

Investigation for Rother District Council Monitoring Officer

Subject Member: Councillor J Streatfeild, Northiam Parish Council

Investigation Officer

I am a solicitor working in a District Council in West Sussex. I have nearly 30 years of experience in local government and have worked in four different authorities in three different counties. My background is in litigation and administrative / governance law.

I am a Monitoring Officer for my own authority and have acted in that capacity at three of my authorities. I have wide experience of investigation of conduct matters. I have carried out investigations on behalf of eight other local authorities as an independent external investigator and through this have experience on applying different local practices and Codes of Conduct.

I have received training on the national code of conduct, participate in local government association legal group and maintain my continuing professional development with a focus upon local authority governance issues.

I have no links to Rother District Council beyond being Monitoring Officer at a geographically close authority (next County), nor do I have any links to the persons involved in this matter.

Background

For brevity I shall typically refer to Councillor Streatfeild as the Subject through this report as he is the Councillor subject to consideration. I note that some of the emails provided use different spellings of his name.

It is important I start this report by explaining what it shall not cover (and in fact may not cover). I am not investigating or deciding as to the decision making by or running of Northiam Parish Council. This investigation is exclusively into the allegations made as to potential breaches of the code of conduct which is statutorily required to be followed by each Councillor. I have explained this to several of the parties several times.

However, the matters complained of relate to a long dispute between Councillors about the running of areas of land, the development of housing and selection of a business to operate services on land, the relationship with a CIC. It has been the subject of significant numbers of referrals outside the Parish as well as confrontational meetings. The matter has become polarised and almost all persons presenting me with their perspectives have referred to the impact upon their wellbeing in some way. All relationships appear to run along those polar lines and the actions of the other side of the disputes, or of those involved in advising, is viewed at best critically.

The investigation is however itself as to simple questions as provided in the complaint – did Cllr Streatfeild breach the code as to;

- 1) Treatment of person with an interest in St Francis Field
- 2) Making allegations on social media and a website called “northiam next door”
- 3) By a statement by way of an “open letter”

- 4) Generally in his approach and actions was he bringing his role or the authority into disrepute.

Sources of rules and the law applied in this investigation

I have considered various sources in my evaluation of the law to apply to this investigation.

Firstly, some generic sources such as the Encyclopaedia of Local Government Law (Sweet and Maxwell), Knowles on Local Authority Meetings A manual of Law and Practice (current, eighth, edition) by Philip McCourt.

These sources have been applied when I have considered and applied the Northiam Code of Conduct.

I have considered the information provided to me by the Monitoring Officer in my instructions and the communications from Councillor Streatfeild as well as from a range of parties.

As I have many years of experience in this area I have a variety of sources and experience relating to member conduct and investigation including training documents, documents provided during annual Monitoring Officer conferences or Governance conferences as well as having access to the Local Government Ombudsman website and carried out searches of the decision system at <https://www.lgo.org.uk/decisions> (hyperlink) in particular the elements on Councillor Conduct and standards.

I have also considered guidance materials in particular the Local Government Association guidance "Councillors and Social Media" in particular sections 3 and 6 (the latter being "dealing with harmful rumours and misinformation". Hyperlink - <https://www.local.gov.uk/councillors-and-social-media#:~:text=Councillors%20are%20personally%20responsible%20for,you%20will%20be%20personally%20liable.>

To quote that guidance

"The right to freedom of expression is a fundamental human right of the greatest importance and a lynchpin of any democracy. However, it is not an absolute right as indicated in the three articles numbered 9, 10 and 14 of the European Convention on Human Rights. The key elements appear in article 10, which sets out that the freedom includes to right to hold opinions and to receive and impart information and ideas without interference from a public council.

The elements that have a bearing on councils are:

- *Interests of public safety*
- *Prevention or disorder or crime*
- *Protection of health or morals*
- *Protection of the reputation or rights of others*
- *Preventing the disclosure of information received in confidence*

All the above have been incorporated within our legislation and thus restrict the extent to which freedom of speech is permitted.”

