

## **DECISION**

**CASE REF:** APE 0159

**DATE:** 23<sup>rd</sup> February 2004

**RE:** Reference in relation to a possible failure to follow the code of conduct

**RESPONDENT:** Councillor Mrs Roxana Brammer

**RELEVANT AUTHORITY CONCERNED:** Ash-cum-Ridley Parish Council

**ESO:** Nick Marcar

**ESO REPRESENTATIVE:** Natalie Birtle

**Panel Members:**

**Chairman:** Melanie Carter

**Member:** Richard Boyd

**Member:** Stan Szaroleta

### **1 Preliminary Documents**

1.1 In a letter dated 31 October 2003, the Adjudication Panel for England received a reference from an Ethical Standards Officer ("ESO") in relation to allegations that the Respondent, Councillor Mrs Brammer had failed, during the period 17<sup>th</sup> January 2002 to 19<sup>th</sup> February 2003 ("the relevant period") to comply with Ash-cum-Ridley Parish Council's Code of Conduct by:

1.1.1 failing to declare a personal and prejudicial interest in matters on which joint Parish Council meetings were being held when it became apparent the matters were being considered and failing then to withdraw from the room.

1.1.2 improperly seeking to influence decisions about matters in which she had a personal and prejudicial interest.

### **2 Procedural Findings**

2.1 The Respondent wrote to the Adjudication Panel on 11 February 2004 to state that she would not be attending on account of work commitments. The Case Tribunal decided in the circumstances to proceed in the absence of the Respondent.

### **3 Findings**

The Case Tribunal found the following facts:

- 3.1 The area of Ash-cum-Ridley Parish Council includes the village of New Ash Green.
- 3.2 New Ash Green Village consists of a number of neighbourhoods, each with a residents association. House owners pay £10 for a share in the relevant residents association and are bound by deed of covenant to pay a subscription to it. Each residents association has a committee made up of 'shareholders' who are elected at the annual general meeting.
- 3.3 New Ash Green Village Association Limited ("NAGVA") is a company limited by guarantee. All residents of the New Ash Green area are bound by deed of covenant to pay twice yearly contributions to the NAGVA. The Memorandum and Articles of Association for NAGVA list its objects as "the ordering of any arrangements intended for the benefit of residents within the village of New Ash Green and the maintenance of land and buildings within the village, including all requisite works of management, repair, renewal, cleaning, tidying and decoration..."
- 3.4 Membership of the NAGVA comprises 24 chairmen representative of the residents associations and some professional consultant members. The members elect nine members to form a Council of Management (comprised of both representative and consultant members), which acts as the Board of Directors and they are required to register their directorships at Companies House.
- 3.5 Councillor Mrs Brammer is a resident of New Ash Green and was at the relevant time:
  - Chairman of Capelands Residents Society Limited and as a result a member of NAGVA
  - An elected member of the Council of Management of NAGVA
  - Treasurer of NAGVA (following AGM on 12/6/2002)
  - Chairwoman of the Finance and General Purposes Committee of NAGVA
  - Member of Northfield Management Committee
  - Paid treasurer to Farm Holt, Ayelands, Penenden and The Mead Residents Associations
  - Paid secretary of Lance Croft and The Mote Residents Associations.
- 3.6 She was not a shareholder in any of the residents associations where she held a paid position and consequently did not have voting rights in those associations.
- 3.7 NAGVA owns the freehold to a piece of land known as Northfield:
  - 3.7.1 This land is jointly leased to Ash-cum-Ridley and Hartley Parish Councils at a nominal rent. The lease agreement includes conditions of use clauses and a statement of joint intent and was signed on the 10 March 1999 by the Respondent in her capacity as Company Secretary to NAGVA.
  - 3.7.2 Both parish councils established Northfield Management (Joint) Committee ("NMC") to manage the site and financially support the work of the joint committee.

