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28 June 2021

STANDARDS SUB-COMMITTEE

A meeting of the **Standards Sub-Committee** will be held on **Tuesday, 6th July, 2021** in the **Council Chamber, Forde House, Brunel Road, Newton Abbot, TQ12 4XX** at **12.00 pm**

PHIL SHEARS
Managing Director

Membership:

Councillors L Petherick (Chair), Connett and Peart

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A G E N D A

Part I

4. **Standards Complaint** (Pages 3 - 30)

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INVESTIGATION REPORT

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|--|----------------|
| NAME OF COUNCILLOR COMPLAINT AGAINST: | Cllr Patch |
| NAME OF INVESTIGATOR: | David Campbell |
| DATE OF REPORT: | 27th May 2021 |
| REFERENCE: | DC/TBC |



Contents

1. Executive Summary (Paragraphs 1-11);
2. Introduction (para. 12-27);
3. Statement of allegation (para. 28-30);
4. Particulars of the allegation (para. 31).
5. Undisputed facts (para 32).
6. Account and comments given by Cllr Patch (para. 33-39);
7. Account and comments on behalf oof the Complainant (para. 40-44);
8. Electronic communications (para. 45-56);
9. Legal approach to issues raised (para.57-73);
10. Analysis and findings (para.74-111);
11. Conclusion (para. 112);
12. Conduct of Cllr Patch (para 113);
13. Available and recommended sanctions (Para. 102-1030)

Executive Summary

1. The behavior of councillors is regulated by the Council's adopted Code of Conduct. Any allegations received regarding a failure by a councillor to comply with the Code of conduct must be dealt with under the Council's adopted policy for dealing with such complaints.
2. Two allegations have been made about the conduct of Cllr Adrian Patch. They concern his conduct prior to and during a meeting of the Planning Committee on 7th July 2020.
3. The allegations were initially assessed by the Monitoring Officer, however, as of a result of the subsequent conduct of Cllr. Patch towards her, her draft report was not finalised and this Report was commissioned. Cllr Patch asserted, amongst other things, that the investigation was not independent. The Monitoring Officer felt undue pressure was being placed upon her by Cllr Patch in the course of her normal duties because of her investigation and the preliminary conclusions she came to.
4. I was instructed as an independent investigator. I was called to the Bar in 1992. I am subject to the Bar Council Code of Conduct and have confirmed to Cllr Patch that no conflict of interest arises. During my correspondence with Cllr Patch he indicated that he was satisfied with the assurances I had given him as to the manner and conduct of my investigation.
5. On 4th May 2021 a draft report was circulated to all parties for their comments. Both responses are attached in full.
6. Cllr Patch has sought to allege that the investigation conducted by me was biased and that I have a personal and financial interest in recommending a particular outcome to the committee. In his comments he

implies that this taint extends to the actions of the Council legal department in instructing me. He asserts this without foundation, and does so despite my assurances to him that I act under the Bar Council Code of Conduct. This conduct is in a similar vein to that he displayed to the Monitoring Officer. I do not make formal complaint of it, it would delay the outcome of this primary complaint. However, I bring it to the attention of the Committee because it is a matter of concern and the conduct of a councillor during an investigation is a matter for the Sub-Committee. Cllr Patch is entitled to properly explain his actions and properly seek to refute any allegations. However, in seeking to attack the credibility of both investigations he does himself no credit.

7. The investigation resulted in a finding that Cllr Patch acted in breach of paragraphs 4.7 and 6.4 of the Code. This is the recommendation to the Committee.
8. It is Cllr Patch's view that the predetermination found is not an "interest" for the purposes of the Code of Conduct. **This, as a matter of law, is incorrect.** A predetermination is capable of being an interest pursuant to 6.4 of the Code it is covered by the preamble "In any other case where the code applies."
9. In his response to the draft report, he seeks to explain how he sought the opinion of others. As outlined below, the issue of a declaration of an interest is one for each individual councillor. Any act or omission in this regard is subject to scrutiny. That is whole purpose of an investigation once complaint is made. The buck cannot be passed.
10. I attach the comments raised by Stephen Scown for the Sub-Committee's consideration and make no comment as to them.
11. After hearing all the evidence and considering the documents provided, the Sub-Committee must consider whether, on the facts found, Cllr Patch

has failed to comply with the Code of Conduct and, if so, what sanctions, if any, should be applied.