I have considered the balancing of freedom of speech – and the counter responsibilities that limit that right. In doing so I have considered the Anti- Social Behaviour, Crime and Policing Act 2014, Malicious Communications Act 188 section 1, the Communications Act 2003, s360 of the Sentencing Act 2020, the Malicious Communications Act 1988, the Communications Act 2003, s 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and the Defamation Act 2013.

Further I have considered the Local Government Association “Civility in public life” guidance (hyperlink - <https://www.local.gov.uk/our-support/guidance-and-resources/civility-public-life>) and the “Councillors guidance to handling intimidation” (hyperlink - <https://www.local.gov.uk/councillors-guide-handling-intimidation>) both of which provide helpful advice to members who find themselves in disputes, and which is guidance which is of assistance to me in assessing conduct against best practice advice which those guides provide.

I have also considered the relevant guidance on what comprises bullying from the Local Government Encyclopaedia.

In a decided Court case **Heesom v Public Service Ombudsman for Wales** Mr Justice Hickinbottom considered a councillor’s right to free speech in some detail.

His considerations drew attention to a number of earlier cases in which the following propositions could be derived:

- a. While freedom of expression is important for everyone, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests.
- b. The enhanced protection applies to all levels of politics, including local.
- c. Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.
- d. Whilst, in a political context, article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false.
- e. The protection goes to “political expression”; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others.
- f. Past cases draw a distinction between fact on the one hand, and comment on matters of public interest involving value judgment on the other. As the latter is unsusceptible of proof, comments in the political context amounting to value judgments are tolerated even if untrue, so long as they have some – any – factual basis. What amounts to a value judgment

as opposed to fact will be generously construed in favour of the former; and, even where something expressed is not a value judgment but a statement of fact (e.g. that a council has not consulted on a project), that will be tolerated if what is expressed is said in good faith and there is some reasonable (even if incorrect) factual basis for saying it, “reasonableness” here taking account of the political context in which the thing was said

g. As article 10(2) expressly recognises, the right to freedom of speech brings with it duties and responsibilities. However, any restriction must respond a “pressing social need”.

h. Politicians are required to have a thick skin and be tolerant of criticism and other adverse comment. Civil servants are, like politicians, subject to the wider limits of acceptable criticism. However, unlike politicians they are involved in assisting with and implementing policies, not making them. As such they must enjoy public confidence in conditions free from perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive attacks when on duty.

I must give weight to the fact if comments were directed towards an elected councillor; politicians are required to have a thick skin and be tolerant of criticism and other adverse comments. In addition, in a political context, councillors are able to be slightly more exaggerated and offensive in their language than what might be considered acceptable outside that context. The opposite but implied point, that comments directed towards members of the public should be less exaggerated (etc.) is also relevant to consideration in this matter.

I have considered the case law on the question of “Acting as a Councillor” and the Northiam Code.

The Code of Conduct applies to a Councillor as soon as they sign their declaration of acceptance of the office of councillor or attend their first meeting as a co-opted member and continues to apply to them until they cease to be a councillor.

The Code of Conduct applies to Councillors when acting in a capacity as a councillor which may include when:

- They misuse their position as a councillor
- Their actions would give the impression to a reasonable member of the public with knowledge of all the facts that they are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

Councillors are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

Time delays

Whilst undertaking the investigation, Cllr Streatfeild lodged complaints as to other persons involved in the matter. To ensure as much separation as possible between those complaints and this investigation, I “held” my investigations pending those complaints. I apologise to all involved for these delays, but I considered it important to ensure the investigation I carried out was achieved in as independent a manner as I could, and without it needing to be subject to any third element.

Application of the Code of Conduct and the importance of respect for decision making

The correspondence shown to me has been consistent in showing that the disagreements on the activities of the NPC have been significant. Allegations have been followed by more allegations. Attempts at what were termed “bridge building” have been rebuffed, positions appear to have become more and more entrenched, the actions of others have been perceived entirely negatively.

However, as emphasised above, this investigation is not about the rights and wrongs of the Parish in its decision making. It is about the conduct of a Councillor, considered against the rules that Councillor agreed to follow at the time that he became a Councillor, assessed against a wider context. There are mechanisms to object to the decision making of the Parish or individuals and the Subject Councillor has used many of them as referred to below.

