

**FULL DECISION**

Ref: APE 0199

Date: 27 September 2004

RE: REFERENCE ABOUT POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT

RESPONDENT Councillor Paul Armstrong

RELEVANT AUTHORITY CONCERNED Halstead Parish Council

ESO Mr Nick Marcar

ESO REPRESENTATIVE: Ms Claire Lefort

RESPONDENT'S REPRESENTATIVE: Ms Esther Schutzer-Weissmann

Panel Members:

Chairwoman: Mr Karen Aldred  
Member Mr David Billing  
Member Mr Trevor Jex

1 Attendance

Councillor Armstrong was in attendance and represented by Ms Schutzer-Weissman. The ESO's representative, Ms Lefort, and a member of the Standards Board staff, Mr McGowan were present.

2 Preliminary Documents

The Reference from the Ethical Standards Officer

In a letter dated 17 June 2004, the Adjudication Panel for England received a reference from an Ethical Standards Officer ("ESO") in relation to allegations made against Councillor Armstrong. The allegations were that Councillor Armstrong had breached Halstead Parish Council's Code of Conduct by:

- 2.1.1 convening, chairing and taking part in, an extraordinary meeting of Halstead Parish Council on 3 March 2003, at which he had a personal interest as described by paragraph 7 of the Code and at which he did not properly disclose the nature of that interest, contrary to paragraph 8 of the Code;

- 2.1.2 having a prejudicial interest in a matter considered at the meeting of 3 March 2003, as described by paragraph 9 of the Code, but not withdrawing from the room where that meeting was taking place, contrary to paragraph 10(a) of the Code, and that by chairing and addressing the meeting, that he sought to improperly influence any decision about that matter contrary to paragraph 10(b) of the Code;
  - 2.1.3 by making derogatory remarks at the meeting of 3 March 2003, and during adjournments of that meeting about representatives of the Rural Housing Trust (RHT), who were due to address the meeting, contrary to paragraph 2(b) of the Code;
  - 2.1.4 making a false statement to the Council about advice that he had received regarding his interest in the Rural Housing Trust project in the village and that in doing so he attempted to use his position improperly to confer on himself or another person an advantage or disadvantage contrary to paragraph 5 (a) of the Code of Conduct;
  - 2.1.5 compromising the impartiality of the Parish Clerk contrary to paragraph 2 ( c ) of the Code of Conduct;
  - 2.1.6 preventing another person from gaining information to which the person was law contrary to paragraph 3(b) of the Code of Conduct, and;
  - 2.1.7 by each of the above actions conducting himself in a manner, which could reasonably be regarded as bringing his office or authority into disrepute, contrary to paragraph 4 of the Code.
- 2.2 In response to the reference being made to the President of the Adjudication Panel, the Respondent:
- 2.2.1 accepts that at the meeting on 3 March, although he disclosed that he had a personal interest, he did not do so in the appropriate form at the correct time;
  - 2.2.2 does not accept that his interest was prejudicial;
  - 2.2.3 refutes the allegations that he made remarks about individuals in breach of paragraph 2(b) of the Code;
  - 2.2.4 refutes that he is in breach of paragraph 4 of the Code, and;
  - 2.2.5 refutes the suggestion that he attempted improperly to influence the Council's decision and in particular that he did so in a way which undermines the general principles which the public rightly demand from those in public office.

### 3 Oral Submissions (procedural)

- 3.1 The ESO's representative requested that Mr Smith of the Rural Housing Trust (RHT) be called as an additional witness.
- 3.2 The Respondent's representative objected to this as neither she nor her client had been given any prior indication of this application or of the nature of Mr Smith's evidence. The Respondent had alerted the ESO to the number of witnesses he would be calling, their identity and the nature of the evidence they would give in July and the ESO had therefore had ample time in which to consider whether additional witnesses needed to be called. At this late stage it was unreasonable to expect the Respondent to agree to further fresh evidence being introduced.
- 3.3 The Tribunal established that whilst the Adjudication Panel members had been alerted on the previous working day (a Friday) to the request by the ESO to hear Mr Smith's evidence notice had not been given to the Respondent or his representative. In those circumstances the Tribunal was not minded to agree to the late application.
- 3.4 The Respondent's representative noted that the ESO was not present. She would have liked the opportunity to cross-examine the ESO on his report. The ESO's representative explained that it was not normal for the ESO to be present.

#### Oral submission (evidence)

- 3.5 The respondent's representative identified a number of additional areas of contention and outlined all the areas that were in dispute. These disputes are outlined in this decision.
- 3.6 The ESO's representative submitted that she would not be bringing any evidence in respect of the allegations outlined in paragraphs 2.1.4 to 2.1.7 above.

