

Case Reference – VF/703/4/32 – Councillor Delia Sinclair, Oxford City Council.

On the 12th April 2011, the Standards Committee at Oxford City Council referred allegations against Councillor Sinclair to Jeremy Thomas, Monitoring Officer, Oxford City Council for investigation in accordance with section 57A(2)(a) of the Local Government Act 2000.

In accordance with guidance issued by Standards for England, Jeremy Thomas appointed Victoria Fennell, Lawyer, Oxford City Council to conduct the investigation.

This report sets out the outcome of that investigation.

I shared a draft of the report with the complainant and with Councillor Sinclair and any comments they have made, I have considered and where appropriate I have made changes to my draft report.

Victoria Fennell
14th July 2011

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1. Executive Summary

1.1 Summary of Allegations

1.1.1 Mr Rupert Stephens alleges that Councillor Delia Sinclair failed to declare an interest at the meeting of North East Area Committee (NEAC) on the 18th January 2011 in respect of her membership of the Friends of Quarry Conservation Group.

1.1.2 It is alleged that Councillor Sinclair failed to attend the meeting with an open mind given that she had a relative living in the area of the proposed development and her association with the Friends of Quarry Conservation Group.

1.1.3 I have also considered whether any interests which were, or ought to have been, declared were prejudicial.

1.2 Summary of Investigation Outcome

Councillor Sinclair breached the Code of Conduct.

2. Councillor Sinclair's Official Details

2.1 Councillor Sinclair was first elected to Oxford City Council in May 2002.

2.2 Councillor Sinclair sits on the North East Area Committee and Communities and Partnerships Scrutiny Committee

2.3 Councillor Sinclair last gave a written undertaking to observe the City Council's Member Code of Conduct on 7th May 2010.

2.4 Councillor Sinclair completed training on the Members of Code of Conduct and Planning on 22 May 2010.

3 Relevant Provisions of the Code

3.1 Oxford City Council has adopted a Members' Code of Conduct in which the following paragraphs are included:

"8.— Personal interests

(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated

by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or

inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

9.— Disclosure of personal interests

(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, “ executive decision ” is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000¹.

10.— Prejudicial interest generally

(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

- (2) You do not have a prejudicial interest in any business of the authority where that business—
- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - (c) relates to the functions of your authority in respect of—
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

11. Prejudicial interests arising in relation to overview and scrutiny committees

You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

12.— Effect of prejudicial interests on participation

(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

- (a) you must withdraw from the room or chamber where a meeting considering the business is being held—
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's

standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.”

4 The Evidence Gathered

4.1 I interviewed and/or received written representations from:

Mr Rupert Stephens (Complainant); and
Councillor Delia Sinclair (Subject of Complaint)

4.2 I have also considered the following documentary evidence:

- Reports to and minutes of the meeting of the 18th January 2011 referred to in the allegations.
- Councillor Sinclair’s Register of Interests
- The Code of Conduct

5 Summary of Material Facts

5.1 At the meeting of NEAC on the 18th January 2011 one of the agenda items was two planning applications (10/02130/FUL and 10/02313/CAC) in respect of 26 & 28 Quarry High Street, Headington. This was the first time the matter had reached the Committee. There had been previous applications which had been refused.

5.2 The committee refused planning permission for both contrary to the officer’s advice. There were a number of reasons why the previous planning applications had not been approved and several of those reasons were why the committee refused to grant permission. One councillor added the loss of backland gardens also as a reason for refusal.

5.3 Councillor Sinclair has declared on her Register of Interests that she is a member of the Friends of the Quarry Conservation Group. At the meeting she failed to disclose this interest.

5.4 Councillor Sinclair has a niece who lives a few doors down from the proposed planning development. At the meeting she declared that she

had a personal interest in that her niece lived near the proposed development.

First Allegation – Councillor Sinclair failed to attend the meeting with an open mind