Introduction

12. I have been asked to independently investigate two complaints made by Stephens Scown Solicitors on behalf of its client, Trago Mills (South Devon) Limited (the “Complainant”)
13. The complaints are made against Cllr Adrian Patch and arise out of his conduct prior to and during a meeting of the Planning Committee on 7th July 2020.
14. I am guided by precedent in that I am required to decide whether on the facts that underlay the allegations there was a breach, or breaches of the Code of Conduct for Members of Teignbridge District Council (the Code) dated 8th May 2019. One set of facts can, and often does, involve more than one breach of the Code (**Rayment, Hampshire Police Authority** (2010) LGS/2010/0479).
15. The original complaint does not fix the scope of my investigation and I am able to allege a breach of the Code not identified by the Complainant (**Bartlett, Milton Keynes Council** (2008) APE 0401).
16. The Investigation I am instructed to conduct has had a convoluted history. The complaints have been investigated previously and resulted in a draft report being sent to the Complainant and Cllr Patch.
17. For reasons that do not concern me the previous author recused herself from completing matters.
18. I have been tasked to complete the investigation.

19. I have seen and considered the following documents:
- Draft investigation report (22.12.20);
 - Background papers and documents considered in the investigation
 - Letter of complaint
 - Emailed document (6 July 2020) from Cllr Patch to allmembers of the Planning Committee 7 July 2020
 - Emails to / from Cllr Patch (July 2020) regarding threatenedjudicial review / legal proceedings against the Council
 - Emails to / from Cllr Patch (December 2021 to February2021) regarding his response to the standards complaint;
 - Response to draft report from complainant (Jan 2021);
 - Response to draft report to and from Cllr Patch (Jan - Feb 2021).
20. I have also been in contact with Cllr Patch through his preferred method of communication – email. In particular, I have been provided with an email thread, dated 12th June 2020, that advises him that “**members of the public and Councillors can circulate information to Members prior to a meeting by email in line with normal procedure.**”
21. I have spoken to Stephens Scown Solicitors.
22. I have watched the “You Tube” upload of the Planning Committee meeting and re watched the relevant parts that appertain to the complaints.
23. I have considered the Code (as in force July 2020) and guidance issued by Central Government, the Local Government Association and considered Legislation and caselaw. Furthermore, I have considered the published protocols on the Teignbridge District Council website. I have also considered the applicability of “**The Seven Principles of Public Life**” (Nolan).
24. I have read the agenda that was published for the Planning Committee meeting and perused the documents provided through the TDC planning

portal.

25. For the avoidance of doubt, I have considered the contents of the Confidential Draft Report dated 22nd December 2020 but have not taken its conclusions into consideration.
26. I am also aware that the planning application that gave rise to the complaints is subject to an appeal to the Planning Inspectorate. As that process is de novo, I am of the view that this report will not interfere in that process.
27. In considering the evidence, interpretations and reasoning of the Complainant and Cllr Patch, I have been mindful that the issues are serious for both. In making findings of fact, I have applied the “balance of probabilities” as the appropriate test. However, it is conduct that is considered here. It has either occurred, or it did not. The rationale for conduct provides explanation and, if allegations are proven, mitigation.

Statement of Allegations

28. The allegations are that Cllr Patch acted in breach of Para 4.7 and 6.4 of the Members' Code of Conduct.
29. Para 4.7 deals with the obligation “**not to bring the office of Councillor or the Council into disrepute**”. This is not to be confused with persons bringing themselves into disrepute, the key test relates to the office an individual holds and any actions that bring the office, that is held, into disrepute:
30. Para 6.4 outlines the situation when a Councillor has an interest that would prevent them from acting without prejudice in his or her decision making. It is opaque, and therefore it is useful to refer to it in its entirety:

“6.4 In any other case when the Code applies, where a matter arises at a Meeting which a member of the public with knowledge of the facts, would reasonably regard as so significant that it is likely to prejudice the relevant councillor’s consideration or decision-making in relation to the matter that Member must:

- (a) Disclose the interest;**
- (b) Not vote on the matter; and**
- (c) Only speak on the matter if members of the public are also allowed to speak on the matter at the meeting”.**