### 4 Disputes of facts

- 4.1 Advice on nature of personal interest
  - 4.1.1 Councillor Armstrong's acceptance of the guidance given by the Parish Clerk to the effect that he had a prejudicial as well as personal interest in the RHT project by virtue of his Mother-in-law owning a flat in an adjacent development to the site to be developed by the RHT did not mean that he had agreed with this advice. Councillor Armstrong in evidence maintained that he had challenged this interpretation of the code throughout.
  - 4.1.2 The ESO's representative did not make any counter representations on this point.
- 4.2 Further advice on interpretation of the Code in late 2002 and early 2003

- 4.2.1 It had been suggested that a lack of information and therefore embarrassment had led Councillor Armstrong to further challenge the strength of the Parish Clerk's advice on the nature of his interest.
- 4.2.2 Councillor Armstrong told the Tribunal that it was not only the embarrassment he felt in not being able to answer villagers' enquiries on this issue that had led him to seek further advice but the fact that he had always doubted the accuracy of the guidance and because he had recently received information that the scale of the development was now significantly larger than that which had initially been indicated to him.

#### 4.3 Prejudicial interest

- 4.3.1 In evidence Council Armstrong identified, by means of photographs, the property that was owned by his Mother-in-law and its outlook onto the potential development site and the adjacent roadway. These photographs showed that from the front of the flat there was a view of hedges and a little way off a road, Clarks Lane. To the rear the view was of standard wooden fencing and then just above this the top of a row of single storey modern garages with blue metal doors. This road was one of two ways of gaining access to the main village from Station Road, the road in which the entrance to the RHT development would be sited. Buses passed along Clarks Lane. In cross examination Councillor Armstrong agreed that there would be some increase in the volume of traffic on this road if the development took place and that there would be some environmental impact on his Mother-in-law's flat from the increased traffic flow although he maintained that it would be virtually negligible. Councillor Armstrong also conceded that a building of more than a single storey would have been partially visible over the top of these garages.
- 4.3.2 Council Armstrong gave evidence that his Mother-in-law had not occupied the flat since 2001 when she had been taken ill and then moved into a home for the elderly. However, she still owned the flat, which had been tenanted since 2001.
- 4.3.3 In relation to the increase in noise that any development would involve addition noise Councillor Armstrong stated in evidence that it was unlikely to make matters that much worse as most of the occupants of the adjoining flats had young children who were noisy.
- 4.3.4 Evidence on the number of inhabitants and residences in the village demonstrated that at a level of 35 dwellings it represented only just over a 5 % increase in the size of the village. Councillor Armstrong believed that this would be significant for the character of the village. The Tribunal raised with Councillor Armstrong the subject of the discussions that took place at the Parish Council meeting on the 10<sup>th</sup> March on the letter that Mrs. Constable had written to Councillor

Armstrong and other members of the Parish Council. This letter referred directly to the conduct of Councillor Armstrong at the meeting of the 3<sup>rd</sup> March and was critical of his manner, attitude and the way that he had arranged and handled the meeting of the 3<sup>rd</sup> March. At the meeting of the Parish Council on the 10<sup>th</sup> March Councillor Armstrong had called for the Council to write to Mrs. Constable challenging and refuting the substance of her letter. In questioning by the Tribunal Councillor Armstrong denied that he had any conflict of interest (in the discussion of this topic) and therefore should have declared an interest and arguably should also have withdrawn from the meeting at this point.

#### 4.4 Date guidance sought from the Standards Board of England

4.4.1 The Respondent had not contacted the Standards Board between the 10<sup>th</sup> February 2003 and the 16<sup>th</sup> February the time during which his stated view of the nature of his interest had changed again. The Respondent maintained in his evidence in chief that he had never said that he had. The ESO's representative acknowledged that there was no suggestion that the Respondent had or should have contacted the Standards Board during this period.

#### 4.5 Conversation outside Village Hall

4.5.1 The ESO's two witnesses, Mrs Taylor and Mrs Constable (of the RHT), both gave evidence of an exchange of views between Councillor Armstrong and Mrs Constable in a porch area outside the Parish Hall at the time on the 3 March 2003 when the villagers were moving from one meeting venue to another.

4.5.2 Mrs Taylor and Mrs Constable gave evidence that Councillor Armstrong was upset and concerned at the lateness of the RHT representatives' arrival at the meeting and at the decision by RHT to withdraw from making a presentation to the gathered villagers about the proposed housing project.

4.5.3 The ESOs report and the supporting interviews in the bundle of papers before the Tribunal disclose Councillor Armstrong as changing his evidence as to whether he had a conversation with a group of people, including Mrs Constable, or not and as to what was and was not said in that purported exchange. In evidence Councillor Armstrong denied that he had spoken more than a few words to Mrs Constable that evening outside the village hall.

4.5.4 Mr. John Cooke (the Respondent's son-in-law), Mr. Dean Armstrong (the Respondent's son), Mrs Amanda Hawkes and Mr Barry Gardner, witnesses called on behalf of Councillor Armstrong, were able to give evidence as to the tone of the meeting held on the 3 March 2003 and the conduct and demeanour of Councillor Armstrong at that meeting however none of those witnesses were able to give evidence about a

meeting and conversation between Councillor Armstrong and Mrs Constable outside the village hall.