The work of a Parish Council is significant and requires those involved to show the characteristics of a Councillor to deliver what its community needs. Councillors are different, but the principles of public life are the same for all of them. They have freedom of speech, but as in any sphere those freedoms come with obligations to use that freedom with wisdom and thought. They have access to information and a public position to receive and give their views, but these come with obligations to respect confidentiality and the views of others. All Councillors have the right to make their arguments publicly, to challenge appropriately in their meetings and are under a duty to weigh the arguments of all that evidence.

The purpose of a Parish Council is to make decisions. To weigh evidence, bringing the perspectives and intelligence that led to the Councillors being elected by their peers, and come to decisions. Once a decision is made those decisions impact the lives of others and the decisions of the body have to be respected so as to avoid bringing the Council into disrepute.

All of the above are foundations of an effective Council and Councillors unwilling to engage with them or apply them in the manner set out by the Code of Conduct are failing their Parish and their Community. The sanctions available for breach of the Code of Conduct reflect this.

Outline of the process and work of the investigation

Evidence

This investigation has been a very significantly defined by the weight of documents submitted to me. This is because the matters which have led the Parish to this point have been the focus of its attentions for several years, with a debate that has clearly been unpleasant for all involved. I have been told that the matters in question have had a huge and adverse impact upon the Parish, and I note the comments of the Rother District Council

independent person in their statutory capacity that they consider these matters require an external investigation in the hope of enabling the authority to move on. I take heed of their direction with thanks.

The Subject Councillor has communicated with me by several emails and provided a number of documents to me all of which will be attached to the hard copy of this report when sent to the Monitoring Officer and the Subject (as shall all evidence provided to me by all witnesses). His emails have been courteous and prompt. Some of the latter emails to me have included further evidence such as reports on the Blue Cross site, an excel spreadsheet as to cheque payments. He provided me with a detailed initial response to the complaints which largely amount to a bare denial and an explanation of where he considers the behaviour of others has been improper and his actions simply a response to those failings in the actions of the Parish and the CIC as he sees them.

He then responded over the weekend of the 16th April 2022 to a second range of questions with more detailed responses providing detail as to the doctors field housing development proposal, reports to police and otherwise as to St Francis Field and its occupier, statements on financial matters as to that occupier which he advised he believed to be public, greater detail as to his dispute with specific Councillors, the CIC and housing matters, sources of advice and why he considers that to be of limited value (at best) and his lack of training as a Councillor. Finally, he provided me with a number of contacts from Police and the Community Interest Company regulator in which those bodies decline to follow the concerns raised by the Subject. I also received and considered a number of documents by way of supporting information though again this largely related to the dispute rather than as to the Subject's actions.

I asked questions as to the source of information referred to in the "open letter" and the Subject asked some questions as to which specific matters I was referring to but indicated that he considered all matters to have been publicly referred to in Parish meetings and confirming his subsequent understanding that instead he ought to have called a special public meeting.

The Subject provided further information as to his contact with Rother District Council officers. He also emailed me with a variety of his perspectives on NPC officers including Mrs Gilly Lowe.

The Subject evidence as to responses from Police, the CIC regulator, the Monitoring Officer and her staff and the external body that provides advice to Parishes.

I have received evidence from Ms Harding by way of a detailed email of her perspectives on the history of the matter and the conduct of the Subject, a copy of a resignation statement and another email and one document which was empty.

I received a great deal of evidence from Mr Sargent along with a wide range of documents – again, copies of historic emails, cashflow projections, legal fact sheets, resignation letters, a 5-page report on the matters as to the land, correspondence with Trevor Leggo of SALLC, minutes of meetings, information on the SF development, emails as to whistle-blowers and more.

I have received evidence from Ms Schlesinger again including a number of exhibited emails as to complaints by the Subject against officers, emails from the Subject and one in respect of Mr Amphill.

