

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **F111**

**TO: **PARISH COUNCIL CASE
 SUB-COMMITTEE OF THE
 STANDARDS COMMITTEE****

DATE OF MEETING 27 October 2006

**REFERRED COMPLAINT IN RESPECT OF COUNCILLOR PHILPOT, HOLTON ST MARY
PARISH COUNCIL – PRE-HEARING PROCESS SUMMARY REPORT**

1. SUMMARY

- 1.1 Ms Jennifer Rogers, an Ethical Standards Officer with the Standards Board for England has referred two complaints to the Council’s Monitoring Officer in respect of Councillor A Philpot of Holton St Mary Parish Council, for local investigation and subsequent determination by the Standards Committee.
- 1.2 Ms Caroline Whatling, Assistant Solicitor has investigated the complaints on behalf of the Monitoring Officer. Those investigations have now been concluded and a copy of Ms Whatling’s report is appended (Appendix 1.). The findings contained in the report are that Councillor Philpot has failed to comply with the Code of Conduct of Holton St Mary Parish Council.
- 1.3 The Sub-Committee must now consider those complaints at a hearing held in accordance with the Local Authorities (Code of Conduct) (Local Determinations) Regulations 2003, as amended and determine whether it agrees the findings of failure in the report and, if so, whether it considers that any sanction would be appropriate.
- 1.4 The Monitoring Officer has concluded a pre-hearing process in order to identify any points of dispute. None have been identified.
- 1.5 In view of the factual nature of the complaints and the fact that Councillor Philpot proposes to attend the hearing, but not call witnesses, no arrangements have been made to call witnesses in support of Ms Whatling’s report.

2. RECOMMENDATIONS

- 2.1 That the Sub-Committee determine whether Councillor Philpot did fail to comply with the Code of Conduct of Holton St Mary by:-
 - (a) not declaring a personal and prejudicial interest in the planning application submitted by D Johnson and Son for change of use of an agricultural building at Holton Place when it was considered at the meeting of the Parish Council on 14th September 2005
 - (b) subject to (a) above, not withdrawing from the meeting of the Parish Council on 14th September 2005 when the planning application (in (a) above) was discussed, despite having a prejudicial interest
 - (c) not declaring a prejudicial interest in the planning application submitted by Anglia Grain Services Limited for use of an agricultural building at Holton Place for grain cleaning when it was considered at the meeting of the Parish Council on 15th February 2006

- (d) not declaring a personal and prejudicial interest in the planning application submitted by Anglia Grain Services Limited for use of an agricultural building at Holton Place for grain cleaning when it was considered at the meeting of the Parish Council on 1st March 2006
- (e) subject to (c) and (d) not withdrawing from the meetings of the Parish Council on 15th February 2006 and 1st March 2006 when the planning application relating to Holton Place was discussed, despite having a prejudicial interest
- (f) seeking improperly to influence the decision of the Parish Council in respect of the planning applications considered by the Parish Council on 15th February 2006 and 1st March 2006

2.2 That subject to 2.1 above, the Sub-Committee determine whether and, if so, what sanction to impose on Councillor Philpot.

The Committee is able to resolve this matter.

3. **FINANCIAL IMPLICATIONS**

None.

4. **KEY INFORMATION**

4.1 **THE COMPLAINTS**

4.1.1 The first complaint contains allegations regarding the conduct of Councillor Philpot at meetings of the parish council on 14th September 2005 and 15th February 2006. A second complaint was made against Councillor Philpot by the same complainant in relation to his conduct at a meeting of the parish council on 1st March 2006 appertaining to the same circumstances. Both complaints have been investigated and copies of all documents and the interview records are appended to the investigation report. These provide full particulars of the allegations and responses from Councillor Philpot and the witnesses who have been interviewed. The text of the relevant provisions of the Code are set out in full in the investigation report.