#### 4.6 Derogatory remarks

4.6.1 The Tribunal heard evidence from witnesses called by both parties and from the Respondent as to the feeling and mood of the villagers at the meeting and the tone and demeanour of the Chairman of the meeting Councillor Armstrong. There were conflicting views on this. One description was of a rowdy rabble and the other of a chatting throng of neighbours.

4.6.2 There was evidence that there was general disappointment about the decision by the RHT not to give a presentation and general concern about the lateness of the start of the meeting, the lack of facilities at the venues, the overcrowding and personal well-being as it was cold and wet that night.

4.6.3 Several witnesses agreed, and Councillor Armstrong confirmed, that he was embarrassed and disappointed that the meeting was not going as planned. The term 'disgraceful' was referred to by a number of witnesses including Councillor Armstrong as being how he had described the behaviour of the RHT representatives at arriving late and not addressing villagers about the proposed development.

4.6.4 Mrs Constable, who has considerable experience of public speaking particularly to a hostile audience, told the Tribunal that she was surprised at the strength of feeling that appeared to have been whipped up. She believed that the tone of the leaflet that had been distributed ahead of the meeting and the inaccuracies it contained had exacerbated the feelings of those attending the meeting. She maintained that Councillor Armstrong had admitted during their heated exchange outside the Parish Hall, that he had circulated this leaflet. A later witness, Mr Cooke, stated that he had constructed the leaflet and undertaken its circulation without the help of his father-in-law, Councillor Armstrong. Councillor Armstrong denied shouting at the RHT officers outside the Parish Hall.

#### 4.7 Conduct of the meeting on the 3 March 2003

4.7.1 There was no substantive evidence to support the allegation that the Chairman, Councillor Armstrong, had been selective in his choice of speakers at the meeting or the correspondence that he had read out.

### 5 Findings

#### 5.1 The Case Tribunal has found the following facts:

5.1.1 Halstead Parish Council adopted the model Code of Conduct for Parish Councils on 11 March 2002.

- 5.1.2 Councillor Paul Armstrong is the Chairman of Halstead Parish Council (the Council). He has been a Parish Councillor for over five years and Chairman for the last two years. Around June 2001, as Chairman of the Council, Councillor Armstrong played a key role in involving an organisation known as the Rural Housing Trust (RHT) with the Council in order to develop an affordable housing project (the project) on a site within Halstead village. Council meetings took place from June 2001 until the end of 2003 when matters appertaining to the RHT and the project were included as agenda items.
- 5.1.3 At a meeting held in October 2002, Councillor Armstrong, following advice from the Parish Clerk, declared a personal and prejudicial interest in the project, on the grounds that his Mother-in-law owned property adjoining the proposed site for the project, and absented himself from any discussion relating to the project.
- 5.1.4 In November 2002, Councillor Armstrong became unhappy with the advice received and asked Mrs King-Scott, Clerk to Halstead Parish Council (the Parish Clerk), to re-evaluate the position. The Parish Clerk sought advice from the Monitoring Officer at Sevenoaks District Council, from Clive Powell, an officer of the Kent Association of Parish Councils (KAPC), and from the Standards Board for England (SBE), who each confirmed advice that in their opinion Councillor Armstrong had an interest which was prejudicial, although the SBE simply quoted the Model Code and the Parish Clerk has also said that the Monitoring Officer's advice was vacillating.
- 5.1.5 Councillor Armstrong told the Parish Clerk that the Standards Board's advice had been that his interest was personal and not prejudicial. The Standards Board for England had written a letter dated 24 January 2003 to Councillor Armstrong, which gave general information on the definition and appropriate behaviour in respect of personal and prejudicial interest, and said that in seeking specific advice regarding the nature of their interest that Councillors should contact their Monitoring Officer.
- 5.1.6 Councillor Armstrong also looked at the website of the Standards Board for England website and considered the example given in one of the frequently asked questions (FAQ) when considering whether he had a personal or prejudicial interest:
- 'Councillor Smith declared a personal interest in agenda item 3. The property in question on item 3 is adjacent to land that borders his friend's house;'
- 5.1.7 Councillor Armstrong has said that as 'friend' and 'relative' are, in his opinion, covered in the same way in paragraph 7(1) of the Parish Councils (Model Code of Conduct) Order 2001 this example of a personal interest is '...exactly like [his] own situation...'. He added that even if he were to be considered

to have a prejudicial interest, that he had reasonable grounds for considering it only to be personal, given the 'advice' in the FAQ.

