

TONBRIDGE & MALLING BOROUGH COUNCIL
HEARING PANEL OF THE JOINT STANDARDS COMMITTEE

04 January 2016

Report of the Monitoring Officer

Part 2 - Private

Delegated

LGA 1972 - Sch 12A Paragraph 1 and 2 – Information relating to an individual and information which is likely to reveal the identity of an individual

1 CODE OF CONDUCT COMPLAINT

Members are asked to consider the report of Mr Richard Lingard Solicitor in respect of a complaint made by Mr Barry Hughes that Councillor Mike Taylor has breached the Codes of Conduct of Tonbridge and Malling Borough Council and Borough Green Parish Council.

1.1 Introduction

- 1.1.1 On 6 March 2015 I received a complaint from Mr Barry Hughes, a resident of Borough Green about the conduct of Cllr Mike Taylor of Tonbridge and Malling Borough Council (“TMBC”) and Borough Green Parish Council (“BGPC”).
- 1.1.2 The allegation arises from a letter sent by Cllr Taylor to the Planning Inspectorate in relation to an application for planning permission to extend 13 Harrison Road, Borough Green, a property adjacent to Mr Hughes’ property at number 11.
- 1.1.3 In that letter, which Cllr Taylor states is written because of concerns voiced to him, he observes that because the sole objector [Mr Hughes] ‘*was previously a long serving Parish Councillor, and ex Chair and Vice Chair, a long serving member of T&MBC, and past Leader and Mayor, any reasonable person could draw the conclusion that undue influence had been brought to bear on the Planning Process, which could lead to the Planning Process itself being brought into disrepute*’.
- 1.1.4 Mr Hughes complained that Cllr Taylor’s letter was ‘*an attempt to bring [him], the Borough Council and the whole planning process into disrepute by innuendo and inference without any shred of evidence*’.
- 1.1.5 The complaint passed both of the initial assessment tests i.e. the legal jurisdiction test and the local assessment criteria test. Having consulted the Chairman, Vice-

Chairmen and Independent Person(s), my view was that the complaint should proceed to investigation.

- 1.1.6 The investigatory functions in respect of this matter have been delegated to an independent investigator. Mr Lingard is a Solicitor and former Head of Legal & Democratic Services at Guildford Borough Council. He is experienced in acting as an independent investigator, pursuant to section 82A of the Local Government Act 2000
- 1.1.7 A copy of Mr Lingard's report is attached as **Annex 1**. The report is confidential at this stage pursuant to paragraphs 1 and 2 of Schedule 12A to the Local Government Act 1972. As with all exempt information decisions, the Sub-Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure. In most cases the public interest in transparent decision making by the Sub-Committee will outweigh the subject member's interest in limiting publication of an unproven allegation that has yet to be determined. In the present case Councillor Taylor has indicated that he is happy for all of the proceedings to be held in public.
- 1.1.8 If the Sub-Committee are minded to hold the hearing in public, then copies of the Investigation Report will be distributed to any persons present, and published on the Council's website.
- 1.1.9 In summary Mr Lingard has concluded that Councillor Taylor breached the Codes of Conduct for Tonbridge and Malling Borough Council and Borough Green Parish Council.

1.2 Legal Implications

- 1.2.1 Section 28(4) of the Localism Act 2011 requires that *"a failure to comply with a relevant authority's code of conduct is not to be dealt with otherwise than in accordance with the arrangements made under subsection (6)..."*
- 1.2.2 Those arrangements are the "Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011" as adopted by the Council and attached to this report at **Annex 2**.
- 1.2.3 Therefore the entire procedure for dealing with the allegation is contained within those arrangements.
- 1.2.4 Paragraph 14 of the Arrangements provides that either a Hearing Panel or Monitoring Officer has *"the right to depart from these Arrangements, where considered expedient to do so in order to secure the effective and fair consideration of any matter."*

1.3 Key Issues/ recommendations

- 1.3.1 The Panel are asked to consider whether Councillor Taylor has breached the provisions of the Tonbridge & Malling Borough Council Code of Conduct, and the Borough Green Parish Council Code of Conduct.
- 1.3.2 The role of the Hearing Panel is to decide whether it agrees with the conclusions set out in the report of the Investigating Officer. The relevant standard of proof is the civil standard i.e. the balance of probabilities. This means that the Panel has to be satisfied that it is more likely than not that the Code in question has been breached.
- 1.3.3 If the Hearing Panel concludes that there has been a breach of the Code(s), the available sanctions are set out at paragraph 4 of the 'Procedure for Investigating The Complaint' at **Annex 2**.

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