

**REPORT OF AN INVESTIGATION INTO ALLEGATIONS MADE TO THE
STANDARDS COMMITTEE OF CHELTENHAM BOROUGH COUNCIL AGAINST
COUNCILLOR MRS. DRIVER**

6 AUGUST 2009

1. INTRODUCTION

- 1.1 This report is presented following a formal investigation into complaints made to the Standards Committee of Cheltenham Borough Council ("the Council") under section 57A of the Local Government Act 2000 ("the Act"). The Standards (Initial Assessment) Sub Committee met on the 2 June 2009 and decided to refer the matter for investigation by the Monitoring Officer. The details of the complaints, investigation and findings are set out in this report.

2. COMPLAINTS

- 2.1 It is alleged that at a meeting of the Council's Planning Committee on the 30 April 2009, Councillor Mrs. Driver failed to disclose a personal and prejudicial interest and therefore failed to withdraw from the meeting.

3. THE RELEVANT PARTS OF THE CODE OF MEMBERS' CONDUCT

- 3.1 The complaints in this case relate to the following paragraphs of the Code: -
- 3.2 Paragraph 8(1)(a) provides that a member has a personal interest in any business of the Council where "it relates to or is likely to affect *(ii)* any body *(bb)* directed to a charitable purpose of which you are a member or in a position or general control or management."
- 3.3 Paragraph 8(1)(b) provides that a member has a personal interest in any decision of the Council where a decision "in relation to that business might reasonably be regarded as affecting the well-being or financial position of a relevant person to a greater extent than the majority of *(i)* (in the case of authorities with electoral wards) other tax payers, rate payers or inhabitants of the electoral division or ward, as the case may be, affected by the decision". A relevant person includes (a) any person with whom you have a close association or (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).
- 3.4 A close association is not defined within the Code. The guidance issued by the Standards Board suggests that "a person with whom you have a close association is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them."¹
- 3.5 Paragraph 9(1) requires where a member has a personal interest in any business of the Council and they attend a meeting at which business is

¹ See page 20 - The Code of Conduct – Guide for members – May 2007

considered, the existence of the interest and the nature of the interest must be disclosed.

- 3.6 Paragraph 10(1) states that where a member has a personal interest in the business of the Council, the member will also have a prejudicial interest in the business where a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice a member's judgement of the public interest.
- 3.7 Paragraph 12 provides that where a member has a personal and prejudicial interest the member be required to withdraw from the room where the meeting is being held. There are a number of exceptions to this rule but they are not relevant to this investigation and report.

4. **INFORMATION**

4.1 The starting point of this investigation was the letters of complaint received from the persons listed below. The letters of complaint included a number of issues and not all of these issues relate to matters within the terms of reference of the Standards Committee. These matters were the subject of a separate investigation and report. Where relevant to this investigation the following documents (see Appendix 1) were considered as part of this investigation: -

- Letters and emails from Councillor David Prince dated the 3 May, 4 May, 1 June and 14 June 2009;
- Letters from Councillor Diane Hibbert dated the 6 May and 15 June 2009;
- Letter from Mr. Douglas Ogle dated the 5 May 2009;
- Letters and emails from Mr. Derek Marley dated the 5 May, 12 May, 28 May, 29 May and 14 June 2009;
- Letter from Mr. F.A Warren dated the 5 May 2009; and
- Letter from Mr. David Horsted dated the 8 May and 18 May 2009.

4.2 Councillor Mrs. Driver was interviewed on the 29 May 2009. The interview was a joint interview and Councillor Mrs. Driver was asked to comment on the various issues, relating to interests and apparent or actual bias, raised by the complainants.

4.3 The following officers provided written evidence: -

- Jonathan Noel, Solicitor; and
- Robert Lindsey, Development Control Manager.

4.4 A telephone interview was also conducted with Mr. Bonney, Trustee for St Vincent's.

4.5 Information concerning the planning application and planning committee were also considered however, it is important to note that the purpose of this investigation was not to look into or to make any findings regarding the planning merits or otherwise of the decision. A copy of the minutes from the meeting is contained within Appendix 1.

4.6 Counsel was also instructed to provide an overview and advice on the issues of bias and predetermination as part of this advice he also provided opinion

on the issue of interests. The opinion of counsel is consistent with the findings of this report.

