



**Formal Assessment – Ref SH06 170820201**

**Complaint against Councillor Bernard Taylor** (“the ‘Subject Member’”) of South Hams District Council (“the Council”)

**Complaint by Mr Jonathan Marshall** (“the ‘Complainant’”)

**Independent Person George Barnicott**

**1. Documents and information considered**

1.1 In carrying out this Formal Assessment, I have considered:

- 1.1.1 The complaint from the Complainant as received, together with supporting documentation;
- 1.1.2 The informal assessment;
- 1.1.3 The response from the Subject Member and supporting documentation;
- 1.1.4 South Hams District Council’s “Dealing with Standards Complaints” procedure; and
- 1.1.5 The views of the Independent Person.

**2. Summary of the Complaint**

2.1 It is alleged that the Subject Member breached the Council’s Code of Conduct in that the Subject Member:

- 2.1.1 lacked impartiality;
- 2.1.2 placed pressure on the planning officer and failed to have regard to professional advice;
- 2.1.3 improperly used his position to confer an advantage or disadvantage by manipulating the date of the Development Management Committee meeting; and
- 2.1.4 brought the office of Councillor or Council into disrepute.

2.2 I have already, as part of the Informal Assessment, reached the conclusion that the Subject Member did not seek to manipulate the date of Committee meeting.

### **3. Decision**

3.1 A finding that the Subject Member breached the Code of Conduct by bringing the Council into disrepute.

3.2 With the aim of upholding and improving the standard of conduct expected of councillors, I recommend that the Subject Member undertakes training on Probity in Planning, but also that the Council's Planning Protocol is reviewed.

3.3 No further action is taken in respect of the allegations that the Subject Member lacked impartiality; placed pressure on the planning officer and failed to have regard to professional advice; or improperly used his position to confer an advantage or disadvantage by manipulating the date of the Development Management Committee meeting.

### **4. Discussion and Reasoning**

4.1 As with the assessment of all ethical standards matters, the complaints are considered on the balance of probabilities, that is; would a reasonable person in possession of all the facts, and viewing them objectively, consider that it is more likely than not the Subject Member has breached the Code of Conduct.

4.2 I am satisfied for the purposes of this assessment that the Subject Member was bound by the Council's Code of Conduct at the time of his alleged actions, as the Subject Member acting in his official capacity at these times.

4.3 Although the formal assessment is not an assessment of the Council's decision, it is necessary to set out some of the history of the Planning Application, so that the allegations can be seen in context.

4.4 The Subject Member is the local Ward Member and is a member of the Council's Development Management Committee. The Council's scheme of delegation for planning applications effectively delegates the power to determine all planning applications with some exceptions to the Head of Development Management. However, before issuing a decision on a planning application, the Head of Development Management or the planning officer dealing with the planning application on his behalf must send a copy of his report to the Ward Members. A Ward Member may ask for the planning application to be referred to the Development Management Committee for it to decide. When doing so, the Ward Member must give material planning reasons.

- 4.5 In September 2020, the Complainant applied to the Council for planning permission for a replacement dwelling on his property in Bigbury (“the Planning Application”).
- 4.6 The Complainant says that on 18 December 2020 the Subject Member was sent an e-mail by a parish councillor in which the parish councillor explained to the Subject Member about an extraordinary meeting of the Bigbury the previous evening and conveyed a sense that the meeting found the Planning Application unacceptable. The same parish councillor then arranged for the Subject Member to meet with her and another parish councillor on 30 December 2020 to view the Complainant’s property and site of the proposed development. The Subject Member accepts that he met with the two parish councillors, but says that they looked at four properties that were likely to be the subject of planning applications in the near future and in doing so, passed the Complainant’s property on the way.
- 4.7 The Subject Member also says that at the request of the residents of the three adjoining properties, he visited them together with representatives of the Parish Council. This would appear to have been between 27 January 2021 and 11 February 2021. He adds however, he also visited the Complainant’s property accompanied by the Complainant’s agent. The Subject Member considered that doing so, put him in a position to reach a balanced view. It was at this point, he says, he decided that he would refer the Planning Application to the Development Management Committee for it to decide.
- 4.8 The Complainant refers to an extract of e-mail dated 30 March 2021 from the planning officer to the Subject Member with a copy of her report recommending approval of the planning application. The e-mail requested delegated authority to issue the decision. It is clear from a further extract of an e-mail dated 13 April 2021 from the planning officer organising a mediation meeting on Teams that the Subject Member had requested that the Development Management Committee decide the Planning Application. Mediation meetings were set up by the Council in response to Covid-19 legislation requiring the Council only to meet as and when necessary. They were a means of seeing if a Ward Member’s concerns could be overcome by, for example, conditions, a planning obligation or a change in a plan, so avoiding the need for the Committee meeting.
- 4.9 The Subject Member referred the Planning Application to the Council’s Development Management Committee in or around April 2021.
- 4.10 On 26 May 2021, the Development Management Committee met to consider the Planning Application. The Subject Member was present and declared “a personal interest” in the Planning Application “as he was a Member of the South Devon AONB Partnership Committee.” The Subject Member remained in the meeting for the consideration of the Planning Application and spoke on the Planning Application. In doing so, the Subject Member acknowledged that