4.1.2 The complaints have been investigated by Ms Whatling, Assistant Solicitor in the context of the relevant provisions of the Code of Conduct of Holton St Mary, as follows:-

- (a) that Councillor Philpot failed to declare an interest in a planning application submitted by D Johnson and Son for change of use of an agricultural building at Holton Place when it was considered at the meeting of the Parish Council on 14th September 2005

Ms Whatling found that Councillor Philpot did have a personal interest in this application by reason of him having a contract with Mr Johnson, one of the applicants, to farm the land adjacent to the application site. As someone who had employed or appointed Councillor Philpot, Mr Johnson stood to gain or lose from the outcome of the application and thus had an interest greater than other residents of Holton St Mary.

Additionally, Ms Whatling found that Councillor Philpot had a personal interest arising from his ownership of land adjoining the application site, his land ownership being an interest required to be entered on his Register of Interests.

It is therefore concluded that Councillor Philpot had failed to comply with Paragraph 8 of the Code

- (b) that Councillor Philpot failed to withdraw for the meeting of the Parish Council on 14th September 2005 when the planning application was discussed, despite having a prejudicial interest in the matter.

Ms Whatling concluded that the impact of the arrangement to farm Mr Johnson's land was so significant that he did have a prejudicial interest in the application. His failure to declare the prejudicial nature of the interest and withdraw from the room amounted to a failure to comply with Paragraph 10(a) of the Code.

However, Ms Whatling concludes that the interest arising from Councillor Philpot's ownership of adjacent land would not be likely to be considered by members of the public generally in possession of the relevant facts to be sufficiently significant to prejudice his judgement of the public interest. Consequently no breach arose in this respect. A plan identifying the proximity of the planning application site to Councillor Philpot's land is shown at Appendix 3.

- (c) that Councillor Philpot failed to declare a prejudicial interest in a planning application submitted by Anglia Grain Services Limited for use of an agricultural building at Holton Place for grain cleaning when it was considered at the meeting of the Parish Council on 15th February 2006

Ms Whatling found that the application related to the same site as the previous application, but on this occasion it had been submitted by the lessee or prospective lessee of Mr Johnson's firm and was for a different kind of activity. Councillor Philpot had declared a personal interest and stayed in the room for the discussion. Ms Whatling concluded that irrespective of the difference in the applicant, Councillor Philpot's employer or principal stood to gain from the application and the interest was therefore so significant as to amount to a prejudicial interest and Councillor Philpot therefore failed to comply with Paragraph 9(1) of the Code.

- (d) that Councillor Philpot failed to declare a personal and prejudicial interest in the planning application submitted by Anglia Grain Services Limited for use of an agricultural building at Holton Place for grain cleaning when it was considered at the meeting of the Parish Council on 1st March 2006

Ms Whatling found that consideration of the application on 15th February 2006 had been deferred to allow the applicant to attend a meeting of the parish council and answer questions for members. On this occasion Councillor Philpot did not declare any interest in the application. For the reasons set out in (a) and (c) above, Ms Whatling concluded that Councillor Philpot had failed to declare a personal and prejudicial interest contrary to Paragraphs 8 and 9(1) of the Code.

- (e) that Councillor Philpot failed to withdraw from the meetings of the Parish Council on 15th February 2006 and 1st March 2006 when the planning application (in (c) and (d) above) was discussed, despite having a prejudicial interest.

Having concluded that Councillor Philpot had a prejudicial interest in the second planning application, it follows that Councillor Philpot should have left the room for consideration of the application on both occasions and his failure to do so amounted to a failure to comply with Paragraph 10(a) of the Code.

- (f) that Councillor Philpot sought improperly to influence the decision of the Parish Council in respect of the planning applications considered by the Parish Council on 15th February 2006 and 1st March 2006.

Ms Whatling found no evidence that Councillor Philpot had sought to improperly influence the decision of the parish council at its meeting on 14th September 2005. However, by attending, speaking and moving approval of the planning application on 15th February 2006 Councillor Philpot failed to comply with Paragraph 10(b) of the Code. Likewise by participating and voting at the meeting on 1st March 2006 he failed to comply with Paragraph 10(b) of the Code.