- 5.1.8 Councillor Armstrong has said that he had been placed in an embarrassing position with residents of the village who knew that the Council had been having discussions about the project in camera; they were asking him what was being discussed, but because he could not attend the meetings due to his declared personal and prejudicial interest, he could not properly respond. At this time Councillor Armstrong heard talk of the development being increased in size. Councillor Armstrong had assumed that because other developments carried out by the RHT in other villages had been on the scale of six to eight dwellings that this would be the number to be built in Halstead. The level of housing being discussed was in the region of thirty to thirty-five as the level of need was greater and Halstead was a larger village than most.
- 5.1.9 In January 2003 the Parish Clerk initiated a meeting between Councillor Armstrong and the Monitoring Officer. The Monitoring Officer suggested that the Parish Clerk attend the meeting but she declined to do so. Thus the meeting was between the Monitoring Officer and Councillor Armstrong
- 5.1.10 Ms Marshall, the Monitoring Officer from Sevenoaks District Council, remembers considering the matter of Councillor Armstrong's interest in the project during an informal meeting with Councillor Armstrong. Although she had kept no written record, she recalled advising him that, in her view, Councillor Armstrong had a prejudicial interest, but that it was ultimately his decision.
- 5.1.11 The interest that Councillor Armstrong had in the project was that his Mother-in-law owns a ground floor flat that adjoins the RHT site proposed for development in the project, the flat is one of around 20 similar properties.
- 5.1.12 The flat in question is set back from the road at the front with a small hedge and grass verge between it and the roadway. The road, Clarks Lane carries traffic to the main village from Station Road the road in which the entrance to the RHT development was to be sited. Clarks Lane is one of two routes to the main village from Station Road. Buses pass along this road. There would be an increase in traffic and therefore noise and fumes if the project went forward.
- 5.1.13 The view from the flat in Clarks Lane to the rear is of a standard wooden fence and above this of a row of single storey garages of standard modern construction with metal garage doors. There is skyline above this. If a two or more storey building were put on this project site it would be visible from the flat.



- 5.1.14 The project site backs directly onto the garage area and although at some distance from the property any loud noise emanating from the project site could be audible in the flat.
- 5.1.15 Councillor Armstrong said during interview that he had spoken to a dozen or more people in the village and that they had considered that his judgement on the project would not be affected by the position of his Mother-in-law's flat. He said that he had approached villagers for their opinions at random and that '...some of those I spoke to were people whom I knew well, and others were people who I did not know well'. Councillor Armstrong has not provided the names of any of the people that he approached.
- 5.1.16 Councillor Armstrong had also, following the allegations made against him to the Standards Board for England, taken legal advice from his son, a barrister and his daughter-in-law, a solicitor, having shown his advisors photographs of his Mother-in-law's flat and a copy of the letter from the Standards Board for England. Having received this advice Councillor Armstrong did not seek further clarification from the Monitoring Officer or Parish Clerk.
- 5.1.17 At the Parish Council meeting of 10 February 2003, Councillor Armstrong read from a prepared statement dated 9 February 2003, saying that he had been unable to 'obtain a categorical ruling regarding [his] potential interest [in the matter],' but that advice taken from 'relevant authorities', up to and including that from a Senior Policy Advisor for the Standards Board for England, given in a letter dated 24 January 2003, led him to believe that his interest was personal, not prejudicial. The advice that he read in his statement was an extract from the paragraphs of the Code relating to personal and prejudicial interest.
- 5.1.18 On 16 February Councillor Armstrong sent an email to the Parish Clerk saying that he had sought further advice on the matter from the Standards Board for England, following which he had changed his position, deciding that the matter was now, and always had been, personal and that it had been 'deemed to be prejudicial'.
- 5.1.19 Councillor Armstrong had not contacted the Standards Board for England between 10 February 2003 and 16 February 2003.
- 5.1.20 Councillor Armstrong sought, and obtained, copies of all minutes of discussions relating to the project that he had previously not attended. He also called for an extraordinary meeting of the Council, to be held on 3 March 2003, in order, amongst other things, to hear a presentation from RHT representatives Mrs Moira Constable and Mr Andrew Smith, and to debate a resolution relating to the project. The Parish Clerk, having received advice from the Kent Association of Parish Councils and the Monitoring Officer for Sevenoaks District Council, had already informed Councillor Armstrong in

January 2003, that in her view his interest was prejudicial and that he should withdraw from any discussion on the matter. He did not do so.

5.1.21 A leaflet was delivered to householders in the village relating to the meeting of 3 March 2003. Councillor Armstrong informed the Parish Clerk on 28 February that his daughter and son-in-law were involved in the production, and previous evening's delivery, of the notice.

5.1.22 The notice read:

NOTICE

Halstead Parish Council is meeting on Monday 3<sup>rd</sup> March to discuss plans to build affordable housing in the village.

The proposed estate is five times bigger than the sort of scheme we have been told about before. It could change the character of the village.

The meeting is on Monday 3<sup>rd</sup> March at 7.45pm in the parish room, Church Road.

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Please attend if you care about the future of your village.

You have the right to attend.

You can make a difference.