5. INVESTIGATION AND FINDINGS OF FACT

- 5.1 Councillor Mrs. Driver is an elected councillor for the Landsdown ward in the Borough of Cheltenham. Councillor Mrs. Driver was elected in 1999 and has sat on the Planning Committee since 1999. Councillor Mrs. Driver currently also sits as a member on the Licensing Committee and has sat on the Licensing Committee since 2000. Councillor Mrs. Driver last completed a Member's register of interest form on the 10 August 2007. She did not disclose a personal interest relating to St Vincent's.
- 5.2 In May and June 2009, complaints were received in respect of the conduct of a number of members of the Planning Committee that met on the 30 April 2009 to consider application number 08/01342/FUL. Councillor Mrs. Driver who sits on the Planning Committee has been the subject of a number of the complaints.
- 5.3 The proposal was for the erection of a residential facility for 12 adults with complex disabilities (use class C2) and non residential therapeutic activities and associated landscaping. The site is at land adjacent to Dunalley Primary School, West Drive, Cheltenham.
- 5.4 This application was one of a number of applications and because of the full agenda the meeting, which commenced at 6.00p.m had to be adjourned to the following day, so that all of the reports could be processed.
- 5.5 A detailed report was provided to the committee and this report outlined the comments of various consultees. Members were also provided with copies of the letters of support and objections that were received. The application was debated at length at the meeting on the 30 April 2009. There were a number of speakers both objecting to the application and supporting the application. Councillor Mrs. Driver addressed the committee in support of the application.
- 5.6 At the end of the debate Councillor Morris moved to permit, the application and 7 members (including Councillor Mrs. Driver) voted in favour while 6 members voted against the move to permit the application.
- 5.7 After the Planning Committee on the 30 April 2009, a number of letters of complaint were received. The complaints concerned a number of different issues. Some of the complaints were categorised by the complainants as failure to disclose interests and breaches of the Code of Conduct. Some of the complaints alleged bias or procedural irregularity on the part of members. An initial assessment was conducted into all of the complaints. At the conclusion of this initial assessment, the complaints were divided into those that related to the interests and the Code of Conduct and those that related to questions of bias or procedural irregularity. At the conclusion of this initial assessment, it was also determined that no further action was required in respect of some of the complaints. In summary, the following complaints (which were classed as within the remit of the Standards Committee) regarding Councillor Mrs. Driver were received: -
- 5.8 The following complaints were received regarding the conduct of Councillor Mrs. Driver: -

- i. Councillor David Prince who alleges that Councillor Mrs. Driver "spoke emotionally about the work of St Vincent's and the people who use the centre" and that Councillor Mrs. Driver has attended on a number of occasions the St Vincent's summer fete "where she works as a volunteer to raise funds for them." Councillor Prince also alleges that Councillor Mrs. Driver explained to the planning meeting that she has "extensive knowledge of the internal workings of the St Vincent's centre."
- ii. Councillor Diane Hibbert alleges that Councillor Mrs. Driver "works for St Vincent's on a voluntary basis at their fund raising events". Councillor Diane Hibbert stated that she had spoken to Councillor Mrs. Driver at a number of events. Councillor Diane Hibbert also relies upon the fact that Councillor Mrs. Driver was very familiar with the workings of St Vincent's and that Councillor Mrs. Driver illustrated this through how she described her various visits to St Vincent's.
- iii. Mr Douglas Ogle who alleges that Councillor Mrs. Driver appeared "to have significant enough ties with the applicant..for them to declare a prejudicial interest and withdraw from the process";
- iv. Mr. Derek Marley who alleges Councillor Mrs. Driver focused purely on emotional issues and gave "a passionate speech in support of St Vincent's, a speech which ignored the real planning issues". He also alleges that Councillor Mrs. Driver is a supporter of St Vincent's and has run stalls at St Vincent's summer fete to raise money for them which meant she was unable to take an unbiased view;
- v. Mr F. A Warren who alleges that Councillor Mrs. Driver "helps raise money for St Vincent's and in all probability is a "Friend of St Vincent's" and therefore be bias towards the applicant; and
- vi. Mr. D. Horsted alleges that Councillor Mrs. Driver is a contributing friend of the applicant and therefore should not have voted where she "could favour one side";

5.9 Councillor Mrs. Driver was interviewed and asked to respond to the complaints listed above. Councillor Mrs. Driver was asked her connection with St Vincent's. Councillor Mrs. Driver was also asked about her conduct at the committee and her decision to vote in favour of approving the application.

