DECISION NOTICE

(of Hearing Panel on 4 January 2016)

Complaint No. 22/2015

On 4 January 2016, the Hearing Panel of the Tonbridge and Malling Borough Council considered a report of an investigation into the alleged conduct of Councillor Mike Taylor, a member of Tonbridge & Malling Borough Council and Borough Green Parish Council. A general summary of the complaint is set out below.

1. Complaint Summary

1.1 The complaint against Cllr Taylor arose from a letter dated 5 December 2014 that he wrote to the Planning Inspectorate ("PINS") in relation to an appeal against the refusal of a planning application for the construction of a residential extension in Harrison Road, Borough Green.

1.2 In that letter, Cllr Taylor alleged that *"...the size of extensions approved by TMBC Officer's delegated powers has steadily increased to what we believe to be excessive proportions."* It was also alleged that objections to planning applications were *"always ignored"* by Officers, and that *"because the sole objector [to the application in question] was previously a long serving Parish Councillor, and ex Chair and Vice Chair, a long serving ex 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..."*

1.3 The Complainant (who was the objector in question and referred to in Cllr Taylor's letter, although not by name) completed a complaint form, in which he alleged the offending behaviour to be *"an attempt to bring me, the Borough Council and the whole planning process into disrepute by innuendo and inference without any shred of evidence."*

2. Consultation with Independent Person

2.1 The Independent Person asked for clarification surrounding the procedure for calling witnesses. The Monitoring Officer explained that it is for the Investigating Officer to determine whether he wishes to call any witnesses to give live evidence. The Hearing Panel has no power to compel any person to attend and there should be no expectation by any party that any individual should or would attend a Hearing Panel. In the present circumstances, no indication had been given that the Complainant would attend the hearing.

2.2 The Monitoring Officer further explained that a Subject Member was entitled to call witnesses, and it was for that Subject Member to arrange their attendance.

2.3 The Independent Person felt that Councillor Taylor had been frank with his views, and that it was a matter for the Panel to come to a decision on the facts as presented.

3. Findings

In the following paragraphs, references marked "IO xx" are references to paragraph numbers of the Investigating Officer's report.

Facts

3.1 At the time of the Complaint, Cllr Taylor was a serving member of both Borough Green Parish Council ("BGPC") and Tonbridge & Malling Borough Council ("TMBC"). In relation to BGPC, he was Chairman of the Parish Council, and for TMBC, a Ward Member for Borough Green and Long Mill.

3.2 The complaint arose in connection with a planning application for a household extension by the Complainant's neighbours (IO 4.4-4.7), which had been refused under powers delegated to TMBC's Director of Planning, Housing and Environmental Health. There were three such applications: the first (to which BGPC and the Complainant had objected) was withdrawn; the second application (to which the Complainant, but not BGPC, had objected) was refused under delegated powers and subsequently refused at appeal. A third application had been submitted, which had not been objected to by the Complainant or BGPC. It was in connection with the appeal on the second application that Cllr Taylor wrote to PINS.

3.3 The Complainant was a former member and former Mayor of TMBC (his membership ceasing in 1991), and a former member of BGPC (from 1974 until 2007).

3.4 Councillor Taylor believed that because the Complainant had previously been a Borough Councillor (and Mayor), he should have been aware of how an objection by him to a planning application would be viewed in the community (IO 5.27) and that because of his previous position he should not object to planning applications (IO 5.28). However, he also believed the Complainant should not be "disenfranchised" (IO 5.27).

3.5 Councillor Taylor felt that "influence" (by a person's position in the community or previous involvement in local politics) was "more important" than the role of a decision maker on planning applications (IO 5.31). It was, therefore, Councillor Taylor's perception that TMBC Officers had "kowtowed" to the Complainant's objection to the planning application because of his previous position on the

Borough Council (IO 5.25 and 5.32). As such he therefore believed that his concerns, as raised in the letter to PINS, were justified (IO 5.36).

3.6 Councillor Taylor agreed that his perception that the Complainant held greater influence could (in part at least) be attributed to the fact that, as an experienced former Borough Council member, the Complainant had a greater knowledge of the planning system and how it worked, than an ordinary member of the public.

3.7 During the course of the second application, the Complainant had met with the planning Case Officer dealing with the application on two occasions (IO 6.6). Firstly, at the Council's offices, when the Complainant had visited in order to discuss the proposed development, and secondly at the Complainant's home when the case officer had conducted a visit to better understand the relationship between the two properties.

3.8 The Monitoring Officer confirmed, and Cllr Taylor agreed, that there was nothing untoward or improper about the Case Officer visiting the Complainant in connection with the planning application. Cllr Taylor did, however, believe this was "most unusual".