I have received evidence from Mr Biggs again exhibiting a number of emails as to the background to this matter, relating in particular to the CIC and about the CIC regulator, the Open letter, the livery.

I have received evidence from Ms Edwards and Mr Edwards setting out their perspectives on the conduct of other members of the NPC towards the Subject and broadly by way of a character support statement as to the Subject. I further received an email from Ms Edwards setting out her recollection of her involvement at the CIC until her resignation in October. She gave me her perspective in detail as to the relationships involved and as to behaviour towards the Subject by other Councillors.

I have been forwarded an email from Ms Jacqueline Harding dated 15th July 2021 as to the activity of the Parish by the Subject.

I received an email setting out representations from a Mr Dean Johnson in support of the Subject.

Shortly after starting this investigation I received a further complaint on behalf of members of the CIC as to the conduct of the Subject though largely on parallel issues set out by the initial complaints. I agreed to consider those as part of this complaint. Those complaints essentially repeated elements of the complaint elements set out in the background above.

I did not receive evidence further to the complaint put forward by the current tenant of land who submitted a complaint to the Monitoring Officer. This lack of response is clearly critical to some elements of the Complaint as there is no evidence beyond the bare assertions made in the complaint.

I took leave and the Subject contacted my own authority (not Rother District Council) and asked some of my legal colleagues several technical and procedural questions. I have considered that correspondence but it was made in response to direct questions and only relate tangentially to this investigation which addresses the Code of Conduct as set out in the background above. I shall not include this discussion in my documents in the appendix to this report. Those officers are not instructed by the Monitoring Officer.

Several sources – including those supplied by the Subject – show my investigation that the actions of the NPC as to the land and the CIC have been assessed by a variety of persons and bodies with professional, external or independent perspectives or that they have been presented by concerns by the Subject about the issues which led to the Open letter and decided on consideration not to proceed. These include the Monitoring Officer, the Deputy Monitoring Officer, senior officers at Rother District Council carrying out complaint processes, Ms Upton (a former clerk and solicitor) the Police, Auditors, the CIC regulator, Mr Trevor Leggo. I am not aware of any of them finding in favour of the Subject on the points of procedural or other alleged failings and the evidence provided by the Subject as copy emails show that the police and regulator did not consider those complaints to be ones which they should act in relation to for different reasons. They did suggest alternative

routes to proceed. I note also that other NPC Councillors have considered the points in debate and otherwise.

This is not to indicate that I make findings on the history – only to set out the history to show that the perspectives of the Subject have been reviewed by many different professional viewpoints. The Subject maintains that he is correct on the facts and that those who have assessed his evidence are wrong. He is entitled to hold those views but is required as a Councillor to act within the Code in when and whether to express them. He should consider the repute of the Parish in making those decisions and of course his legal obligations to respect confidentiality.

All of the above evidence will be attached to the hard copy of this first draft report when sent to the Monitoring Officer and the Subject (as shall all evidence provided to me by all witnesses).

The Investigation Decision Process

In assessing a Code of Conduct complaint an investigators task is straightforward. To assess whether the conduct complained of was covered by the Code. If it is covered by the Code, does the matter complained of comply with the duties established by the Code of Conduct. If the matter complained of does not comply, an assessment of the context to inform the decision on whether to recommend a sanction. That contextual information can be mitigating elements or aggravating elements.

Is the matter forming the subject of the complaints covered by the code?

Generally, this matter relates to disagreement as to the NPC actions as to the Land and the conduct of the Subject towards those actions.

The NPC code is standard in its wording that a Councillor is subject to that code whenever they act, claim to act (etc.) as a Councillor (full wording at section 2 (1) (b) of the NPC code.) The complaints are wide, but the core focus for the Complainants is the “open letter” written by the Subject Councillor. That open letter has a stated intention to be written as a “concerned citizen” rather than as a Councillor. However as set out in the case law it is not sufficient to state that an action is being carried out with a particular “hat on” to settle the position on whether the activity is acting as a Councillor.