- 5.5 Mr Stephens stated in his written submission that it became clear to him at the meeting that Councillor Sinclair had in fact grown up in the area and had reported to the meeting that she had met Thames Water, one of the statutory consultees, on site and discussed drainage problems in the area. Mr Stephens stated that he failed to see how Councillor Sinclair could attend the meeting with an open mind given the information above.
- 5.6 Councillor Sinclair said that she knew the Quarry area well as she was brought up there, but that she had left about 45 years ago and had not been a resident in the area since that time.
- 5.7 Councillor Sinclair stated that she had dealt with this planning application like any normal planning application. She said that she had read the report and looked online at the application. It was just a normal application that was on her patch. She told me that she had checked that the application was coming to NEAC as she thought it would be contentious. I asked her why this was and she said that she thinks the application was for 6 houses and that there had been previous applications which had all been refused, so there was a history to the site. She said that this was the first time that it had come to the committee for decision.
- 5.8 Councillor Sinclair stated that she believed everyone voted against or abstained in respect of the development. She said that she did not think that any other members supported it even though it was against the officer's recommendation.
- 5.9 I asked Councillor Sinclair why she had met with Thames Water and she said that whilst she had met with them, it had been about two years ago. There had been concerns over a period of time. It was a common concern that where there were applications which needed comments from statutory authorities they mostly came back with a "no comment". Councillor Sinclair stated that this was frustrating. Councillor Baxter and Councillor Sinclair organised walkabouts in Risinghurst and Quarry. A parish councillor went on the one in Risinghurst and a member of the Friends of Quarry Conservation Group went on the Quarry walkabout. They were looking at and discussing the issues they had and the ongoing issue of sewerage flooding in the cottage gardens and other houses that had experienced problems. A representative came from Thames Water and a City Officer was present.
- 5.10 Councillor Sinclair stated that the Thames Water representative had expressed concerns about the pumping station in Coppocks Close.

She had said that there was a possibility of over capacity but whether anything would be done anytime soon was down to funding.

- 5.11 Councillor Sinclair said that she had noticed that her niece had made a comment about the application. She said that her niece was not suggesting that there be no development on the site but that she had concerns about the traffic implications. Councillor Sinclair said that she had not spoken to her niece individually about her concerns, she had only read her letter in conjunction with the other comments that had been received from residents. Councillor Sinclair said that she treated it as any normal planning application.
- 5.12 Councillor Sinclair stated that there were a number of reasons why the previous planning applications had not been approved and several of those reasons were why the committee refused to grant permission. She said that one councillor added the loss of backland gardens also as a reason for refusal.

Second Allegation – Councillor Sinclair failed to declare an interest in relation to the Friends of the Quarry Conservation Group

- 5.13 Mr Stephens states in his written submission that he thought the conduct of Councillor Sinclair was disappointing. He acknowledges that Councillor Sinclair declared an interest in the matter in so far as she had a relative living in the vicinity. She declared a personal interest and this was recorded in the minutes of the meeting.
- 5.14 Mr Stephens then goes on to say that after leaving the meeting he checked the Member's Register of Interests on the Oxford City Council website and found that one of Councillor Sinclair's declared public interests was being a member of the Friends of Quarry Conservation Group. Mr Stephens states that in fact this Group were the main opponents to the planning application and at no point in the meeting did Councillor Sinclair declare her link to the Friends of Quarry Conservation Group.
- 5.15 When I met with Councillor Sinclair and asked her to describe to me what had happened at the meeting on the 18th January 2011 she said that she had forgotten to declare an interest. She said that she "holds her hands up to it". Councillor Sinclair said that she was so anxious to make sure she declared a personal interest that she had a relative who lived in Quarry High Street that she just forgot about declaring a personal interest in relation to being a member of the Friends of Quarry Conservation Group.
- 5.16 Councillor Sinclair told me that when she heard that there had been a complaint she thought that it was about the personal interest that she had declared but when she was in the process of updating her Register of Interests she realised that was what the complaint was about. She

said that she was devastated when she found out. She told me that she was quite meticulous especially when it came to planning issues and that this was just plain human error, nothing more sinister than that.

- 5.17 Councillor Sinclair said that at the meeting she was the one with most to say as she is one of the local councillors for the area in which the development was proposed. She said that this usually happens at meetings. She went on to say that there was quite a lengthy debate and that most of the councillors had something to say on the matter. She said that she did have several questions and comments on the application.
- 5.18 I asked Councillor Sinclair about the Friends of Quarry Conservation Group. She said that the Group were the main organised group that were opposing the development. She said that whenever there was proposed development in the conservation area the Group would always comment. However she said that there were individual letters opposing the development as well.
- 5.19 Councillor Sinclair said that she can see why Mr Stephens might see an error and she is cross and upset with herself.
- 5.20 Councillor Sinclair stated that she is a member of the Friends of Quarry Conservation Group but this is because she has historically usually gone along to AGM's and joined again. She said that she does not have regular contact with the group and that she does not participate in meetings. She said that she pays £2 a year to join and attends the AGM as the local councillor as residents expect it. She categorically stated that she had not had any conversations with them about the planning application. She said that she knew that there was a meeting to discuss the planning application but she said that she does not get involved in meetings that purely discuss a planning application.

