

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

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

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

- 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 members 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 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. 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 Barnes was interviewed on the 2 June 2009. The interview was a joint interview and Councillor Barnes 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;
- 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.

4.6 Counsel was also instructed to provide an opinion on the issues of bias and predetermination as part of his advice he also provided opinion on the issue of interests.

5. INVESTIGATION AND FINDINGS OF FACT

- 5.1 Councillor Barnes is an elected councillor for the College ward. Councillor Barnes was first elected in 1976, has been an elected member since 2002 and has been on the Planning Committee since 2004. Councillor Barnes currently also sits as a member on the Licensing Committee and has sat on the Licensing Committee since 1997. Councillor Barnes last completed a Member's register of interest form on the 26 January 2008. He did not disclose a personal interest relating to St Vincent's on the form although he did declare a personal interest at the meeting on the 30 April 2009.
- 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 Barnes 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 Before the application was considered, Councillor Barnes declared a personal interest in the application. The reason given was that Councillor Barnes is a member of the Friends of St Vincent's, gives £10 per year to St Vincent's and he visited the charity during his mayoral year.
- 5.6 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 objection 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 Barnes did not contribute to the debate. The officer recommendation was to refuse the application. At the end of the debate Councillor Morris moved to permit, the application and 7 members (including Councillor Barnes) 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 letters detailed a number of concerns some of which are not relevant to this investigation. In summary, the following complaints (which are also relevant to this investigation) regarding Councillor Barnes were received: -
- i. Councillor David Prince complained that Councillor Barnes failed to disclose a prejudicial interest;
 - ii. Councillor Diane Hibbert who alleges that Councillor Barnes failed to disclose his membership of St Vincent's.

- iii. Mr Douglas Ogle complained that Councillor Barnes 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 complained the prejudicial interest of Councillor Barnes in St Vincent's meant Councillor Barnes was "unable to take a clear and unbiased view on the planning aspects of the case";
 - v. Mr F. A Warren complained that the interest of Councillor Barnes was "strong enough to influence decision";
 - vi. Mr. David Horsted complained that Councillor Barnes is a contributing friend of the applicant and should not have voted where he "could favour one side"; and
- 5.8 Councillor Barnes was interviewed and asked to respond to the complaints listed above. Councillor Barnes was asked about his connection with St Vincent's. Councillor Barnes was also asked about his conduct at the committee and his decision to vote in favour of approving the application.
- 5.9 Councillor Barnes stated in interview that while he was the mayor he was invited to an event at St Vincent's School and that since then he has been to a number of other events. When asked how many times a year, Councillor Barnes stated he thought two or three times maximum.
- 5.10 When asked about the way he made his donation to St Vincent's, Councillor Barnes stated that he and wife give £10 per year donation to St Vincent's and that this is done via a cheque in the post. He stated he receives a newsletter but is not involved with the board of trustees nor does he have a decision making role with St Vincent's and he does not have any personal connection with the board of trustees.
- 5.11 Councillor Barnes stated he supports a number of other both local and national charities and attends events organised by these charities.
- 5.12 When asked whether he had, any links with Mr. Bonney, Councillor Barnes stated he was aware of Mr. Bonney's association with the Liberal Democrats but he did not know what form this support took and that he had never seen him at any events nor discussed the application with Mr. Bonney. Councillor Barnes confirmed he has spoken to Mr. Bonney at St Vincent's events. When the application came up Councillor Barnes stated that he could not discuss the application as he sat on the Planning Committee.
- 5.13 Councillor Barnes explained he had considered the question of interests and that he had sought the advice of officers. He felt that as he had visited St Vincent's he should declare a personal interest. He did not however believe that his links were strong enough to debar him from taking part in the meeting.
- 5.14 When asked about how he dealt with the application, Councillor Barnes stated he considered all of the information contained within the report and attended the planning view. Councillor Barnes stated that he listened to all of the comments made at the meeting and although emotional issues were raised during the course of the debate, he did not feel that the work of the charity was a relevant consideration.
- 5.15 Councillor Barnes confirmed he did not contribute to the debate as he felt there was no need to reiterate points that had already been made. Councillor

Barnes also stated that he tends not to say very much at planning committees.

- 5.16 Mr. Bonney stated in interview that he had invited Councillor Barnes to an open day at St Vincent's, when Councillor Barnes was the mayor. Mr. Bonney stated that St Vincent's always invite the mayor to events. He stated that he thought that Councillor Barnes made a yearly donation to St Vincent's. Mr. Bonney stated that he did not know Councillor Barnes socially.

6. CONCLUSIONS AND REASONING

- 6.1 When interviewed, Councillor Barnes confirmed that he and his wife make a yearly donation to St Vincent's and that he had visited St Vincent's on a number of occasions. It is also not disputed that Councillor Barnes, sought advice from the legal officer at the committee; regarding a potential interest and that, he declared a personal interest at the start of the meeting.
- 6.2 A charitable donation, especially a small donation of £10 per year, is not in itself sufficient to create a personal interest in a matter.
- 6.3 Councillor Barnes in interview also stated that he received a newsletter from St Vincent's and had visited St Vincent's at open days/fetes. The charitable donation in this case does not however give rise to 'membership' in the sense of giving Councillor Barnes any management or voting rights. I do not consider that Councillor Barnes has a position of general control or management as set out in paragraph 8(1)(ii) of the Code.
- 6.4 Councillor Barnes stated at interview that he attends a number of events at St Vincent's and that he has spoken to Mr. Bonney.
- 6.5 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."
- 6.6 Councillor Barnes has clearly come into contact with Mr. Bonney and has spoken to Mr. Bonney at a number of events held at St Vincent's. The events that Councillor Barnes has attended are what could be classed as community events where Councillor Barnes has attended with a large number of other attendees. There is no evidence to suggest that Councillor Barnes has met Mr. Bonney outside of the events at St Vincent's.
- 6.7 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 Barnes 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 Barnes. There is no evidence to suggest that the

relationship between Councillor Barnes and Mr. Bonney is a close association as defined by paragraph 8(1)(b) of the Code of Conduct.

- 6.8 It is common practice that local councillors support local charities and attend charity events and I do not believe that a 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.
- 6.9 There is also no evidence suggest that a close association exists between Councillor Barnes and Mr. Bonney as a result of the fact that they both belong to the Liberal Democrat party.

7. FINDINGS

- 7.1 I do not believe that Councillor Barnes has a personal interest, as defined by paragraphs 8(1)(ii) and 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 paragraphs 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 Barnes was not in breach of Cheltenham Borough Council's code of conduct.

Sarah Farooqi
Solicitor
6 August 2009