5.1.23 On the evening of the 3 March 2003, the meeting was attended by such large numbers of villagers that they were not all able to fit into the Village Hall where Council meetings were normally held. As a result a decision was taken to adjourn the meeting and move immediately to a nearby primary school. The RHT representatives had been delayed by traffic problems and did not arrive at the Village Hall on schedule. The Clerk had telephoned them and they had confirmed that they were on their way but that they were having difficulty due to the volume of people and the lack of parking.

5.1.24 The RHT representatives arrived at the Village Hall at the time when the meeting was changing venues and spoke to Councillors D. Taylor, Bent and Gilfillan outside the Hall, expressing their concerns about the apparent hostility of the meeting attendees, the number of which they were unprepared for. They felt that in the circumstances they could not properly represent the RHT position on that evening.

5.1.25 As Councillor Armstrong left the Parish Hall to go to the School Hall he and Mrs Constable entered into an emotional exchange of views. They disagreed about how the meeting had been arranged and organised and on how it was going to proceed.

- 5.1.25.1 Mrs J. Taylor has said that Councillor Armstrong shouted at Mr Smith and Mrs Constable saying that they had to come to the meeting whether they liked it or not.
- 5.1.25.2 Mrs Constable stated that both Councillors Bent and Armstrong had 'hemmed' her into a corner and that she had had to ask them to 'stop shouting at [her]' on at least two occasions but that no bad language was used nor threats made. Mrs Constable told Councillor Armstrong that he was 'rabble rousing and using misinformation to stir up unnecessary hostility'.
- 5.1.25.3 Councillor Bent says that he did not witness any confrontation between Councillor Armstrong and the RHT representatives, but noted as he left the first venue on the 3 March 2003, that Mrs Constable was very upset. Councillor Bent says that the majority of the questions and comments on the evening came from those against the project. In his opinion the atmosphere at the meeting was hostile to the extent that it would have been 'difficult and brave' to speak in favour of the project.
- 5.1.25.4 Councillor D. Taylor was aware that Mrs Constable appeared to be distressed
- 5.1.25.5 Councillor Armstrong did not think that any of the RHT representatives were upset or annoyed; rather that they were apprehensive and surprised by the numbers in attendance.
- 5.1.26 Councillor Armstrong reconvened the meeting, in the school hall. At this point it was obvious that Councillor Armstrong was unhappy about how matters were going. He was clearly embarrassed and disappointed that the meeting he had arranged so that RHT representatives could speak to the villagers was not going to plan. Councillor Armstrong has admitted that he had been disgusted by the attitude of the RHT representatives and that 'well mannered people' would have apologised for arriving late. Mr Smith of RHT entered the meeting and read from a short statement informing the meeting of the decision not to address the parishioners that evening and then immediately left.
- 5.1.27 Mrs Constable asserted that when Mr Smith addressed the meeting, Councillor Armstrong made loud comments in a sarcastic tone to the effect that Mrs Constable was not present. Councillor Armstrong told the people in attendance, prior to Mr Smith's statement, that the RHT representatives would not now be addressing the meeting and expressed a view that he thought that this was 'disgraceful'.
- 5.1.28 Councillor Armstrong then declared a personal interest and continued with the published agenda of the meeting.

Councillor Armstrong said that he had called for a vote from those present, including the public, on whether they wished the project to go ahead, but that the Clerk had said that such a vote was 'not allowed'. Councillor Armstrong declared himself in favour of the affordable housing project, but said that the scale of the project had increased over time, without the public being made aware, and that he did not agree with the number of houses now proposed.

- 5.1.29 Although villagers had not heard the detail of the RHT plans and were ignorant of the discussions between the Council and the RHT the overwhelming view of those there was against the proposal. There was however at least one speaker firmly in favour of the project.
- 5.1.30 On 5 March 2003 Mrs Constable wrote to the Councillors at Halstead Parish Council, copied to the Clerk, raising her concerns about the way that she and her colleague had been treated at the meeting on the 3 March 2003, claiming that the Chairman of the Council had been openly hostile to the project, that he had verbally assaulted Mrs Constable and that she would not allow any members of RHT staff to have to face such confrontational meetings.
- 5.1.31 At a Parish Council meeting held on 10 March 2003, Councillor Armstrong proposed that the Council write to RHT expressing displeasure at the content of the letter of 5 March 2003, and concern at the conduct of the representatives of RHT on the 3 March 2003. All other Councillors present voted against the proposal.
- 5.1.32 Councillor Armstrong has said that he replied personally in writing, but heard nothing further. Councillor Armstrong couched his letter in a manner expressing his personal displeasure and concern.
- 5.1.33 The process for delivering documents to the members of the Council was that the Parish Clerk, having produced a list with each of the Councillors names in order, provided the first person on the list with copies of the relevant documents for each Councillor in named envelopes. The first named Councillor would retain the documents appertaining to him, and forward the others to the next on the list.
- 5.1.34 Councillor Armstrong refused to deliver any documents to the Councillor whose name on the list was immediately after his own instead he was passing the documents to another Councillor but ensuring that the Councillor concerned was noted as not yet having received his copy of any documents and that he should do so in due course. The net effect was that the Councillor next on the list after Councillor Armstrong received his documents later than he would otherwise have done