FINDINGS

First Allegation – Councillor Sinclair failed to attend the meeting with an open mind

- 6.1 In my opinion, Mr Stephens has mistaken the requirements of the Code of Conduct to declare interests and the requirements of the common law to avoid pre-determination and bias.
- 6.2 The Standards Board for England states that predetermination is where a councillor's mind is closed to the merits of any arguments which differ from their own about a particular issue on which they are making a decision, such as an application for planning permission. The councillor makes a decision on the issue without taking them all into account.

- 6.3 The Standards Board for England states that if councillors are involved in making a decision they should avoid giving the appearance that they have conclusively decided how they will vote at the meeting, such that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.
- 6.4 When considering whether there is an appearance of predetermination or bias, councillors who are responsible for making the decision should apply the following test: would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?
- 6.5 However, when applying this test, they should remember that it is legitimate for a councillor to be predisposed towards a particular outcome as long as they are prepared to consider all the arguments and points made about the specific issue under consideration.
- 6.6 Also the importance of appearances is generally more limited when the context of the decision-making is not judicial or quasi-judicial. Planning decisions are not judicial decisions, they are administrative decisions. Therefore councillors can appear strongly predisposed for or against a particular planning decision.
- 6.7 The distinction is between public pronouncement to which might give rise to an appearance of bias and private interests declarable under the Code of Conduct. The Code is not generally concerned with the issue of bias (save that a finding by a court of bias on the part of a councillor might give rise to a complaint of disrepute under the Code).
- 6.8 Notwithstanding the non-applicability of the Code, however, I disagree with Mr Stephens that Councillor Sinclair did not attend the meeting with an open mind. I believe Councillor Sinclair when she says that she attended the meeting with an open mind. I believe her when she says that she treated the planning application as she would any normal planning application. She even said that she was not adverse to a development on that site so long as it was the right sort of development.
- 6.9 Further I do not believe that Councillor Sinclair meeting with Thames Water nearly two years ago in any way closed her mind to the merits or otherwise of the proposed planning development for 26 & 28 Quarry High Street.
- 6.10 I fail to see how Councillor Sinclair growing up in the area, having left over 45 years ago is going to close her mind to the planning application. She is entitled to be predisposed towards a particular outcome so long as she is willing to listen to all of the arguments put forward and I believe, after speaking to her, that she would have done this.

6.11 I therefore do not find that there is any breach of the Code of Conduct in relation to this allegation. I have dealt with this allegation even though strictly speaking it forms no part of the Code and concluded that there was no predetermination or bias on the part of Councillor Sinclair.

Second Allegation – Councillor Sinclair failed to declare an interest in relation to the Friends of the Quarry Conservation Group

6.12 Councillor Sinclair is, as detailed on her Register of Interests, a member of Friends of Quarry Conservation Group, one of the objectors to the planning application.

6.13 As such Councillor Sinclair had a personal interest in relation to the planning application of 26 & 28 Quarry High Street and this should have been declared at the meeting.

6.14 Councillor Sinclair openly admitted to me that she failed to declare the personal interest that she is a member of the Friends of the Quarry Conservation Group.

6.15 I accept her account that it was an honest mistake and she was obviously upset and concerned by the fact she forgot to declare the interest.

6.16 I also accept her account that she had not spoken to or discussed the planning application with the Friends of Quarry Conservation Group.

6.17 I also accept her account that that she is not an active member of the Group, that she just attends the AGM's and joins every year out of a sense of obligation as a local councillor.

6.18 I accept her account that that she had attended the meeting with an open mind and that it was just an oversight that she had failed to declare the other personal interest. She said that it was a genuine mistake. She said that she feels that she has let her constituents down by not declaring the interest.

6.19 It is also worth noting that Councillor Sinclair declared her membership of the Group on the Public Register of Interests and I am entirely content that the non-declaration at the meeting was an oversight as opposed to the deliberate concealment of a private interest.

Third Issue – Councillor Sinclair failed to declare relevant prejudicial interests

General Principles

- 6.20 Although not explicitly raised in the wording of the complaint I have gone on to consider whether the two interests (one of which was declared and one undeclared) were also prejudicial.
- 6.21 A Member needs to consider how a reasonable and objective observer with knowledge of all the relevant facts would view the situation, and in particular how the circumstances are likely to impact on their judgment of the public interest. Great care needs to be taken in relation to this topic. The judgment must be a reasonable one, and an interest will only be prejudicial if it can reasonably be regarded as significant.
- 6.22 Almost any degree of personal involvement or knowledge of the circumstances is likely to affect a Member's judgment. A Member may well have been elected precisely because of his or her local knowledge. For an interest to be prejudicial it must be "likely to prejudice" the Member's judgment. In other words, the interest must be likely to harm or impair the member's ability to judge the public interest.
- 6.23 The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that will positively harm the Member's ability to judge the public interest objectively.
- 6.24 Some general principles must be borne in mind when applying this test.
- 6.25 Members should clearly act in the public interest and not in the interests of friends or family. Members are custodians of the public purse and their behaviour and decisions should always reflect this responsibility.
- 6.26 A special mention needs to be made in this case because of its application, where a Member shares a personal interest with a large number of other people in the area. The Standards Board for England advises that if a Member shares a personal interest with a large number of people, it is less likely that a prejudicial interest will exist.