the bungalow was in need of renovation or rebuild, but said he felt that the design of [the Planning Application] impacted on the neighbours' amenities and did not sit well within the street scene." The Development Management Committee resolved to refuse planning permission, with the Subject Member and six other members voting in favour of refusal. Planning Permission was granted on appeal to the Planning Inspectorate some five months later.

- 4.11 **Intimidating the planning officer and failure to have regard to professional advice.** The Complainant says that significant pressure was put on the planning officer to delay the publication of her report. He also says that the Subject Member put pressure on the planning officer when, in an e-mail to the planning officer dated 27 January 2021, the Subject Member said: "I had a call yesterday from Bigbury PC and also pages from the Neighbourhood Plan that are relevant to [the Planning Application], they are concerned that if the N PLAN is over looked it t would invalidate the plan for future applications, this only applies of course if planning is granted which at the end of the day is your call." The Complainant also refers to an e-mail dated 11 February 2021 sent to the Subject Member by a parish councillor, referring to the parish councillor's hope that the Subject Member would have an opportunity to speak to the planning officer about the consequences of her decision on the Planning Application and asking the Subject Member to contact the planning officer.
- 4.12 Finally, the Complainant seeks to rely on the referral of the Planning Application to the Development Management Committee and the mediation meeting as evidence of pressure being put on the planning officer.
- 4.13 I do not accept that the alleged conduct either in part or whole, would on further investigation be likely to be found to be bullying, the term used in the version of the Code of Conduct that applied at the time of these events. The email to the planning officer, might have been better worded, but it was not an attempt to coerce the planning officer. I do not accept that of itself a request to refer a planning application to committee can be the basis for a breach of the Code of Conduct because as I have said above, the scheme of delegation provides for it.
- 4.14 **Failure to have regard to professional advice.** The Complainant says that the planning officer advised the Subject Member, including during the Committee meeting, that the Complainant's planning application complied with all the planning policies including the Bigbury Neighbourhood Plan.
- 4.15 In response, the Subject Member has not commented.
- 4.16 The wording of the Code of Conduct was "have reasonable regard to any relevant advice provided to you by an officer of the Council." There is no obligation for a member to act on that advice. The obligation is only to have

'reasonable regard' to advice, it does not mandate that councillors have to follow the advice or any other advice they are given.

- 4.17 **Bringing office or the Council into disrepute.** For disrepute to be found, this has to be something that would objectively damage the Subject Member's standing in the community. In considering whether this is the case, I have compared to the way any Ward Member may deal with a planning application in their area with the actions of the Subject Member in dealing with the Planning Application. While any planning applicant may not like the involvement of an elected member to the extent that the Subject Member has been involved in undertaking his role as Ward Member, others may welcome the due diligence that was being undertaken.
- 4.18 As the Nolan Committee's 1997 report stated: 'It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves' As a Ward Member, the Subject Member was entitled under the Council's scheme of delegation to refer the planning application to the Development Management Committee and to represent the views of those he represented.
- 4.19 However, although lobbying by both applicants for planning permission and objectors is a normal and perfectly proper part of the process, ward members who are also members of the Development Management Committee need to avoid appearing to be biased. The general public's expectation is that a planning application will be processed and determined in a transparently open and fair manner.
- 4.20 The Council has published its own Planning Protocol providing guidance to members. While the guidance to members could be more explicit, I consider that a member of the Development Management Committee visiting neighbouring properties, and indeed, the Complainant's own property, in an informal way without the visit being arranged by an officer or an officer being present to record the discussion, would be likely to cause a reasonable member of the public to think that the process for determining the Planning Application was not transparent. Consequently, the public's view of the Council would be likely to be diminished.

George Barnicott  
Independent Person

David Fairbairn  
Monitoring Officer

16 February 2022