6 Whether the material facts disclose a failure to comply with the Code of Conduct

6.1 The Respondent's Submissions

- 6.1.1 The Respondent accepted that he did not properly disclose the nature of his personal interest at the commencement of the meeting held on 3 March 2003. He did declare a personal interest, as is recorded in the Minutes of the Meeting. The nature of that interest was that his mother-in-law's property adjoined the site under discussion. This was known to many of those present, the Respondent made no attempt to conceal it, and indeed he referred to it that evening. He accepts, however, that he did not declare this fact in the appropriate form at the correct time.
- 6.1.2 However the Respondent does not accept that his interest was prejudicial, and therefore does not accept that he failed to comply with paragraphs 10(a) and (b) of the Code. He also refuted the allegation that he made remarks about individuals in breach of paragraph 2(b) of the Code, and that he was in breach of paragraph 4 of the Code, since this alleged breach rests on the other aforementioned breaches.
- 6.1.3 The Respondent has disputed that he has shown a susceptibility to inaccuracies in his memory of events, his interpretation of guidance and in his communicating of information to relevant parties.
- 6.1.4 The Respondent also disputed that he made derogatory, unpleasant or disparaging comments. The ESO referred to 'evidence put forward on behalf of Mr Smith...'. The Respondent could find no evidence from My Smith in the bundle of exhibits that relates to this allegation. The Respondent supplied the investigator, following his interview on 2 July 2003, with the names and addresses of witnesses who would provide evidence as to the events in question. none of these witnesses appears to have been contacted by the ESO or any of his investigators.
- 6.1.5 The Respondent disputed the suggestion that he relied 'unreasonably' on the example given in the SBE website. He is bound to ask what the purpose of the 'Frequently Asked Questions' section of the website is, if not to provide guidance? Furthermore, he refuted the assertion that he does 'not readily accept advice which conflicts with (my) own views'. This is the opinion of the ESO, not a fact.
- 6.1.6 The Respondent also disputes the suggestion that either he, or members of his close family, were hostile to the project in its proposed form, and that he was in consequence allowing this personal view to affect my objectivity. The Respondent will provide evidence on this at the tribunal.
- 6.1.7 The Respondent disputed the fact that he had been given clear advice that his interest was prejudicial. The advice given from

the Monitoring Officer was that on balance she thought the interest was probably prejudicial, but that this was 'a very grey area'. This was why the Respondent was unhappy with the advice given.

6.1.8 The Respondent supplied to SBE a list of six witnesses able to corroborate his version of events with regards refuting the allegation that he made derogatory remarks to the RHT representatives. This list was supplied in a letter to the ESO sent Recorded Delivery on 10 September 2003.

6.2 The ESO's Submissions (as set out in the reference)

6.2.1 Councillor Armstrong agreed to and accepted the obligations imposed by the Code of Conduct.

6.2.2 There is no evidence to show, and none has been offered, that Councillor Armstrong properly advised the meeting of 3 March 2003 of his reason for declaring a personal interest.

6.2.3 Councillor Armstrong, along with close members of his family, was hostile to the project in its proposed form and that he was allowing his personal view to affect his objectivity as Chairman of the Council. Councillor Armstrong readily admits that he is opposed to the affordable housing project in its current form; he had not during the previous year attended any of the meetings that considered this matter due to his then declared personal and prejudicial interest and had not heard the debates for or against the proposal as it stood. His views on the matter were therefore pre-conceived. He had a relative whose property would be directly affected by any development on the proposed site, and other relatives who were making efforts to rally support in the community against the project in its proposed form. Councillor Armstrong had also received advice from the Parish Clerk and directly from the Monitoring Officer at Sevenoaks District Council, along with knowledge of the KAPC advice, all of which was clear in its consensus that Councillor Armstrong held a prejudicial interest. He sought advice from the Standards Board for England and received guidance on the matter, with a very clear position that advice should be sought from the Monitoring Officer.

6.2.4 Councillor Armstrong argued that his interest was not prejudicial because the limited view that is already enjoyed from his Mother-in-law's flat would not be further diminished by any development and that the land is currently not accessible, also that the value of neighbouring houses would not be affected. The close proximity of his mother-in-law's flat to the proposed development; the potential effect that the development would have on the view of the skyline; and the potential to affect financially his mother-in-law, her enjoyment, value of, and pleasure derived from the property would be affected.

