



ASSESSMENT DECISION NOTICE

NO BREACH OF THE CODE

Reference: CCN017/19/20

Complainant: Mr Michael Scoble

Subject Member: Cllr Ivor Phillips, Madron Parish Council

Person conducting the Assessment: Eleanor Garraway, Corporate Governance Officer

Date of Assessment: 26 May 2020

Complaint

On 26 May 2020 the Monitoring Officer considered a complaint from Mr Michael Scoble concerning the alleged conduct of Cllr Ivor Phillips of Madron Parish Council. A general summary of the complaint is set out below:

It is alleged during the course of the Parish Council meeting on 2 January 2020, the Subject Member failed to declare an interest when planning application PA19/10464 came under discussion due to the Subject Member renting land to the applicant.

Further the Complainant states that the Subject Member failed to provide specific details of the objectors received to the application but advised that the same should be refused as '*people objected*'.

Decision

For the reasons set out in this notice it is not considered that the Subject Member has breached the Code of Conduct for Madron Parish Council and that no further action needs to be taken.

Reasons for the Decision

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

- The original complaint;
- The Subject Member's views to the complaint;
- The Subject Member's Register of Interest form;
- The Parish Council minutes of the meeting on 2 January 2020; 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 due to not acting in accordance with the Code when the Parish Council considered planning application PA19/10464 (the 'Application') at its meeting on 2 January 2020 as he rents land to the applicant.

Whilst no written response has been received by the Subject Member, he has advised the Independent Person assigned to this matter via telephone, that he does not rent land to the Applicant but to the Applicant's father.

Furthermore, the Subject Member has stated that whilst members of the public had objected, he had not read the application in full and that there was not enough information contained within the same for those reading to understand what was being proposed.

Findings of Fact

When considering the facts that are presented they are required to be considered objectively and on the balance of probabilities that is; would a reasonable person in possession of the all the facts view the actions of the Subject Member as a breach of the Code of Conduct.

Application of the Code of Conduct

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

Declaring an Interest

Two types of interest 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.

3.5 of the Code sets out –

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 meeting 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.*

For a disclosable pecuniary interest to arise the matter under discussion had to be something that will affect the beneficial interest the Subject Member has with regards to those items on his register of interests form in a positive or negative manner.

The matter under discussion was not in relation to the land the Subject Member has registered on his Register of Interest form and therefore there would have been no need for the Subject Member to declare such an interest.

I have also considered if the Subject Member may have a non-registerable interest in the Application. A non-registerable interest is defined in the Code of Conduct at paragraph 5B which sets out that;

You have a non-registerable interest where a decision in relation to a matter being determined or to be determined:

(i) might reasonably be regarded as affecting the financial position or well-being of you; a member of your family or any person with whom you have a close association; or any body or group which you are a member of more than it might affect the majority of council tax payers, rate payers or inhabitants in your electoral division or area; and

(ii) the interest is such that a reasonable person with knowledge of all the relevant facts would consider your interest so significant that it is likely to prejudice your judgement of the public interest

In considered this matter, whilst I note the Complainant's concerns, no evidence has been provided to suggest that the Subject Member rents land to the Applicant of the planning Application under discussion. I further have considered the Subject Member's statement, that whilst he does not rent land to the applicant he rents land to the Applicant's father and that the Applicant plays no part in the business that his father runs. As no evidence

has been received to the contrary I believe, on the balance of probabilities, that the Subject Member does indeed rent land to the Applicant's father and not to the Applicant.

I do consider that there is a potential that, given that the Application came under discussion during the contents of the Parish Council meeting in relation to the applicant's father, that a non-registerable interest may arise as this is something that could affect the well being of a member of his family.

However, for an interest to arise paragraph 5B has to be read in its entirety and the second part sets out that;

'the interest is such that a reasonable person with knowledge of all the relevant facts would consider your interest so significant that it is likely to prejudice your judgement of the public interest'.

I have considered whether a reasonable person would consider the Subject Member's relationship with the Applicant's father to be significant enough to affect his judgement. I believe that a reasonable person would see the interest as too far removed for an interest needing to be declared as whilst the Code may extend to the applicant, the relationship the Subject Member has with the Applicant's father is remote and no evidence has been provided which suggests otherwise.

As a result I do not consider that the Subject Member has a non-registerable interest in the Application and therefore no breach of the Code has been found in this regard.

Para 2.5 - You must not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct by Members

For the reasons set out above I do not consider the Subject Member has failed to adhere to the general principles of public life underpinning the Code and has therefore not conducted himself in a manner contrary to the Council's statutory duty to promote and maintain high standards of conduct and has not breached paragraph 2.5 of the Code of Conduct for Madron Parish Council.

It should further be noted that a member can vote on a matter under discussion as they choose fit and whilst it is always encouraged that one reads an application in full there is nothing to enforce a member to do so. Furthermore, in respect of the objections observed by the Subject Member, one is not obligated to provide information on the objections received but the Complainant should note this is available from the local planning authority.

In considering the facts as above I do not consider that the actions of the Subject Member have resulted in a breach of the Code of Conduct for Madron Parish Council.

Whilst I have not found the Subject Member to be in breach of the Code, I do consider that his Register of Interest form lacks clarity.

When land is shown on the form it needs to be identifiable and from the wording laid out I believe this not to be the case. I would therefore request that the Subject Member amends his Register of Interest Form to clearly identify the land that he owns and/or rents and provide the clerk with this updated copy within 28 days of this Notice.

Independent Person's views

In considering the complaint I have noted the views of the Independent Person assigned to this matter with regards to the Subject Member's conduct. The Independent Person did not consider the alleged actions of the Subject Member would result in a breach of the Code.

As set out in our procedures the Independent Person's written views are set out below:

Having considered the information provided by the complainant, Mr Scoble, the information provided by the Monitoring officer and following my discussion with the Subject member, Cllr Phillips, It is my view that Cllr Phillips has breached Paragraph 3.5 of the code as he should have declared his own business relationship with the applicant's father and not participated further in the discussion of the application. He should have withdrawn from the meeting.

It should be noted that whilst the views of the Independent Person have to be taken into consideration upon assessment, the assessing officer does not have to agree with their decision and reasoning.

Therefore; for the reasons set out above there has been the decision at assessment is there is no finding on whether there has been a breach of the Code of Conduct for Madron Parish Council.

What happens now?

This decision notice is sent to the Complainant, the member against whom the allegation has been made and the Clerk to Madron 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.

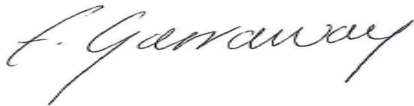
We must receive a written request from the Complainant to review this decision within 15 days from the date of this notice, explaining in detail on what grounds the decision should be reviewed.

If we receive a request for a review, we will write to all the parties mentioned above, notifying them of the request to review the decision.

Additional help

If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010.

We can also help if English is not your first language.

A handwritten signature in black ink, appearing to read 'E. Garraway', written in a cursive style.

Eleanor Garraway
Corporate Governance Officer

On behalf of the Monitoring Officer
Date: 26 May 2020