3.9 The Case Officer confirmed that he was aware that the Complainant was a former member of the Borough Council but this did not make any difference to the determination of the application (IO 6.5).

3.10 Cllr Taylor believed there was no substantive difference between "ignoring" a representation and considering it and then coming to a decision that the person making the representation does not like. He believed the only difference was one of semantics (IO 5.44).

3.11 In writing his letter to PINS, Cllr Taylor said he had been careful to state that the letter was a "personal letter" because he was not "speaking on behalf of the Parish Council or Borough Council". He agreed that an official letter from the Parish Council would have to be signed by the Parish Clerk, but it was permissible to write individually as a Parish Councillor or Borough Councillor. However he had written the letter on his official TMBC letterheaded paper in order to give it weight.

3.12 He agreed that because the letter stated that it was written "because of concerns voiced to [him]", it could be inferred that he was acting in an official capacity (IO 5.17), but Councillor Taylor believed that he was a Parish Councillor, Borough Councillor and a private individual at all times and therefore believed that the Codes of Conduct would always apply to him unless he specifically said words to the effect of "this is my own personal opinion" (IO 5.18-5.19).

The Panel's Determination

Borough Green Parish Council Code of Conduct

3.13 In respect of the BGPC code of conduct, the Panel found that the code was engaged, as Councillor Taylor had signed the letter as "Chairman of Borough Green Parish Council". Had he been acting in a purely personal capacity, there would have been no reason for doing so. The reason he had signed the letter in that manner had been to give it greater weight.

3.14 Furthermore, he had implied, by repeated use of the word "we" in that letter, that he was acting for the Parish Council. In interview with the Investigating Officer he had also confirmed that he was acting in that capacity as he believed he was always "all three people" (i.e. a Borough and Parish Councillor and a member of the public). It was apparent that he was purporting to act in a representative capacity.

3.15 The BGPC code requires its members to act in a manner which a reasonable person would regard as respectful. The first paragraph of the letter was disrespectful to the Borough Council's planning officers as it impugned their professional integrity, by stating that they "always ignored" objections made against planning applications by BGPC, despite there being no evidence of this. There is a clear difference between giving no regard to a representation and paying due regard to it, but coming to a conclusion that the person making the representation does not like.

3.16 The final paragraph of the letter was disrespectful to the Complainant, who was an ordinary member of the public, because it alleged (with no evidence) that the Complainant had sought to improperly influence a planning decision.

3.17 The letter as a whole was disrespectful to the Borough Council in general, and to its planning officers in particular.

Tonbridge and Malling Borough Council Code of Conduct

3.18 In respect of the Tonbridge and Malling Borough Council Code of Conduct, the Panel found that the code was engaged, as the letter was written on official TMBC letterheaded paper, which describes Cllr Taylor as a "ward member for Borough Green and Long Mill" and gives a TMBC email contact address. Councillor Taylor confirmed that he had used this letterheaded paper because he believed it would carry more weight with the planning inspectorate.

3.19 In interview with the Investigating Officer he had also confirmed that he was acting in that capacity as he believed he was always "all three people" (i.e. a Borough and Parish Councillor and a member of the public). It was apparent that he was purporting to act in a representative capacity.

3.20 The letter implies that the Borough Council ignores its residents and that officers allow themselves to be unduly influenced.

3.21 It was clear from the oral evidence of Cllr Taylor that there is a long-standing dispute between himself and the complainant. It appeared that in writing the letter, Councillor Taylor was misusing his position to call into question the actions of a resident, who would not have the same ability to respond to such allegations as Councillor Taylor does. This is not acceptable conduct for a Councillor.

3.22 The Panel accepts that an ordinary member of the public might perceive that a former Borough Council member might retain some influence. That perception might, in part, arise from the greater knowledge which a former member would have about how the planning system operates than an average member of the public.

3.23 However, there was no evidence in this case that any influence was exerted by the Complainant. Even if there was any influence, there is no evidence that any such influence was improper.

3.24 The Panel found it surprising that Councillor Taylor, as a knowledgeable member of the authority, should not have approached the appropriate officer to enquire into the process followed in determining the planning application and investigated the evidence to support his assertion that the Council had behaved incorrectly, in advance of the letter to the Inspectorate. It was notable that the planning application was not "called in" by Councillor Taylor (which as ward member for the area he would have been entitled to do) for determination by a planning committee, nor by any of his ward colleagues.

3.25 The Panel therefore concluded that Councillor Taylor's conduct was such that it would cause the reputation of the Authority to suffer, as viewed by a reasonable onlooker. Therefore, Councillor Taylor's conduct brought both his office, as a councillor of the Borough Council, and the Authority as a whole, into disrepute.