Particulars of the Allegation

31. In the letter of complaint from Stephens Scown six matters are particularised, as the correspondence outlines the rationale for the Complaint. For ease of consideration I quote the matters complained of in full:
 - i. **“Councillor Patch took advantage of his position as a District Councillor and Member of the Planning Committee to circulate a nine-page memorandum (“the Memorandum”) concerning the application to other members of the Planning Committee on the evening before the meeting at which the application was to be decided. The Memorandum was not simply his interpretation or commentary on the information put before Members, but a substantive submission of purported fact and evidence. In our experience, the preparation of such a document by a District Councillor (and member of the Planning Committee) themselves (as opposed to an objector) is extraordinary and equates to actively campaigning against the application. In itself, such conduct is clear evidence that Councillor Patch was determined to have the planning application refused at the Planning Committee. Such a weighty submission from a member of the Planning Committee would only have been acceptable if they had accepted that they were acting as an objector and therefore recused themselves from the Planning Committee meeting. The submission of the Memorandum was clearly intended to serve a specific purpose, to seek to lobby other Planning Committee Members to refuse the application, and the timing of its dissemination was to prevent the applicant from having any opportunity to respond to the document (see below). This conduct was further exacerbated by sending further additional information to the Planning Committee on the morning of the meeting which, again, was intended to sway the Committee’s views on the application. Contrary to the protocol, neither documents appear on the website.”**
 - ii. **Councillor Patch took further advantage of his position as a member of the planning committee by making a speech at the meeting which**

was, in essence, a speech by an objector, rather than by a committee member. Such a speech would only have been acceptable if he had recused himself from voting and if such a speech would have been permitted from an ordinary member of the public who objected to the application.

- iii. Councillor Patch indicated in the midst of the meeting that he would work with an objector or Parish Council to apply for a Judicial Review in the event that the application was granted, demonstrating quite plainly that his mind was already made up.*
- iv. Councillor Patch then voted on the application, and indeed moved the motion that the application be rejected. In light of the points above, Councillor Patch should clearly have recused himself from voting, and in any event, it is quite clear that he entered the meeting having already made up his mind that the application be rejected.*
- v. Before these events, the Planning Officer had recommended the application for approval, it was only due to Councillor Patch calling the application to the Planning Committee that prevented the application being granted under delegated powers. Given Councillor Patch's conduct on the application in respect of the Committee meeting, it is apparent that his decision to call the application in to Committee was similarly tainted.*
- vi. At no point did Councillor Patch declare an interest, in breach of the Code of Conduct for Members. Councillor Patch had an interest which fell to be disclosed under paragraph 6.4 of the Code, which requires Councillors to declare an interest and recuse themselves in circumstances where a member of the public with knowledge of the facts would reasonably regard those circumstances "as so significant that it is likely to prejudice the relevant councillor's consideration or decision-making" – which was clearly the case here".*

Undisputed facts

32. The following facts are known to both the Complainant and Cllr Patch and are not in dispute:

- i. The matter was referred to full committee at the request of Cllr Patch.
- ii. A nine-page document was sent to members of the planning committee by Cllr Patch on the evening before the meeting. This was followed up by a further electronic communication on the day of the meeting. This document provided the detail behind the four questions Cllr Patch raised orally at the meeting.

- iii. These documents were not provided to the Applicant.
- iv. No opportunity was given to the Applicant to consider them.
- v. The Applicant was unaware of their existence until they were mentioned in the meeting by Cllr Patch.
- vi. The Applicant was not legally represented at the meeting.
- vii. Before the questions raised by him were answered, Cllr Patch moved a motion to refuse the Application. This was seconded. It was not voted on until the end of the meeting.
- viii. Cllr Patch voted in favour of his motion to refuse the application.

Account and comments given by Cllr Patch

33. The original investigation involved Cllr Patch providing a detailed and comprehensive rebuttal of the allegations. During the initial investigation into the complaints, the following was recorded as his responses to the matters raised by the investigator:

- i. ***“With regard to the allegation that the tenor of the representations was such as Cllr Patch was acting as an objector, Cllr Patch stated that his speech at the meeting was not an objector’s speech, but rather reflected his wish for due consideration to be given to road safety issues by the committee before the committee members voted on the application. He was raising what he considered to be important questions for the committee’s consideration; providing the committee members with advance notice of the issues which he considered needed addressing; questions upon which officers he did not provide answers. He did not consider the County Council had given sufficient consideration to the road safety issues so it was appropriate to raise his queries with fellow members of the committee. He sent the material to his fellow committee members as a ward councillor as he wanted to present the information at the committee but was not permitted to do so.***