4.2 MATTERS WHICH THE SUB-COMMITTEE MUST ADDRESS

- 4.2.1 The Sub-Committee must specifically address those matters where there have been adverse findings (as set out in the recommendations of this report). It is open to the Sub-Committee to consider matters contained in the investigation report on which Ms Whatling has made no adverse finding. Whilst the Sub-Committee has authority to consider possible alternative or additional failures, it is not advised that the Sub-Committee do so as the councillor will not have received notice and had opportunity to respond to such allegation.

4.3 MONITORING OFFICER ADVICE

- 4.3.1 The first matter that the Sub-Committee must consider is whether Councillor Philpot had a personal interest in the applications. A member has a personal interest in a matter which is under consideration at a meeting if the matter relates either to an interest which the member is required to register or where a decision might reasonably be regarded as affecting the well-being or financial position of himself, a relative or friend to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area.
- 4.3.2 Accordingly, if the Sub-Committee concludes that the planning applications relate to an interest which was or should have been entered in Councillor Philpot's Register of Interests, then it would follow that there is a personal interest irrespective of whether Councillor Philpot stood to be affected more or less than other inhabitants.
- 4.3.3 The Register of Interests contains details of a member's financial and certain other interests including details of any employment or business carried on by him and the name of the person who has employed or appointed him. The address or other description of land sufficient to identify its location in which the member has a beneficial interest or licence to occupy for 28 days or longer, must also be included.
- 4.3.4 The Sub-Committee can only proceed to determine if there is a prejudicial interest in a matter if it has firstly determined that Councillor Philpot did have a personal interest in the planning application/s.
- 4.3.5 It is the member's own responsibility to determine whether he has an interest in a matter. However, the minutes of the meetings record that Councillor Philpot declared a personal interest in the second planning application considered by the parish council on 15th February 2006, but no interest in the same application when it was considered at the subsequent meeting on 1st March 2006. By his own evidence and that of other witnesses, Councillor Philpot rejected advice by fellow councillors that he may have a prejudicial interest in the planning applications.

4.3.6 The Sub-Committee can further only proceed to determine if Councillor Philpot had sought to improperly influence a decision if it has determined that he did have a prejudicial interest in the planning application/s. If satisfied that Councillor Philpot did have a prejudicial interest, the Sub-Committee must decide whether he spoke in a manner that was intended by him to influence the decision of the parish council.

5. **PROCEDURAL MATTERS**

5.1 To remain quorate, at least three members of the Sub-Committee must be in attendance for the duration of the meeting to include at least one Independent Member unless precluded from attending by virtue of a prejudicial interest in the business to be conducted. There must be a parish council representative on the Parish Council Sub-Committee although the parish council representative does not need to be present for the Sub-Committee to be quorate.

5.2 The procedure for the hearing will be as set out in Appendix 4

5.3 The Monitoring Officer has conducted a pre-hearing process to identify any points of dispute between Councillor Philpot and the findings in the investigation report. Councillor Philpot has not disputed any points of fact set out in the report. He has indicated that he will attend the hearing, but does not propose to call any witnesses.

5.4 If the Committee determines that the Code of Conduct has been breached, the Monitoring Officer shall give written notice of that finding on behalf of the Committee to Councillor Philpot, the complainant, the Parish Council and the Ethical Standards Officer. The Monitoring Officer will also arrange for a notice of the finding to be published in at least one local newspaper circulating in the district of Babergh.

5.5 Whilst the Monitoring Officer has provided guidance to certain members of the parish council on application of the Code of Conduct in relation to matters giving rise to this complaint, the Standards Board have confirmed that this guidance would not prejudice the Monitoring Officer's position to attend the hearing and provide advice to the Sub-Committee.

6. **APPENDICES**

Appendix 1 - Report of an investigation under sections 59 and 60 of the Local Government Act 2000 by Caroline Whatling dated 14th September 2006 and exhibits thereto.

Appendix 2 – Councillor Philpot's responses to the pre-hearing process

Appendix 3 – Plan identifying land owned by Councillor Philpot and the land subject to the planning applications

Appendix 4 – Hearing procedure

7. **BACKGROUND PAPERS REFERRED TO:**

None

CONTACT: Kathryn Saward

DIRECT LINE: 01473 825729