3.26 In coming to these conclusions in respect of both codes of conduct, the Panel had regard to the protection afforded to the right to freedom of expression as set out in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Human Rights Act 1998. The panel had the benefit of written legal advice, which is annexed to this decision notice, and agreed with the conclusions set out in that advice that in the circumstances it was justified in interfering with Cllr Taylor's right to freedom of expression by finding a breach of the codes.

4. Sanctions Applied

4.1 The Monitoring Officer drew the Panel's attention to the questions set out at paragraph 4.4 of Annexe 4 of the Council's Arrangements for dealing with Code of Conduct Complaints, which the Panel had to consider when determining which (if any) sanctions to apply. He highlighted that any sanctions had to be reasonable and proportionate. As to the questions set out in paragraph 4.4, he made the following representations:

(a)What was the subject member's intention and did they know that they were failing to follow the Borough/Parish Council's code of conduct?

- Before Cllr Taylor's letter to PINS, the Monitoring Officer had had an exchange of emails with Councillor Taylor, regarding his concerns about the matters which Cllr Taylor was raising.

(b) Did the subject member receive advice from officers before the incident and was that advice acted on in good faith?

-As in (a) above. The email exchange had taken place on 3 December 2014 and Councillor Taylor's response to the advice was that he felt he was being "browbeaten" by the Monitoring Officer.

(c) Has there been a breach of trust

- No breach of trust had occurred

(d) Has there been financial impropriety

- No financial impropriety had occurred

(e) What was the result/ impact of failing to follow the Code of Conduct

As the Investigating Officer had concluded (para 7.4 of report), the sentiments and implications expressed in Cllr Taylor's letter not only undermine the reputation of those alluded to, but also display a lack of respect for the professional and personal integrity of Mr Moat and his fellow TMBC Officers and Mr Hughes alike, without any form of evidence.

(f) How serious was the incident?

As the Investigating Officer concluded, the letter from Cllr Taylor called into question the integrity and reputation of the Borough Council in general, of TMBC Planning Officers (both as to the manner in which they handled applications generally and as to the alleged influence upon them of a former member of the authority) and, whilst not naming him, of Mr Hughes himself.

(g) Does the subject member accept that they were at fault?

- The MO felt that Cllr Taylor should be allowed to answer this question for himself, but the Monitoring Officer assumed he did not.

(h) Did the subject member apologise to the relevant persons?

- No apology had been offered by Councillor Taylor

(i) Has the subject member previously been reprimanded or warned for similar misconduct?

- Yes, the subject member had previously been sanctioned by a Standards Hearing Panel for bringing his office and the authority into disrepute under the TMBC code, by a decision dated 12 October 2015.

(j) Has the subject member previously breached the Borough or Parish Council's Code of Conduct?

- Yes (in respect of the Borough Council code), as described in (i) above.

(k) Is there likely to be a repetition of the incident?

- Councillor Taylor appears to consider that his relationship with TMBC has "passed the point of no return". He continues to make accusations about the Complainant on his website. The Monitoring Officer provided the Panel with a printed copy of a recent entry on that website which makes allegations about the Complainant.

4.2 The Independent Person believed that some issues might be resolved by further training, but it would be a matter for Councillor Taylor whether or not he would accept such training.

4.3 Councillor Taylor made no representations as to the form of sanctions which might be applied. He expressed reservations about the relevance of his email exchanges with the legal department or why (in relation to the written advice provided regarding his Article 10 rights) the level of seniority of officers had any bearing.

4.4 Having considered all of these matters, the Panel resolved to apply the following sanctions:

4.4.1 In relation to the BGPC code, the Panel's findings would be reported to the Parish Council. In addition, the Panel's findings would be published as follows:

- publication on the TMBC website;

- by email to all Borough Councillors and Borough Green Parish Councillors;

- by email to the local press; and

- by email to all Parish Clerks

4.4.2 In relation to the TMBC code, the Panel recommends that the Borough Council issues a formal censure. In addition, the Panel will send a formal letter to Councillor Taylor, the terms of which will be finalised by the Panel in due course. The Panel's findings are also to be published in the same manner as set out in 4.4.1 above.

4.5 In coming to its conclusions on these sanctions, the Panel again had regard to Cllr Taylor's right to freedom of expression and the written legal advice provided. The Panel was satisfied that these sanctions were the minimum required to uphold the public interest in local government being conducted to standards which maintain public confidence.

5. Appeal

There is no right of appeal against this decision of the Hearing Panel.

6. Notification of Decision

This decision notice is sent to:

Councillor Mike Taylor

Complainant

Clerk to the Borough Green Parish Council

4th January 2016

Signed

Cllr Janet Sergison

Chairman of the Hearing Panel

Tonbridge & Malling Borough Council