- ii. In response to the questions put to him as part of the investigation as to whether he raised his concerns about the road safety advice with the officers or any other planning or highways expert prior to committee at any time, Cllr Patch referred to an email he stated he sent to the case officer prior to the committee meeting and also another email he sent to Devon County Council Highways. Whilst again not providing a copy of the emails, Cllr Patch stated that he received very general assurances but also what he described as an admission that no assessments had been carried out as the planning process generally required the applicant to provide the relevant information, studies and assessments for the Highway Authority to assess; the effect being that the specific and detailed concerns regarding assumptions about allocation of traffic from different routes that Cllr Patch had highlighted were not addressed. He explained that he received a reply from his enquiries that included the view that the applicant's highway evidence was from a respected consultancy firm.
- iii. Unconvinced that there had been a proper review of the applicant's highway case in support of the application, he considered it indicated that reputation might have been considered in lieu of proper scrutiny of evidence in reaching a view on the evidence and therefore a recommendation in support of the application. He stated that he was not convinced that the officer's views that the advice was appropriate based upon his experience, illustrated that due attention had been given to the evidence even though the primary responsibility for scrutinising road safety issues lay with Devon County Council as highway authority.
- iv. In responding to the investigation, Cllr Patch stated that he was arguably predisposed though only with a hope and intention that important road safety issues and evidence would be properly scrutinised. He stated he had wished that the committee members might be encouraged to scrutinise, consider, and weigh road safety issues in the context of the application in the round when deciding which way to vote, as he indeed, he considered he did.
- v. Cllr Patch informed me that the information he sent to councillors was neither done to lobby nor sway views towards refusing the application, but instead to bring to the attention of the committee members issues that deserved scrutiny and consideration before reaching a decision.
- vi. In response to the allegation that he would work with third parties (including an objector) to apply for judicial review of the application should it be granted, Cllr Patch stated that by that stage of the meeting, he considered that the committee had been grossly misled with respect to road safety matters which had not been

scrutinised thoroughly or accurately, nor was such at the meeting. In view of such, he formed the view that there was a very real possibility that a judicial review on the ground that there had not been proper scrutiny of road safety issues might stand a good chance of success. He stated that he had been studying judicial reviews of planning applications when considering possible outcomes of another application that the committee had considered. He considered it was his duty to signal his concern, given the potential threat to the Council in the event that permission was granted as a result of having misled. He pointed out that he did not state he would work to “apply for judicial review” nor that he would be proactive in launching, campaigning for or openly supporting any judicial review against the decision of the Council contrary to the advice that he was doing so given at committee by the lawyer advising the committee. Instead he considered he simply signalled that he would be happy to work with any local residents who were minded to look at whether there might be a case for a judicial review given his reading about judicial review. He stated that any potential work with concerned local residents might indeed have led him to reach a view that a judicial review was unlikely to succeed and such action. In his evidence, Cllr Patch pointed out that he had no idea if other parties were considering judicial review of the application but he considered it as a potential part of any planning process, referring to his concerns about ‘legitimate expectations’ of scrutiny of potential (serious) road safety issues, alongside his view that the committee had been misled about the robustness of road safety assessment evidence that been presented to it.

- vii. *When asked whether there any elements of the experts' assessments which he agreed and if so, did he share those with the fellow committee members, Cllr Patch advised that he did not have time to go through all the evidence that had been presented regarding the application and select/reference all that he agreed with nor was that within his remit.*
- viii. *Cllr Patch has stated that he considers all parts of the Code (which applies to him within the context of his work as a councillor) and that he has not breached the Code in any way. In response to the allegation that he had brought the Council or his office of councillor into disrepute, he stated that he did not consider he had done so, but to the contrary, his diligence could only act to enhance the office of councillor with respect to consideration of planning applications. In being asked whether he considered he had an interest which a member of the public with knowledge of the facts, would reasonably regard as so significant that his consideration or decision making on the application might have been prejudiced, he advised that he couldn't think of interest he might have in that regard”.*

34. Quite properly Cllr Patch was invited to comment on the facts that were presented in the draft report. I summarise his comments as follows:

- ***He asked that mention be included of the email he received that he understood to give him sanctioning communication between Members.***
- ***He queried the use of the phrase “not permitted to do so” (para (i) above).***
- ***He expressed concern that the impression would be given that he had been evasive by the use of the phrase “questions on which he did not provide answers.”***
- ***At para (ii) he commented that he had not been asked for the emails.***
- ***He was concerned that a picture was being painted that was misleading in that he was withholding emails and acting in a generally non-cooperative way.***
- ***He asserted that his words were being misinterpreted.***
- ***He expressed his view that no coherent case has been presented that he brought the office of Councillor or the Council into disrepute.***
- ***He complained that the Confidential Draft Report was sent to the Complainant. He saw this, amongst other things, as a slander and a serious defamation.***
- ***He compared his mention of a potential judicial review with that of advice given by officers at meetings. He was of the view that ...” I no doubt felt it acceptable to raise the issue of a potential threat from a decision that might be taken on application”. He further explained that “Thus, the pre-emptive***

warning of the potential impact of planning decisions appears to be ‘custom and practice’ in discussions of planning applications at TDC’.

- *He indicated that the comments he made regarding the potential case for a Judicial review were impromptu.*
- *He indicated that it was “his firm view that in making comments...I was acting in the interests of both the wider District Council and residents of my Ward”*

35. Upon beginning to consider this report I asked that Cllr Patch and I meet over Zoom or similar.
36. Cllr Patch preferred to be in communication with me via email. This has in no way hampered my investigation.
37. I asked if there was anything he wished to add to the information he previously provided, he provided me with his comments and in particular the email from the Councils’ Democratic Service Department referred to at para.20 ante.
38. He confirmed he had been on all training offered in relation to his role on the Planning Committee.
39. He did not resile from the account he gave originally but also wished to add:

“The complainant in this case argues that he did not have the opportunity to comment on what I set out in my Ward Member speech when addressing the application - as TDC have pointed out to him, the order of speaking/debate in the consideration of Planning Applications does not allow this in any case”.

Account and comments on behalf of the Complainant

40. The complaints relating to Cllr Patch speaks for themselves and need not be repeated.
41. The Complainant relies on the undisputed facts.
42. It is the Complainant's belief that the email sent to the members on the eve of the planning committee meeting should be included in the body of any reports text.
43. It is made plain by the Complainant that they believe the actions of Cllr Patch are in breach of para 6.4 of the Code.
44. I have confirmed with the Complainant's solicitors that in their view the interest that they identify that should have been declared by Cllr Patch was of his "predetermination" of the application in the light that it saw his conduct as being that of an objector.

Electronic communication on the eve of the meeting

45. The fact that this email was sent by Cllr Patch has been central to the issues at hand.
46. As part of my investigation, I was made aware that Cllr Patch was of the view this was permitted. It is clear from the chronology that he had wished to use a share link in relation to a previous meeting of the Planning Committee on a separate matter, the facts of which I need not repeat here.
47. What is relevant is the question asked by Cllr Patch and the precise response he received.
48. The issue is raised on 12th June by Cllr Patch, he wrote to Democratic Services:

"I intend speaking as Ward Member on application 19/00122/MAJ at the June 23rd Planning Committee meeting - at a recent Planning Committee zoom meeting I raised the issue of being able to use the Zoom Share Screen function in Planning Meetings and was told prior notification would be required to do so. I am hereby notifying you of my wish to use this Share Screen function to display documents relevant to my participation.

Can you please confirm that this will be OK - and also that any public speakers will be allowed to use the Share Screen function".

49. The response to this was provided later that day:

"Hello Adrian,

Due to meeting security, which I did not fully understand at the last meeting and for which I apologise, only officers are enabled to screen share.

Members of the public and Councillors can circulate information to Members prior to a meeting by email in line with normal procedure.

***Regards,
Democratic Services Officer"***

50. A further email was sent by Cllr Patch on 16th June I do not have the full address list outlining to whom this was sent. That does not affect its content:

"Hello

I have received no answer to me email of last week (see below), and so am obliged to follow this up.

This council recently resolved that it is committed to the principles of open and accountable decision-making. With reference to the decision that Members and Public Speakers will not now be allowed to use Share Screen at Planning Committees (see below) - in direct contradiction to what Planning Committee Members were told during the Zoom meeting of the Planning Committee last week - can you please let me know:

- 1. Who is ultimately responsible for having made that decision, and how was it made (e.g., in a Zoom meeting or after exchange of emails)?;***
- 2. Which other Officers were consulted or had an input on that decision?;***
- 3. Did any Members have an input in that decision, and if so who?;***
- 4. What is the justification for that decision?***

To be honest, I can see no justifiable reason why Members (and arguably

agreed Public Speakers) cannot be trusted to use Share Screen during Council Meetings. I am particularly concerned because I consider this to be a counter-democratic move: not allowing Members or authorised Public Speakers to participate in decision-making to the best of their ability (i.e., preventing them from presenting supporting evidence, during a debate, to the same extent as Officers are allowed to). This is a particularly worrying issue where Officers are presenting arguments in favour of one outcome, such as granting or refusing Planning Permission and denying those arguing the contrary position the same opportunity. I do not consider the opportunity for Members or Public Speakers to email Committee Members in advance of a meeting equivalent to allowing them to participate fully in a meeting, especially since it cannot be assured that even a majority of Committee Members will read all such documents.