Member of Friends of Quarry Conservation Group

- 6.27 In relation to Councillor Sinclair's personal interest in that she is a member of the Friends of Quarry Conservation Group I have taken in to account the fact that the Code makes it very clear that for a matter to be prejudicial, it is a matter that must be so significant that it is likely to prejudice the Member's judgment of the public interest. The guidance from the Standards Board for England is very clear on this point, namely that an interest shared by a member with numerous other people living in the area is much less likely to prejudice the Member's judgment than an interest that only affects the Member concerned.
- 6.28 Taking all the evidence into account, considering the Code of Conduct and the guidance issued by the Standards Board for England, I have come to the judgment that the interest concerned was not prejudicial.

Councillor Sinclair's Niece

- 6.29 I will now turn to the personal interest in relation to Councillor Sinclair's niece.
- 6.30 The Code of Conduct guidance states that a member of your family should be given a very wide meaning. It includes a partner (someone you are married to, your civil partner, or someone you live with in a similar capacity), a parent, a parent-in-law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, a brother or sister of your partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece, and the partners of any of these people.
- 6.31 Therefore Councillor Sinclair's niece does fit in to the definition of a member of your family. Since the planning matters relating to 26 & 28 Quarry High Street, would affect Councillor Sinclair's niece more than it would the majority of other people in the ward, it follows that Councillor Sinclair has a personal interest in those matters of which she rightfully declared at the meeting on the 18th January 2011.
- 6.32 A member would have then need to consider how a reasonable and objective observer with knowledge of all the relevant facts would view the situation. The member must also particularly consider how the circumstances are likely to impact on their judgment of the public interest.
- 6.33 Each case must be decided on its own facts. A member should also consider the nature of the relationship that gave rise to the personal interest. Members may be very close to some of their relatives but barely know others. Clearly the closer the relationship, the more likely it is that a prejudicial interest will arise.
- 6.34 I have taken in to account the fact that the Code makes it very clear that for a matter to be prejudicial, it is a matter that must be so significant that it is likely to prejudice the Member's judgment of the public interest. I have taken in to account the fact that Councillor Sinclair told me that at the meeting she considered whether the personal interest was also prejudicial and she decided that it was not as she had no contact with her niece prior to the meeting and had not discussed the application with her. I have taken in to account the fact that Councillor Sinclair told me that she considered that the planning application would not have any significant impact on her niece either positively or negatively and that Councillor Sinclair read her niece's comments together with those of the other residents' and that Councillor Sinclair believed that she reflected a balanced view of the development of the site.
- 6.35 I have taken in to account that Councillor Sinclair thought that on declaring the personal interest she demonstrated a link with a family member. I have also taken in to account that Councillor Sinclair told me

that she had read the written report, viewed the associated documents online, on the evening she listened to the presentation, speakers and the general debate and that she made her comments based on her knowledge of the area and her understanding of the application and that her decision to refuse the application was based on her findings and nothing more.

6.36 However I find that there is no way around the fact that a member of the public with knowledge of the facts would deem that having a niece live within such close proximity to the planning development so significant that it was likely to prejudice Councillor Sinclair's judgment of the public interest..

6.37 Therefore taking all the evidence into account, considering the Code of Conduct and the guidance issued by the Standards Board for England, I have come to the judgment that the interest concerned was prejudicial and should have been declared and therefore is a breach of the Code of Conduct.

6.38 However I would point out that I do not find that Councillor Sinclair deliberately failed to declare this interest. I do believe that she considered it at the meeting but I think that due to a lack of understanding and knowledge she deemed that her interest was merely personal.

Conclusion

7.1 For the reasons referred to above, I find that:

In relation to allegation (i) there has been no breach of the Code:

In relation to allegation (ii) that there has been a breach of the Code but not of such a serious nature as the Complainant suggests; and

In relation to issue (iii) that there has been a breach of the Code but I do not find this to be of a malicious nature but purely as a result of a lack of knowledge about prejudicial interests.

Victoria Fennell
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14th July 2011

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