. Whittley

Summary of the Allegation

That Councillor Lorraine McCarthy, a member of Watton Town Council, failed to declare a prejudicial interest and withdraw from the chamber during the consideration of a planning application on 30 January 2007. Further, that Councillor McCarthy voted against the planning application.

Procedures for the Hearing

The hearing would be conducted as follows:

4. To consider the findings of fact as submitted in the Ethical Standards Officer's (ESO) Report.
5. To consider whether, in the light of the facts as found, the Member had failed to follow the Code.
6. If it was found that there had been a breach of the Code, to determine what, if any, penalty there should be.

Action By

At the end of each stage, following consideration of the report and any other information supplied by the Member concerned and the ESO's Representative, the Committee would retire to consider its decision, which would then be announced.

Findings of Fact and Reasons

Councillor McCarthy was asked whether she accepted the summary of findings of fact as already stated relating to the same meeting considered in respect of Councillor J.P. McCarthy in the ESO's Report and if she was therefore happy to proceed on that basis, to which she replied she was.

The hearing accordingly commenced on the basis that the findings of fact were as stated in the ESO's Report.

Councillor McCarthy was invited to respond to the findings in regard to the nature of her interest in the matter concerned.

Councillor McCarthy replied that she had sought advice at the time and had been told that her interest was of a personal nature only. She had since attended training from which she had learned that she should have declared a prejudicial interest.

The ESO's Representative was asked if she had anything to add to the report and she asked that the submissions to the final report made by Councillor McCarthy (Form A, appendices pages 1-2) be incorporated as findings of fact. The Committee agreed to this.

It was confirmed by the Legal Adviser that Councillor McCarthy had attended a standards training session on 20 June 2007 as stated.

When asked if she accepted she had a prejudicial interest in the matter concerned, Councillor McCarthy stated that she had only learned about it afterwards and that from the information given to her when she became a Councillor she had understood that prejudicial interest meant a financial interest.

Councillor McCarthy confirmed she accepted the findings of the ESO that she had breached paragraphs 10(a) and 10(b) of the Code of Conduct.

Findings on whether any contravention of the Breckland Code of Conduct has occurred

The Committee accepted the finding of the ESO, as confirmed by Councillor McCarthy, that she had failed to comply with paragraph 10(a) of the Code of Conduct in that she did not withdraw from the meeting during consideration of the matter in question and that she had improperly influenced the decision about that matter in contravention of paragraph 10(b) of the Code.

Findings on penalty, if any, for contravention of Code

The possible penalties available to the Committee were as previously outlined.

Action By

In the view of the ESO's Representative, relying on the statements of facts as given earlier, although Councillor McCarthy was not the chairman of the meeting in question, an aggravating factor existed from the fact that if Councillor McCarthy had not participated in the meeting, the decision would have been reversed. In mitigation, Councillor McCarthy had not had training until after the event and it was accepted that she was genuinely trying to redress her lack of knowledge of the Code.

The Committee then retired to determine its findings on penalty.

Decision

The Committee's decision was announced by the Chairman as follows:

RESOLVED that the Committee accept that Mrs. McCarthy's position was not the same as Mr. McCarthy in that she was not so involved in events before the Watton Town Council planning committee meeting, she was less culpable than the Chairman and she has tried to rectify her understanding of the Code of Conduct by attending training sessions since the event.

Nevertheless, the Committee believe that Mrs. McCarthy should have realised that she had a prejudicial interest and therefore the Committee's decision is that she should be suspended from being a member of Watton Town Council for a period of six weeks from the date of this meeting.

Copies of the decision summary were made available at the close of the hearing.

52/07 THE LOCAL GOVERNMENT & PUBLIC INVOLVEMENT IN HEALTH BILL - NEW ARRANGEMENTS FOR STANDARDS COMMITTEES (AGENDA ITEM 7)

Consideration was given to the implications for Standards Committees under the recently enacted Local Government and Public Involvement in Health Act. New Regulations would require changes to the constitution of the Committee to enable complaints about alleged breaches of the Code of Conduct to be fully considered at the local level.

At present, although the Act came into force on 30 October 2007, no details were yet available on timescales and the Regulations regarding the provisions on the responsibilities and composition of Committees were awaited. It was expected that the new regulations would come into force from 1st April 2008.

Members were concerned to ensure that the Committee was in readiness by 1st April and that the Council would need to determine the make-up of its Standards Committee by January if the necessary amendments to the Council's Constitution were to be made in time.

**Standards
Officer**

Action By

It was agreed that the Chairman and Standards Consultant would seek to obtain further information to enable further consideration to be given at the next meeting.

RESOLVED that further information be obtained and a report be submitted to the next meeting of the Committee to enable the Committee to consider options and make recommendations to Council.

**Standards
Consultant**

The meeting closed at 5.12 pm

CHAIRMAN