5.10 Councillor Mrs. Driver stated in interview that she was not a friend of St Vincent's and that she had stopped donating to them about 6 or 7 years ago. She did however confirm that she did attend open days at St Vincent's. She stated that she was not specifically invited nor did she attend as a VIP, she did however purchase raffle tickets and cakes. She stated that a number of councillors attend the open days including Councillor Diane Hibbert.

5.11 Councillor Mrs. Driver stated that on one occasion while attending an open day/fete she helped out on a book stall.

5.12 When asked about her connections with individual staff members at St Vincent's, she stated she knew Mr. Bonney and staff members and that she admired the work of St Vincent's.

5.13 When asked about other charities Councillor Mrs. Driver stated she supports a number of other local charities and tries to attend as many events as possible.

- 5.14 When asked about the process she took prior to a meeting Councillor Mrs. Driver stated she read the officer's report, before the committee went through the officer's report, and wrote down the pluses and minuses of the application. When asked whether her address to the Planning Committee had been based solely on non planning matters, Councillor Mrs. Driver stated that she felt that the planning issues were covered by the two speakers who spoke prior to her. She had addressed however, the determining issues outlined at paragraph 6.1 of the report.
- 5.15 When asked whether Councillor Mrs. Driver had considered whether or not to take part in the meeting she stated that she did not consider the question of whether she had a personal/prejudicial interest at the time however; with hindsight, she wonders whether she should have disclosed a personal interest.
- 5.16 Mr. Bonney stated in interview that he knew Councillor Mrs. Driver attended events at St Vincent's; he stated however that he did not know Councillor Mrs. Driver socially.

6. CONCLUSIONS AND REASONING

- 6.1 When interviewed, Councillor Mrs. Driver confirmed that she no longer makes a yearly donation to St Vincent's however; she had visited St Vincent's on a number of occasions.
- 6.2 Support of a charity is not in itself sufficient to create a personal interest in a matter.
- 6.3 Councillor Mrs. Driver in interview stated that she had visited St Vincent's at open days/fetes and that she knows Mr. Bonney and members of staff at St Vincent's. Councillor Mrs. Driver does not have any management or voting rights at St Vincent's. I do not therefore consider that Councillor Mrs. Driver has a position of general control or management as set out in paragraph 8(1) (ii) of the Code.
- 6.4 The Code of Conduct does not define a "close association". As indicated earlier the Guide for Members published by the Standards Board for England provides some guidance on who is a close associate. A "close associate" is someone "with whom a councillor has either regular contact or irregular contact over a period of time and who is more than just an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts."
- 6.5 Councillor Mrs. Driver has clearly come into contact with Mr. Bonney and has spoken to Mr. Bonney and staff members at a number of events held at St Vincent's. The events that Councillor Mrs. Driver has attended are what could be classed as community events where Councillor Mrs. Driver has attended with a large number of other attendees. Although Councillor Mrs. Driver has helped at one of the events, she was not individually invited to that event. There is no evidence to suggest that Councillor Mrs. Driver has met Mr. Bonney outside of the events at St Vincent's.

- 6.6 In my view, a combination of factors must be considered. Factors such as the length of time for they have known each other, the frequency of the contact, the nature of the contact and the extent of knowledge that each has of each other. Whilst Councillor Mrs. Driver has come into contact with Mr. Bonney over a number of years, they only come into contact a couple of times a year in the context of large gatherings such as open days and fetes that are open to others as well as Councillor Mrs. Driver. There is no evidence to suggest that the relationship between Councillor Mrs. Driver and Mr. Bonney is a close association as defined by paragraph 8(1)(b) of the Code of Conduct.
- 6.7 It is common practice that local councillors support local charities and attend charity events and I do not believe that reasonable person would think that there is anything unusual about this aspect of a councillor's role. I also do not believe that a reasonable person in possession of all of facts would conclude that in this case the relationship is more than one of acquaintance.

7. FINDINGS

- 7.1 I do not believe that Councillor Mrs. Driver has a personal interest, as defined by paragraphs 8(1)(ii) or 8(1)(b) of the Code, in respect of the application made by St Vincent's.
- 7.2 It follows that as no personal interest arose under paragraph 8(1) or 8(1)(b) of the Code then no prejudicial interest existed under paragraph 10.
- 7.3 By virtue of the facts and reasons set out in this report, Councillor Mrs. Driver was not in breach of Cheltenham Borough Council's code of conduct.

Sarah Farooqi
Solicitor
6 August 2009