- 3.7.3 The Committee comprises six members, those being the Chairmen and two other members of both Ash-cum-Ridley Parish Council and Hartley Parish Council.
- 3.7.4 Councillor Mrs Brammer was during the relevant period one of the three Ash-cum-Ridley members of the Committee, all three of whom reside in New Ash Green.
- 3.8 Paragraph 11 of the Code of Conduct states meetings of an authority's joint committees are included within the definition of "meeting".
- 3.9 Under the Local Government Act 1972 the members of Ash-cum-Ridley Parish Council who are residents of New Ash Green were granted a dispensation allowing them to participate in discussions and to vote on any question regarding grants to the NAGVA and land in which the Association has an interest. As NMC is a committee of Ash-cum-Ridley Parish Council, Councillor Mrs Brammer and other Parish Council members relied upon this dispensation in order to participate at the NMC meetings.
- 3.10 This dispensation ended with the introduction of the Local Government Act 2000 and the adoption of the Code of Conduct on 17<sup>th</sup> January 2002. Consequently, the relevant Ash-cum-Ridley councillors applied to the Standards Committee of Sevenoaks District Council for a new dispensation on the basis that the number of members of the authority that are prohibited from participating in the business of the authority exceeds 50% of those members that are entitled or required to so participate.
- 3.11 The new dispensation was granted on 19<sup>th</sup> February 2003. During the period between 17 January 2002 and 19 February 2003 when no dispensation was in existence the Respondent continued to participate in NMC meetings concerning NAGVA.
- 3.11.1 Councillor Mrs Brammer stated the Monitoring Officer, Peter Godfrey, did not inform the Clerk of the lapse of the dispensation until 5 July 2002. Until the Clerk received his letter of 5 July, the Case Tribunal accepts all concerned would have assumed affected councillors were acting under the dispensation they had been given to 1 May 2003. Mr Godfrey retired at the end of July 2002 and was succeeded by Tricia Marshall. The Clerk applied to Ms Marshall for renewal of the dispensation. Ms Marshall wished to draft a suitable letter that individual councillors could use to apply. This took some time to do and letters were not sent until November 2002. It then took until 19 February 2003 for the dispensations to be granted.
- 3.12 Matters discussed by the NMC at meetings on 13<sup>th</sup> May 2002, 12<sup>th</sup> June 2002, 15<sup>th</sup> October 2002, 12<sup>th</sup> November 2002, 17<sup>th</sup> December 2002, 20<sup>th</sup> January 2003 and 17<sup>th</sup> February 2003 which concerned development of the Northfield site or directly concerned NAGVA , amongst others, were:
- The preparation of the land in order to allow development of sports pitches
  - The provision of football pitches

- The relevant planning conditions for the provision of car parking
- 3.13 At the NMC meetings on 13 May 2002, 12 June 2002, 12 November 2002, 17 December 2002 and 20 January 2003 Councillor Mrs Brammer failed to declare any interest in NAGVA and failed to withdraw from the meetings.
- 3.13.1 Councillor Mrs Brammer said there were only two matters concerning Northfield that the NAGVA has been involved in while she was on the Council of Management. These however concerned meetings of the NAGVA, not the NMC, and were not therefore in the Case Tribunal's view relevant to the issues at hand.
- 3.14 At a NMC meeting on 15 October 2002, a complaint by a member of the public regarding Councillor Mrs Brammer's position in relation to NAGVA was raised. The Respondent participated insofar as she read out a statement and did not withdraw from the meeting.
- 3.15 At the NMC meeting on 17 February 2003, the Respondent declared a personal interest with regard to NAGVA on one item on the agenda but failed to withdraw from the room.

#### **4 Whether the material facts disclose a failure to comply with the Code of Conduct**

##### **4.1 The Respondent's Submissions**

- 4.1.1 The Respondent has stated that she is used to wearing many "hats". When representing one organisation she is working for that organisation's interests and not for the interests of another. Sometimes interests of different organisations could be diametrically opposite, but one is acting for only one organisation at a time and in its best interests. Several times in the past she had put forward views on behalf of organisations that did not accord with her own personal views.
- 4.1.2 The Respondent has argued that there remains substantial confusion over the question of dispensations. She reported that the present Monitoring Officer communicated to the Clerk that she had been advised by the ESO that the dispensation is unnecessary and should be withdrawn. In his view only personal interests needed to be declared at the commencement of each meeting. She has called for clarification to be given not just with regard to her position but also that of the other Councillors who are members of NAGVA.
- 4.1.3 Her statement to the Northfield Management Committee of 15 October 2002, she claims, was merely a statement of fact to apprise other members of the Committee what was happening. It was not made to introduce discussion, nor was there any. She asserts that there was no reason to declare any interest in making this statement of fact for information and no need to leave the room as no discussion took place.
- 4.1.4 If a matter directly related to NAGVA or its Council of Management was discussed at the NMC, she stated that she

declared an interest and did not take part in the discussion. She did not leave the room. She claims that at the meetings in question neither of these matters arose and, therefore, she fully participated in the meetings.