The open letter is expressly discussing NPC business as to the purchase of land, current and future uses of the land, and the relationship with the CIC. It includes elements which relate to matters which appear to be clearly only available to the author as a Councillor – contents of legal advice to the NPC, descriptions of “whistleblower” statements, statements of legal arrangements of the authority to the CIC and so on. Whether these elements are correct or not they all indicate acting as a Councillor.

- My finding is that the Open letter was written whilst the Subject was acting as a Councillor.
- My finding is that social media posts discussions about the Parish would be written whilst the Subject was acting as a Councillor.
- My finding is that the Subjects alleged contact with the occupier of St Francis Field as set out in the complaint would be carried out as a Councillor.
- My finding is that the wide aspects of how the Subject has engaged with all parties would be carried out as a Councillor on the evidence.

All the above findings are made to the civil standard, that is, on balance of probability.

Does the Open Letter comply with the Code of Conduct?

It is worth repeating the contents of the code and the general obligations of members under the Code – including the Subject of course - at this point.

General obligations

3.
 - (1) *You must treat others with respect.*
 - (2) *You must not –*
 - (a) *do anything which may cause your authority to breach any of its equality duties (in particular set out in the Equality Act 2010);*
 - (b) *bully any person;*
 - (c) *intimidate or attempt to intimidate any person who is or is likely to be-*
 - (i) *a complainant;*
 - (ii) *a witness, or*
 - (iii) *involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or*
 - (d) *do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.*
4. *You must not-*
 - (a) *disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where-*
 - (i) *you have the consent of the person authorised to give it;*
 - (ii) *you are required by law to do so;*
 - (iii) *the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or*
 - (iv) *the disclosure is-*
 - (a) *reasonable and in the public interest; and*
 - (b) *made in good faith and in compliance with the reasonable requirements of the authority; or*
 - (c) *prevent another person from gaining access to information to which that person is entitled by law.*
5. *You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*
6. *You –*
 - (1) *must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;*
 - (2) *must, when using or authorising the use by others of the resources of your authority-*
 - (a) *act in accordance with your authority's reasonable requirements;*
 - (b) *ensure that such resources are not used improperly for political purposes (including party political purposes); and*
 - (3) *must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.*
7.
 - (1) *When reaching decisions on any matters you must have regard to any relevant advice provided to you by-*

- (a) *your authority's chief finance officer; or*
(b) *your authority's monitoring officer,*
where that officer is acting pursuant to his or her statutory duties.
- (2) *You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.*

One complaint alleged that the Subject has harassed and bullied the complainant to try and gain access to the stable yard she rents at St. Francis Field from Northiam Parish Council. In her complaint she states that she only briefly met Cllr Streatfeild to show him around the site.

I contacted the Complainant and did not receive a response to that contact. I therefore have no evidence and must find in the absence of same that there is no evidence of harassment and bullying of the tenant of the stable yard and make no finding against the Subject.

The Open letter has several elements which the Complainants argue run contrary to these obligations.

They raise issues that information as to the resignation of the clerk, the reference to legal advice and a whistleblower is breaching confidentiality requirements as defined in part 4 unless one of the exceptions in part 4 (i to iv) apply.

I find that the information complained of is information given to the Subject in confidence by a person, or is information acquired by him which ought reasonably to be aware, is of a confidential nature.

I do not consider that any of the Part 4 exceptions i to iii apply on the definitions of those exceptions and make that finding.

I have considered the Part 4 exception iv as to whether it was *reasonable and in the public interest; and/or made in good faith and in compliance with the reasonable requirements of the authority.*

I note the comments of the Subject about the comments of the financial fides of an individual that "Everything I have said is completely accurate". He also indicates that he has copies of all emails and directed me to a third party. He also provided me with copies of related documents including emails.

Even if every statement is correct – and I note the contrary position put by others in each case in their complaints or other evidence to me - it is not the same as saying that the statements are made in good faith and in compliance with the reasonable requirements of the authority and in the public interest. The motivation of the Subject is given by him in the Open letter as being that of his concern. But those concerns had been raised in a variety of more legitimate ways, including to the NPC as a Council and to other bodies. He argued – in detail, bringing all the evidence his professional skills could bring to bear – and did not persuade others that he was correct. So, he turned to a public posting to put forward his arguments again to the public. He presents as facts matters which are clearly confidential in nature, which relate to matters of financial affairs of others, of legal advice sought by the

authority subject to all the rules of legal privilege and makes a variety of assertions as to the character of others and their wrongdoing as he saw it and sees it. These are all things which he had avenues to challenge as a Councillor beyond those available to other members of the public.