I intend that this issue receive the full level of robust scrutiny that I feel is warranted - through the usual Council process, but also in the Public Domain if necessary; to that end I must give notice that this issue (including all or part of my email) may be raised through public channels including local press and social media. Of course, I am open to receiving and considering Democratic Services' arguments in favour of their stance before taking such steps - in return, I hope that this decision will be reconsidered.

The decision will not, of course, prevent Members or Public Speakers from presenting supporting material during Committee Meetings, but it will make it a more cumbersome exercise, as documents will have to be printed and held up to computer cameras, after request to Members to switch from Gallery View to Speaker View. This will most likely take extra time and may lead to request for extra speaking time. I am not sure what the watching Public will make of all this when they realise that this is due to an Officer decision to deny Members use of a facility that is available to and used by Officers.

I am sorry if you think this a heavy-handed approach especially at a time when we should all be focusing on bigger, more important issues, but I was elected on a platform of encouraging openness and accountability at TDC, and so consider this a matter of principle (a principle that is not negated in current times). It is not too late to reconsider and allow Members and Public Speakers to use the Share Screen facility in Zoom.

I look forward to your considered response.

*Regards,
Adrian*

**Adrian Patch
Independent Teignbridge District Councillor for Haytor Ward (Ilsington Parish)'**

51. This was responded to later that day with the following from the Chair of the Planning Committee:

"Adrian

I have had a conversation with _____, and I am responding as chairman of the planning committee.

You refer to what members were told at a zoom meeting; this was said by from _____ and was a statement as to what would be technically possible rather than what the established practice is at planning committee meetings.

Thus, in answer to your questions:

- 1. No decision was made, it is established practice.**
- 2. Situation did not arise due to answer to 1.**
- 3. As for 2.**
- 4. As above.**

We do not allow public speakers or councillors to present at committee meetings. Members of the public or councillors can circulate information to committee members prior to the meeting, to which they may make reference when they are speaking.

Regards

"

52. All these emails, apparently concerned with communications, do not support the contention that permission was given to circulate the type of email that was sent on the eve of this application. "Information" is somewhat different from what can be best described as an opposition position paper.

53. Unrelated to the issue of "share screen" or similar modes of presentation I note that the following was sent by the Chair to all members of the planning committee which included Cllr Patch:

"Subject: Predetermination

Dear Councillors

I am circulating this email on predetermination to the Planning Committee as it provides an important helpful reminder for us all when dealing with planning applications. The key points are:

- 1. Predetermination includes expressing an intention to vote in a particular way before a committee meeting.**

2. ***Members must not predetermine an application.***
3. ***Taking part in Planning Committee meetings where a voting member has predetermined their position opens the committee's decision to challenge. It also calls into question the integrity of a whole committee decision, but particularly the individual member's ability to act in the wider public interest.***
4. ***If you predetermine your position, you should withdraw from the committee for that matter. This applies even to members who want to speak on a proposal within their ward.***
5. ***For the avoidance of doubt, members may legitimately have a preferred view on an application providing that they maintain an open mind and take full account of all the different views on an application so it is genuinely clear that their view may change before they vote on the application.***

Further guidance on predetermination is available from PAS at https://www.local.gov.uk/sites/default/files/documents/34.2_Probity_in_Planning_04.pdf.

Please also remember, the guidance on predetermination applies in addition to the specific requirements regarding interests in our Code of Conduct.

Regards
"

54. As of a consequence Cllr Patch responded:

On 18 Jun 2020, at 17:23, Cllr Adrian Patch < > wrote:

Thanks for this .

I understand from this that I would 'step out of committee' for an application that I conceded I may be predetermined on, onto the backbenches, for want of a better term - but would then be able to speak as Ward Member (i.e., I would not have to be counted as one of the Public Speakers).