## 4.2 The ESO's Submissions

- 4.2.1 The functions and funding of NAGVA clearly affected the residents of New Ash Green. Residents have to financially contribute to the Village Association, which in turn is responsible for the maintenance of land and buildings for the benefit of residents. Any decisions made by the Parish Council in relation to the Village Association could reasonably be regarded as affecting the well being of residents of New Ash Green to a greater extent than other council taxpayers. This being the case, the members of Ash-cum-Ridley Parish Council who are residents of New Ash Green have a personal interest in matters relating to NAGVA.
- 4.2.2 Residents of New Ash Green are not automatically members of the Village Association and have no power or influence over the decisions it makes. In the view of the ESO, those inhabitants of the Village who have a personal interest in NAGVA purely by way of their residency do not have a prejudicial interest. At the hearing, it was drawn to the attention of the Case Tribunal that the District Council had recently withdrawn the dispensation of 7 March 2003.
- 4.2.3 The lease of the Northfield site contains conditions of use clauses and a statement of joint intent. The inclusion of shared aims suggests NAGVA has a significant interest in the use and development of the land and the relationship between the lessor and lessee is closer than that of a standard 'at arms length' lease. As such, any action taken by the NMC, which affects the use and development of the land would be of interest to NAGVA.
- 4.2.4 In the ESO's view whilst Councillor Mrs Brammer's residency alone was and is not a prejudicial interest in relation to the use and development of Northfield, this combined with her position within NAGVA and the unusual leaseholder/freeholder relationship, was such that a member of the public with knowledge of the relevant facts would reasonably regard her interest as so significant that it would be likely to prejudice her judgement of the public interest.

## 4.3 Case Tribunal decision

- 4.3.1 The Respondent in this case had, during the relevant period, both a personal and a prejudicial interest arising of her involvement with NAGVA. The prejudicial interest arose from her then membership of NAGVA, the Council of Management and her position as Treasurer and Director of the Company. As has been set out above she sat on a joint Committee of Ash-cum-Ridley and Hartley Parish Councils, the NMC. This Committee would, at each and every one of its meetings, have considered matters relating to the NAGVA insofar as it was the

landlord of the land which the NMC was set up to manage. The terms of the lease contain terms and conditions which support an active and ongoing interest by NAGVA in the use and development of the land by the NMC. Moreover, the terms of the lease clearly indicate that NMC enjoys a wide discretion with regard to how the land was to be used.

4.3.2 Being a Director of NAGVA the Respondent would be bound to act in the company's interests. The company's aims and objectives were for the benefit of the residents of New Ash Village and did not include the benefit of other residents, in particular those of Hartley Parish Council or indeed, the public interest generally. Conversely the NMC was a Committee serving residents from both Parish Councils and bound at all times to act in the public interest.

4.3.3 The Case Tribunal was of the view that the Respondent's interest was such that a member of the public with knowledge of the relevant facts would reasonably regard this as so significant that it would be likely to prejudice her judgement of the public interest.

4.3.4 The Code of Conduct provides:

4.3.4.1 at paragraph 8, that a member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

4.3.4.2 at paragraph 9(1), that a member with a personal interest in a matter also has a prejudicial interest in that matter if 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 the member's judgement of the public interest.

4.3.4.2 at paragraph 10, that a member with a prejudicial interest in any matter must -  
a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from the standards committee of the responsible authority; and (b) not seek improperly to influence a decision about that matter.

4.3.5 The Case Tribunal has noted from the minutes of the NMC that the Respondent attended meetings on 13 May 2002, 12 June 2002, 12 November 2002, 17 December 2002 and 20 January 2003. At those meetings, Councillor Mrs Brammer failed to declare a personal interest in matters relating to the use and development of the Northfield site. Her personal interest in the matters was also prejudicial and she failed to withdraw from

the room when they were considered. In these respects the Case Tribunal found that the Respondent failed to comply with paragraphs 8 and 10(a) of the Code of Conduct.

4.3.6 With regard to the meeting of 15<sup>th</sup> October 2002, the Case Tribunal was of the view that the Respondent had in fact declared a personal interest but then failed to withdraw from the room on account of her prejudicial interest. The Case Tribunal did not accept the Respondent's submission that as there had not been any discussion the matter had not in effect been considered by the Committee. The fact that she had read out a statement and that this had been minuted, in the Case Tribunal's views, meant that the matter giving rise to the prejudicial interest had been considered at the meeting. In the light of this, the Case Tribunal found there to have been a breach of paragraph 10(a) of the Code of Conduct.

4.3.7 At the meeting on the 17<sup>th</sup> February 2003, the Respondent did declare a personal interest on one item of the agenda. She did not however then withdraw from the room. In the light of this, the Case Tribunal found that there was a failure to comply with paragraph 8, other than with regard to the above mentioned item, and with regard to the entire meeting, a failure to comply with 10(a) of the Code of Conduct.

4.3.8 The Case Tribunal found that the Respondent had spoken at the meetings mentioned above other than at the 20<sup>th</sup> January 2003 meeting (in relation to which the minutes fail to show any active participation). Given that she ought to have withdrawn from these meetings on account of her prejudicial interest, the Case Tribunal was of the view that, at the meetings at which she spoke, she sought improperly to influence decisions relating to matters which had given rise to a prejudicial interest. In these circumstances, the Case Tribunal found there to have been a breach of paragraph 10(b) of the Code of Conduct.