- 6.2.5 The ESO does not assert that the proposed development would have a negative impact on the value of the property of the Respondent's mother-in-law
- 6.2.6 Owing to its proximity to the proposed development it is unlikely the enjoyment or value of his mother-in-law's flat will not be affected, particularly by a development that is said will 'change the character of the village'. There would be an impact on the value or pleasure derived from the use of the Respondent's mother-in-law's property due to its proximity to the development site, the visual impact of the development, the increased noise and traffic movement. Other members of Councillor Armstrong's family had openly and strongly objected to the development. Councillor Armstrong did not properly declare a personal interest and he therefore failed to comply with paragraph 8 of the Code.
- 6.2.7 Having concluded that Councillor Armstrong had a personal interest, the ESO considered whether his interest was prejudicial. A member of the public with knowledge of the relevant facts would reasonably regard Councillor Armstrong's interest as so significant that it is likely to prejudice his judgement of the public interest and that Councillor Armstrong did have a prejudicial interest in the housing project as described by paragraph 9 of the Code. By failing to withdraw from the room when any meeting relating to the project was being held, he failed to comply with paragraph 10(a) of the Code. By calling for, and chairing, a meeting to discuss that particular project he sought to improperly influence a decision about that matter, and in doing so failed to comply with paragraph 10(b) of the Code.
- 6.2.8 The ESO concluded that Councillor Armstrong did approach the RHT representatives while changing venues and that he did speak to them. The ESO also concluded that Councillor Armstrong was aggressive and uncomplimentary about and towards the RHT representatives, without necessarily having any justification for such behaviour. The weight of evidence from the witnesses put forward leads to the conclusion that Councillor Armstrong did fail to treat the RHT representatives with respect. Councillor Armstrong has not indicated any witnesses able to corroborate his version of the events.
- 6.2.9 The Respondent's behaviour led to letters being written expressing concern about his behaviour.
- 6.2.10 The Respondent provided names of witnesses to the Ethical Standards Officer. However the Ethical Standards Officer did not interview these persons as he understood that these witnesses would have only given information concerning whether in their opinion the Respondent had a prejudicial interest. This is an objective test to be decided by the case tribunal and it is submitted does not rely upon individual members of the public giving their view as to whether a prejudicial interest exists.

- 6.2.11 Hence the ESO concluded that Councillor Armstrong has failed to comply with paragraph 2(b) of the Code.
- 6.2.12 Councillor Armstrong relied unreasonably on an example given on the Standards Board for England website, without consideration of the other factors identified in his specific case. He does not readily accept advice which conflicts with his own views. His inspiration for changing his position with regard to the possibility of a prejudicial interest emitted, not from any new or altered circumstances, but rather from what he has said was a feeling of embarrassment that he did not have full knowledge of the facts under consideration, which he felt to be an inappropriate position for the Chairman. The frequently asked question gave an example of when it is likely that a personal interest arises. It cannot be assumed that the information given in the frequently asked question stated that the interest described is only personal and not prejudicial. The frequently asked questions are only provided as examples to assist members and monitoring officers and member of the public to consider whether personal and prejudicial interests arise. They are generic and it is important that members consider all of the facts which are relevant to their own circumstances and reach a conclusion as to whether there is a personal and prejudicial interest.
- 6.2.13 There is a discrepancy in information provided to the Council and the Clerk concerning when and whether advice was received. At the 10 February 2003 meeting Councillor Armstrong said that he had been unable to “obtain a categorical ruling regarding [his] potential interest [in the matter].” However in an email dated 16 February 2002 the Respondent said that he had sought further advice following which he changed his position.
- 6.2.14 The ESO is clear that throughout the matters in question and the investigation, Councillor Armstrong has shown a susceptibility to inaccuracies in his memory of events, his interpretation of guidance and in his communicating of information to relevant parties. Councillor Armstrong was selective when informing the Council about the advice he had received from the Standards Board for England, and from other sources, regarding their views on his interest in the affordable housing project.
- 6.2.15 The Ethical Standards Officer considers that the Monitoring Officer's advice was clear and does not suggest that this is a grey area. The obligation to declare and leave is that of the member, and the Monitoring Officer or any other officer of the Council cannot tell a member that they have interests, but may simply give advice.
- 6.2.16 By his reasoning and behaviour culminating in his change in the level of interest that he expressed in the housing project, resulting in his failure to comply with paragraphs 10(a) and 10(b) of the Code when Councillor Armstrong had a clear



personal and prejudicial interest in the housing project; exacerbated by his behaviour leading up to and during the meeting of 3 March 2003 during which he undermined the authority of, and failed to treat with respect, the RHT representatives, Councillor Armstrong damaged the reputation of the Council or his office, and that in doing so he brought his office and authority into disrepute and failed to comply with paragraph 4 of the Code.

- 6.2.17 There was no breach of the Code of Conduct in the manner in which Councillor Armstrong reported to the Council regarding the conclusions of advice that he had received in respect of his status with respect to his interest in the RHT project.
- 6.2.18 Councillor Armstrong did not fail to comply with paragraph 2(c) of the Code by his alleged attempt to change the advice of the Parish Clerk regarding the status of his interest in the RHT project.
- 6.2.19 By undertaking the actions described in paragraph 2.1.5 above Councillor Armstrong did not fail to comply with paragraph 4 of the Code of Conduct.
- 6.2.20 Councillor Armstrong did not attempt to prevent another person from gaining information to which that person was lawfully entitled.
- 6.2.21 Councillor Armstrong did not, by using his position as a member improperly confer or secure for himself or any other person an advantage or disadvantage at the meeting of 3 March.