In doing this the Subject must have known from the evidence he provides to me that those who he raised concerns about did not accept his arguments, that in debate a majority of the Councillors in question had voted to act towards the CIC and land in the way they had decided to, following that debate. He was acting to criticise others and raise allegations against them other than through the proper channels. I note that he had raised some elements in proper channels but that those complaints were not upheld. I find that he acted in a manner which brought the Council into disrepute. I find that the use of an open letter to raise these issues do not show the required respect to others required under the Code.

To confirm my findings as to breaches in full;

I find that the Subject is in breach of the Code as follows

- In breach of the general duty to show respect as required by section 3 (1) of the Code of Conduct due to the contents of the “open letter”.
- In breach of the duty to avoid bringing the Parish Council into disrepute as required by section 5 of the Code of conduct due to the contents of the “open letter”
- In breach of the duties as to confidential information as required by section 4 of the Code of Conduct due to the contents of the “open letter”.

I **do not** find that the Subject is in breach of the code for alleged bullying and harassment of an individual as set out in outline in the complaint by one party and note that no evidence beyond the assertion in their complaint to the Monitoring Officer was made by that third party.

I **do not** find that the Subject is in breach of the code for their actions on social media by reason of his ignorance of the rules in this area.

I considered but make no binding findings as to other allegations of bullying and harassment towards other Councillors (current or previous) or members of the CIC. I shall discuss this decision in more detail below.

What factors do I consider to be aggravating or mitigation to the findings above

As set out in the background, this is a matter with a long and testing history. Decisions in respect of the land seem to have quickly led to difference of opinion and the Subject has disagreed at a fundamental level with some of the decisions as to the CIC and housing uses of the land. His disagreements appear sincerely held. He has shown energy and effort in presenting his counter arguments and then concerns about the site and its use. Some of the complainants have indicated that there may be wishes on the Subjects part to take over roles carried out by others – I cannot make a finding on that.

It is proper that debate allows different perspectives and to the point when the Subject was involved in meetings and making his arguments he was acting within the Code of Conduct. His motivation being apparently sincere does in my view provide some mitigation for the breaches which occur in writing the “open letter”. I say this in full consideration of the

guidance of social media and other sources of guidance on communicating with the public, all of which takes me to a view that the position is aggravated by the vehemence with which he continues to make his arguments after decisions have been made. He has repeatedly put forward concerns about any person involved in reviewing his arguments or who has disagreed with his views on what he considers would have been better use of the land. I do see the arguments put by several Councillors about the words of each other to and from the Subject. I note the law on Councillors showing each other respect and the need for some degree of “thick skin” in what is often called the rough and tumble of political debate. I do not think that an analysis of the interactions of the Councillors will take this matter forward. I believe on what I have read from minutes and commentaries by the Councillors providing me with evidence that debate was imperfect but that to unpick that at this time would be without benefit and be secondary to the issues around the “open letter”. I say this after much reflection on the points made by Mr and Mrs Edwards in their submissions. I do not want to be taken as endorsing any person who has spoken in a way described as bullying by another but in this case, I consider the way in which all sides engaged was increasingly fractious and that a line simply has to be drawn on that element. Nobody leaves a reasonable analysis of the matter with entirely clean hands as matters were polarised and debate appears to have turned into statements of what each feels the other is doing wrongly. In short, I do find the conduct of the Subject to have been less than that required by the Code in addressing the matters, and that by his actions he was below the standard required to preserve the position of respect due to the Parish and his position. However, he was not alone in that and in my view all members of the Parish need to reflect upon their conduct and how they have behaved.