## **5 Submissions as to the action to be taken**

### **5.1 From ESO**

5.1.1 The ESO accepts that the Parish Council did take steps, as soon as it became aware that the dispensation had lapsed, for it to be renewed. Moreover, the Clerk to the Council sought clarification with regard to the particular position of the Respondent. To that extent the ESO does have sympathy for the position the Respondent found herself in. However at the hearing, the representative of the ESO pointed out that as of 30<sup>th</sup> July 2002 the Monitoring Officer had raised the question whether the Respondent was eligible for a dispensation. She further mentioned that the Respondent acted as a part time clerk for three other Parish Councils. It was suggested that these factors lessened the likelihood of there being any genuine confusion or doubt over what was the appropriate course of action for her to take.

5.1.2 In the ESO's view it was unacceptable for the Respondent to participate in NMC meetings during the relevant period without resolution of this matter. Moreover, members should have pressed for more to be done at an earlier stage. Further guidance could have been sought from the Monitoring Officer or from the Standards Board for England. The Monitoring Officer's letter of 15<sup>th</sup> July 2002 stressed that the dispensation issue needed to be "regularised as quickly as possible as the earlier dispensation has lapsed". The letter of 15<sup>th</sup> July indicated the Monitoring Officer was awaiting information from the Clerk of Ashley cum Ridley Parish Council. Had the members arranged for the Clerk to provide additional information to the Monitoring Officer at an earlier stage, it may have become apparent that a dispensation was not available.

5.1.3 At the hearing, the representative of the ESO raised the fact that the Respondent had, following on from the reference, resigned from the Council of Management and as Treasurer of NAGVA. The ESO pointed out that there was no requirement under the Code of Conduct for her to do so and her resignation was a matter for her own judgment. Clearly she could have continued to participate in the NAGVA provided she ensured that she complied with the Code in relation to the NMC. The requirement in respect of personal interests and prejudicial interests would not apply to the Respondent when she attended meetings of the Council of Management of the New Ash Green Village Association or to other meetings of this group as these are not "meetings" for the purposes of the Code and she was not attending in her capacity as a councillor.

## 5.2 From Respondent

5.2.1 The Respondent has argued that the Monitoring Officer should have informed the Clerk sooner that the dispensation had lapsed. As far as the Councillors were concerned they believed they had been granted a dispensation until the next elections, i.e. to 1 May 2003. The Respondent stated that it was due to the change of Monitoring officer that the dispensation took until 19 February 2003 to be renewed. She claims this was not the fault of councillors. While waiting for the renewal of the dispensation, all councillors carried on as normal. No guidance was given as to their position and such advice as they did receive was inconclusive.

## 5.3 Case Tribunal Decision

5.3.1 The Case Tribunal acknowledged the unpaid public service given by the Respondent to the community in which she lives. However, it considered it of the utmost importance that Councillors adhere to the provisions of the Code on personal and prejudicial interests. These are the guarantees of transparency in local democracy. Local electors are entitled to be aware of the interests of those who represent them on local authorities and for those members to withdraw from any discussion in relation to which they have a prejudicial interest. Moreover, all Councils and Councillors are required to comply

with the law and to promote and maintain high standards of conduct in local government.

- 5.3.2 The Case Tribunal acknowledged that the Parish Council as a whole felt itself to be in some difficulty whilst awaiting the replacement dispensation. Nevertheless, the Respondent did retain her personal responsibility for ascertaining her legal position and for taking action accordingly. Having been told on the 15<sup>th</sup> July 2002 that the dispensation had lapsed and on the 30<sup>th</sup> July 2002 that her particular position was in question, the proper course of action for the Respondent to take until such time as the matter was resolved would have been to have routinely declared an interest at each NMC meeting and to have withdrawn from the room. Alternatively, she could have chosen to temporarily step down from either NAGVA or NMC to ensure there was continued representation on NMC for the local electors of Ash-cum-Ridley.
- 5.3.3 The Case Tribunal took into account that the Respondent was a Councillor of longstanding and a part-time clerk to three Parish Councils. By continuing in her role at the NMC whilst aware that she was not covered by the dispensation and that there was doubt as to her eligibility to a dispensation, she chose to break the law. It is not open to Councillors to pick and choose which laws they are to uphold. In this respect the Respondent fell below the standards required of members of local authorities.
- 5.3.4 In these circumstances the Case Tribunal decided that the nature of the failure to comply with the Code was such that the Respondent should be disqualified for 1 year from being or becoming a member of the relevant authority or of any other relevant authority within the meaning of the Local Government Act 2000. The disqualification took effect from the date of the hearing.

Melanie Carter  
**Chairman of the Case Tribunal**

23<sup>rd</sup> February 2004