



ASSESSMENT DECISION NOTICE

NO BREACH OF THE CODE

Reference: CCN012/19/20

Complainant: Mr and Mrs Barry Edgington

Subject Member: Cllr John Symons, Cornwall Council

Person conducting the Assessment: Eleanor Garraway, Corporate Governance Officer

Date of Assessment: 5 February 2020

Complaint

On 5 February 2020 the Monitoring Officer considered a complaint from Mr and Mrs Barry Edgington concerning the alleged conduct of Cllr John Symons of Cornwall Council. A general summary of the complaint is set out below:

It is alleged that during the course of a Parish Council meeting, the Subject Member mentioned the Complainants' names during a heated discussion he was having with another member present.

Decision

That, for the reasons as set out in this Decision Notice the Subject Member has not breached the Code of Conduct for Cornwall Council and no further action 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 minutes of Mylor Parish Council meeting of 30 September 2019;
- The views of another member present at the meeting; and
- An email from the Complainants to an officer in the authority's planning department.

The Complainants have set out that during the course of a meeting of Mylor Parish Council on 30 September 2019, when in attendance as the Ward Member, the Subject Member had a 'heated' discussion with another member present.

The discussion that took place was during the Subject Member's update in respect of breaches of planning control within the Parish. It was during this discussion the Subject Member stated his disappointment regarding the Complainants' prior planning application and as part of this it is alleged stated that he insinuated the Complainants used the planning system to their advantage to gain planning permission, to then go on to sell the site.

Both the Subject Member and the Complainants have provided details of the history to the Complainants' planning permission which does show that whilst planning permission was initially refused by the Cornwall Council, this was later overturned on appeal. Additionally, both parties have confirmed that the site is now for sale.

The Complainants have stated that their names and their past planning application should not have been likened to the planning breach that was under discussion as it had nothing to do with it, and they consider that they did not waver from the correct planning procedures.

The Complainants further has said that at the meeting they had no way to defend themselves or to reply to the statement made by the Subject Member as they were attending the meeting as members of the public.

The Complainants raises the fact that the Subject Member was 'flustered' at the meeting and states that the Complainants were rude to him at the time of their planning application and at the time this had caused him upset. This allegation is denied by the Complainants and no commentary in this regard has been received by the Subject Member.

In his response the Subject Member denied a heated conversation took place at the meeting but does acknowledge he stated the Complainant's name and should not have done so however, no offence was intended. He further sets out that no confidentiality has been breached as their names with regards to the planning application are in the public domain. The Subject Member further acknowledged that he did voice his disappointment

with the Complainants' application and what had happened with the site during the course of this meeting.

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 Cornwall Council.

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.

The Code also requires that it is only the facts of the complaint that are considered at assessment and whilst the background to this complaint has been considered, which is in respect of the Complainants' prior planning application, this can only form the backdrop to the complaint. No consideration has been given on the planning application process and the reasons behind the decision made by Cornwall Council to refuse the application which resulted in the decision of the Council being overturned on appeal.

Application of the Code

The Code of Conduct sets out, at paragraph 2.1 that a Councillor must treat others with respect.

I have compared the accounts of this meeting have reviewed the minutes from the meeting – though in reviewing the minutes it is accepted that these are not a verbatim account nor is there a requirement for them to be.

In dealing with any matter Councillors can be critical and can challenge, and this is intrinsic to the role of a Councillor. However, the operation of the Code draws a distinction between the role and the ability to be critical and challenging, to attacking anyone personally.

When considering whether or not the 'heated' discussion did in fact take place as stated by the Complainants, the Code of Conduct requires that a matter is assessed on the balance of probabilities and that it has to be shown that it is more likely than not that incident took place as alleged took place and then it needs to be considered if the discussion would give rise to a breach of the Code.

In reviewing the facts, as is often the case in such circumstances when a conversation takes place after the event there are conflicting version of events which can hamper the consideration of the facts. One member has provided her version of events and two further members present were contacted to do the same, however no responses were received. The witness, who was present, advised that she can remember a robust debate but cannot she cannot remember the details as alleged accusation by the Complainants. It should be noted that the Complainants provided contact details of another person present and whilst attempts have been made to contact them, no response has been received.

The Subject Member, by his own admission, states that he voiced his disappointment to the Complainants' previous application however denies that any discussion was 'heated' as alleged.

When assessing this aspect, whilst it is not a question as to whether the events subject to this complaint took place, it is the fact that the previous planning application made by the Complainants was raised, as was their intent to sell the site, but whether the way in which the comments were delivered, were as alleged and if these amount to a breach of the Code. When viewing any discussion an individual's view is often highly subjective and the Code requires an objective consideration of the facts.

As a result, on an objective consideration of the facts I am unable to say, on the balance of probabilities, that a robust and heated discussion took place as alleged.

I have considered referring this part of the complaint for further investigation but, as the ethical standards regime does not allow statements of truth to be made, or interviews to be conducted under caution, the alleged conduct will remain a case of one word against the other as no corroborative evidence has been provided. It is therefore not considered to be in the public interest to refer this element for further investigation as it would not be possible to resolve these conflicting statements. Also, it is questionable even if a heated or robust debate took place, it would be a breach of the Code.

I have however considered the element of the complaint when the Subject Member named the Complainants as this is a fact that is not disputed. As stated above, the Subject Member has acknowledged that he stated the Complainants' name however has recognised that this is something which he should not have done and in contacting the Independent Person assigned to this matter, stated that no offence was intended.

Whilst clearly the Complainants were aggrieved by hearing their names used when the Subject Member was comparing their previous application to the breach of planning control under discussion, I do not believe that the threshold for disrespect has been exceeded.

As part of this I have considered whether a reasonable person would stating a past planning applicant's name, which was in the public domain, would warrant finding a breach of the Code due to disrespect.

For a breach of the Code to be found it would need to be shown that in stating their names the threshold from being critical and challenging was crossed into a personal attack and I do not believe on the facts this to be the case.

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:

"The IP found no corroborative evidence that there had been a "heated discussion" at the meeting in September.

The IP noted that when the Subject Member spoke with the IP he did say that the procedure at the meeting had been followed and that there was nothing he had said to create controversy.

The Subject Member acknowledged that the Complainants' name had been mentioned by him and that he probably should not have done so, however nothing was said in the meeting that had not already been within the public domain.

The IP's view is that Cllr Symons has not breached the code of conduct."

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 as a result of this I do not consider that the Subject Member has breached paragraph 2.1 of the Code of Conduct for Cornwall Council.

Paragraph 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 as I consider the Subject Member has not failed to adhere to the general principles of public life underpinning the Code and has not therefore conducted himself in a manner contrary to the Council's statutory duty to promote and maintain high standards of conduct for Cornwall Council.

Actions

Whilst not breach of the code has been found and no actions are recommended I have further considered the Subject Member's comment that the names of the Complainants would be publicly available due to their previous application.

Whilst this is factually correct I would advise the I would advise the Subject Member to consider the way such information may be viewed by a third party prior to making such a statement, and it can be useful when presenting such facts to present them in a manner that puts them into context.

What happens now?

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



Eleanor Garraway
Corporate Governance Officer

On behalf of the Monitoring Officer

Date: 5 February 2020