It is also proper that review and complaint channels exist and are used. It takes courage and public spiritedness to make complaints or seek to challenge how a public body operates. The Subject explained to me his professional career includes experience of this at a journalistic role. However, those channels, once used, should be accepted and indeed respected. Democracy requires that decisions once made and tested are applied. It is vital that we accept decisions even if we don't agree with them – particularly if a person is one of the bodies making them. The role of Councillor does require balance between representing the public, a range of other perspectives and obligations and achieving a direction. My concern in assessing the context is that the Subject appears to have taken their role as what I would call an activist on this issue as outweighing all other concerns or duties as a Councillor. No evidence has been seen by me that suggests his ability to speak or make points was so restricted as to give him no other option than to have acted through the “open letter” in a manner that broke the code. In fairness he does acknowledge at a later point in his correspondence to me that he now knows that other options were available to him but that he did not know that.

I note the advice of the Subject that he has received no training since becoming a Councillor in relevant elements which he would need to understand to apply himself to the above tests. He presents me with his thoughts in one email that he considered himself to be acting as a form of “citizen journalism”. He goes on to indicate that he carried out many of his actions because he felt others were not taking forward the points he considered as significant. He received advice from external professional and independent persons and did not follow that advice (and I refer here to Ms Cooper of Rother and Mr Trevor Leggo). Both are experienced officers and their advice should not be disregarded as lightly as the Subject appears to have done – seeing and describing their motivations as “a disgrace”. I do not find any evidence that they have acted improperly here, only that they made findings or

gave advice which disagreed with the position of the Subject. His ability to assess those things is clearly made more challenging by his lack of a trained foundation in the role of a Councillor and as to Parish Council legal duties and processes.

In conclusion there are aggravating and mitigation which I apply here. I focus upon the “open letter” and not wider member debate. I have read and absorbed carefully the contextual information provided to me to understand the drives of all concerned including the stated wishes to deliver good use of the land. Against that I balance the Subjects stances as to the decisions of others and lack of acceptance of decisions by others which is not supportive of his own.

Sanctions

The Subject would be sensible to reflect on this and to consider with trusted persons whether the focus he has upon this issue is so complete as to make it inconsistent with the role of a Councillor at the Parish. The wider duties and need to accept democratically achieved decisions in which he is so completely uncomfortable with do suggest to me that he should think hard about whether the role continues to be one he can work within.

In making a decision the Subject should reflect upon the needs of the Parish to go forward and the need at some point to draw a line. I accept that he disagrees with various decisions, as set out in the contextual discussion above. But as he will not change his position, neither will others, and the majority appear content with the route democratically decided. If he can continue in the role without further reference to the site and the CIC then he may be able to provide community service as a Parish Councillor. If he does not feel able to do so then I believe the Parish will continue to bite its own wounds. He may well continue to criticise from outside the Council and will be entitled to do so in the manner he stated he wished to in his open letter – as a concerned citizen. But my perspective as somebody who has spent a great deal of time considering the wealth of information provided to me is that he will find continuing in his current role whilst continuing to oppose the decisions of the Parish body about the site and the CIC impossible within the duties of the Code of Conduct.

If the Subject is to choose to remain as a Parish Councillor then I recommend that he will need to undertake training on the role of the Councillor and decision making by the Council and indeed cover all elements of induction training for members.

I recommend to the Monitoring Officer that she consider giving express advice as to predetermination and the restrictions on Councillor involvement in decisions relating to the land and the CIC. I would link that to a requirement that the Subject make a personal undertaking as to personal conduct that they will note and follow that advice on the relevant topics.

If the Subject was willing to enter into a form of dispute resolution appropriate to resolve underlying issues, then it might be appropriate to arrange some form of mediation at the expense of the Parish. That would be required only following the training and express advice (followed by an appropriate personal undertaking) outlined above and is not recommended if the other steps are not taken.

I recommend that the Parish undertake a corporate training exercise into Councillors and Social Media.

Finally, I recommend that this report be provided to the Chairman of the Parish Council to be reported to the Parish and residents in the hope these matters can be concluded and the Parish work to make its decisions effective for its local community.

20th April 2022

Nicholas Bennett, Solicitor