## 7 Submissions as to the action to be taken

### 7.1 The ESO's Submissions

- 7.1.1 The new ethical framework is designed to enhance transparency and accountability in local government. Central to the fulfilment of these objectives is the need for members to properly act on any reasonable advice given by responsible individuals or bodies.
- 7.1.2 Part of this process envisages that Councillors will ensure that they take all necessary actions to enhance and preserve public confidence in the objectivity and openness of those in public office.
- 7.1.3 It clearly undermines the ethos of fair dealing which the public expect and are entitled to receive from their elected representatives, for councillors to take part in the consideration of matters when they can be perceived to be acting, even if only in part, from personal motives, or if they or a relative or friend stand to gain personally from their actions. Any actions by a councillor in this respect could be seen as devaluing the integrity of the Council as a whole.

7.1.4 Any attempt to improperly influence a Council decision, contravenes not only the code of conduct, but undermines the general principles of selflessness, honesty, integrity, openness and objectivity, which the community rightly demand from those in public office.

7.1.5 This is such a case and that further action is needed in order to reassure the public that their expectations would be upheld in a public and transparent manner.

7.1.6 The Ethical Standards Officer considers that the Respondent's alleged behaviour undermines his office as a councillor by treating other individuals inappropriately. In the event that the case tribunal decides that the Respondent has failed to comply with the code of conduct, further submissions will be made at the hearing.

## 7.2 The Respondent's submissions

7.2.1 The Respondent refuted utterly the suggestion that he attempted improperly to influence the council's decision, and in particular that he did so in a way that undermines the general principles of selflessness, honesty, integrity, openness, and objectivity which the community rightly demand from those in public office. He accepted that he failed to outline the nature of his personal interest at the correct time during the meeting held on 3 March 2003; but, in mitigation, he did clearly communicate the nature of that interest on numerous other occasions. Furthermore, his genuine belief now, as well as at the time of the alleged breach, is that the nature of his interest is and was personal not prejudicial.

## 7.3 Case Tribunal Decision

7.3.1 That Councillor Armstrong did not declare the nature of his interest at the meeting held on the 3<sup>rd</sup> March 2003 and had breached the provisions of paragraph 8 of the Code of practice. The Tribunal noted that at all previous and subsequent meetings Councillor Armstrong had declared his interest and the nature of his interest.

7.3.2 The Tribunal could not discount the prospect that any development of the project site in Station Road would have an impact on surrounding properties including that owned by Councillor Armstrong's Mother-in-law. Councillor Armstrong could also not discount such an effect. Councillor Armstrong had received conflicting advice on the nature of his interest. On one side was advice that this part of the Code was a grey area. On the other was the clear advice that Councillor Armstrong's interest was clearly a prejudicial one. At an early stage Councillor Armstrong had taken the cautious view and accepted that his interest was a prejudicial one. At a time when the potential development was thought to have increased in size significantly he should have adopted an even more cautious interpretation of the Code rather than a more

liberal one. The Tribunal finds that the Respondent had a prejudicial as well as a personal interest and that he had not declared this interest or withdrawn from the meeting, as required by the code, when this topic was considered.

- 7.3.3 The Tribunal accepts that Councillor Armstrong was attempting to open up the debate of this topic for the purposes of public information. There was no evidence that Councillor Armstrong had sought to influence the outcome of the matter.
- 7.3.4 Councillor Armstrong's remarks at the meeting were inappropriate and badly chosen. His remarks were not part of the cut and thrust of political debate but aimed at members of public gathering. His comments were judgemental however he was clearly in a difficult situation and given the particular circumstances it can be understood how he came to express himself so poorly. Accordingly the Tribunal does not consider that Councillor Armstrong brought his office or his authority into disrepute.
- 7.3.5 There was no evidence to support the allegations set out in paragraphs 2.1.4 to 2.1.7 above that Councillor Armstrong had breached the provisions of paragraphs 5(a), 2(c), 3(b) and 4 of the Code.
- 7.3.6 The Tribunal does not consider one instance of non-declaration of the nature of an interest as grave. However, in relation to his actions in respect of his prejudicial interest we do feel a sanction is appropriate and impose a suspension from participation in all business of the relevant authority for a period of six months from 1<sup>st</sup> October 2004.

## 8 Recommendations to the relevant authority

- 8.1 That before the period of his suspension ends, Councillor Armstrong should take part in further training on the interpretation of the Code of Conduct, and that should also be offered to other councillors.

Ms Karen Aldred  
Chairman of the Case Tribunal

27 September 2004