

# TONBRIDGE & MALLING BOROUGH COUNCIL

## JOINT STANDARDS COMMITTEE

15 June 2016

### Report of the Monitoring Officer

#### Part 1- Public

#### Matters for Information

#### **1 CASELAW UPDATE**

##### **1.1 Introduction**

1.1.1 This report updates Members on recent cases and other guidance relevant to the work of the Joint Committee.

##### **1.2 Kelton v Wiltshire Council & Others – bias and apparent bias**

1.2.1 Members will be familiar with the legal duty of public authorities to avoid bias in their decision making. The law on bias and predetermination (which is a particular form of bias) is part of the general legal obligation on public authorities to act fairly.

1.2.2 Decision makers are entitled to be predisposed to particular views. However, predetermination occurs where someone closes their mind to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision.

1.2.3 Section 25(2) of the Localism Act 2011 provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because

- (a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and
- (b) the matter was relevant to the decision.

1.2.6 The recent case of Kelton v Wiltshire Council & others concerned a challenge to a local authority planning decision on the ground of apparent bias. A Councillor on the Council's planning Committee, whose vote carried the decision in favour of granting outline planning permission for the development in question, was a Director of the Housing Association which had an interest in the affordable housing element of the development. As Director of this Housing Association the Councillor in question received some £3000 per annum.

- 1.2.8 The Councillor in question had declared that he was a member of the Housing Association Board but, because it was only a prospective partner rather than the applicant for permission, he decided to vote on the application, which was passed by one vote. The Housing Association subsequently became the developers' preferred bidder for the affordable housing.
- 1.2.9 On the facts of this case, the Administrative Court found that the Councillor in question had no direct pecuniary or proprietary interest in the application so as to automatically disqualify him from participating and voting on the planning application. Neither did the Court find that the Councillor had a Disclosable Pecuniary Interest (DPI).
- 1.2.10 Applying the legal test for apparent bias i.e. whether the fair minded and informed observer, having regard to all material facts, would conclude there was a real possibility of bias, the Court held that the participation of the Councillor in the planning meeting gave rise to an appearance of potential bias.
- 1.2.11 It was plainly in the association's interests, and those of the Councillor as director, for the planning application to be approved. The association had committed time, resources and expertise in working with the developers on the affordable housing. It was highly unlikely that it would have done so unless it believed that it would be awarded a contract once permission was granted. Apparent bias could arise even in a case where a councillor had not voted. The private interests of the Councillor were engaged by the vote and it had been wrong for him to have participated in the meeting. The decision to grant planning permission was, accordingly, quashed.

### **1.3 R (on the application of Freud) v University of Oxford – Disclosable Pecuniary Interests**

- 1.3.1 This case arose out of a decision to grant planning permission for a new School of Government building for the University of Oxford. One of the members of the committee was employed by the university, albeit a different part. The complaint was not that the Councillor in question had failed to put his interest in the register. The complaint was as to his participation in the debate at all.
- 1.3.2 The Court held that for him to have been obliged not to participate in the debate, it would have to be shown that he had a disclosable pecuniary interest in the subject matter of the discussion. He had no pecuniary interest in this subject matter. He was not in any part of the university which was promoting it. He had no contract to deal with it. He had nothing in that respect which could amount to a disclosable pecuniary interest in that matter.

### **1.3 Disqualification of Councillors – written question in the House of Commons**

- 1.3.1 Questions were tabled in the House of Commons in February & March 2016 by Debbie Abrahams MP concerning the ability of local authorities to disqualify Councillors convicted of child sex offences whose punishment was lower than the 3 month suspended or custodial sentence threshold required for disqualification.

1.3.2 In response to these questions the Secretary of State for Communities and Local Government confirmed that his department intended to consult on proposals to bring the legislative rules in line with modern sentencing guidelines. The review will also consider whether the provisions of the Localism Act 2011 have any implications for new legislative rules on disqualification.

#### **1.4 House of Commons Briefing Paper on local government standards**

1.4.1 I attach at **Annex 1** a copy of a recent briefing paper issued by the House of Commons library. Whilst the content of the paper will be familiar to Members of the Committee it nevertheless provides a useful reminder of the statutory framework

1.4.2 At paragraph 3.3 of the paper reference is also made to the first conviction under the Localism Act 2011.

#### **1.5 Legal Implications**

1.5.1 As set out above.

#### **1.6 Financial and Value for Money Implications**

1.6.1 None arising from this report.

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