Perhaps or could confirm this (or otherwise).

**Regards,
Adrian**

**Adrian Patch
Independent Teignbridge District Councillor for Haytor Ward (Ilshington Parish)**

55. Generating this response:

On 19 Jun 2020, at 13:48,

> wrote:

"Dear Cllr Patch

I understand:

- ***you do not have an interest under the Code of Conduct in this case; but***
- ***you have predetermined your position on this application, as a consequence of which in line with relevant guidance and law, you will not be participating as a committee (and as such voting) member in the consideration of the application.***

In view of the above and with the agreement of the Chairman, you may still speak on the application at the virtual committee meeting, in your capacity as a ward member.

***Yours sincerely
Solicitor to the Council and Monitoring Officer"***

56. I note that this was in relation to a different planning application but shall deal with the relevance of these emails below, because Cllr Patch relies upon these emails as evidence of permission to send his comments to the other Committee members.

Legal approach to the issues raised

57. It is useful to consider the legal aspects to approaching this investigation.

58. In distilling the complaints made, one can see that the first issue raised can be considered as an allegation of predetermination by Cllr Patch.

59. Bias and predetermination are closely related, both concepts are aspects of the wider concept of fairness.

60. Bias is showing or being perceived to show an inclination or prejudice for or against one party or matter in such a way that is unfair.

61. Predetermination is displayed when an individual approaches a decision with a closed mind.

62. Actual bias need not be found as apparent bias is sufficient. The Magill test outlines the issue as being "*Would a fair minded and informed observer, having considered the facts conclude that there was real possibility of bias.*"; Magill v Porter [2002] 2 AC 357.
63. It is possible and proper to express a legitimate predisposition towards an outcome without this amounting to apparent bias.
64. Local authority decision making is different from judicial/quasi-judicial decision making.
65. Elected members would be "*entitled and indeed expected to have and to have expressed views on planning matters*"; Redcar & Cleveland BC [2009] 1 WLR 83.
66. It is good law that there can be no pretence that such democratically accountable decision makers are intended to be independent and impartial just as if they were judges.
67. "*Something more is required that goes to the appearance of a predetermined closed mind*" Redcar ibid.
68. No significant weight is to be given to an assertion by a decision maker claiming that the decision was made with an open mind Georgiou v Enfield LBC [2004] LGR 497.
69. The issue as to whether Cllr Patch brought the Office as Councillor or the Council into disrepute was narrowed by the original investigator as being concerned with the raising the issue of a potential Judicial Review whilst being a voting member of the Committee. I disagree. For the reasons outlined in para 14. ante, the same facts can engage more than one aspect of the Members Code.

70. The issue of disrepute is accurately outlined in the original Confidential Draft Report:

"The Oxford English Dictionary defines disrepute as a lack of good reputation, respectability, or discredit. Consequently, anything which diminishes public confidence in either a member's office or their authority; or which harms the reputation of an authority, will bring that office or the authority into disrepute. As indicated by the footnote to the Code referred to above, this provision can cover poor conduct which does not readily fall within the confines of other parts of the Code but it should not be confused with comments which a reasonable and objective observer would consider fair for a councillor to raise about the Council or others".

71. As a starting point I have to consider whether the Code applies.
72. In assessing as to whether disrepute I must consider only the effect of any conduct on the office held by Cllr Patch or the Council.
73. The test applied throughout is the balance of probabilities.... I look to where the preponderance of evidence lies.

Analysis and findings

74. The complaints are made in relation to conduct by Cllr Patch by at and before a Planning Committee meeting. He was acting as Councillor when the conduct complained of arose. I therefore am of the view that the Code applies.
75. There is some crossover between his role as a Committee member and that of a Ward Councillor, the issues that this raises are properly considered in the Draft Confidential Report.
76. Cllr Patch is a passionate advocate for his Ward, throughout this whole process he has raised issues that he believed to be worthy of scrutiny, issues that he believed had not been considered properly by the appropriate authorities.

77. In his contribution to the planning meeting, he repeatedly used the phrase "I believe." That Cllr Patch was concerned with road safety, and the issues at hand, is in no doubt. He mentioned "the Public" obliquely in one reference in his comments to the Planning Committee.
78. The question I must consider is whether he had a predisposition or was predetermined? If he was predetermined, this would be an interest that should have been declared.
79. In doing so I have to consider all the facts that an informed observer would have, I need to establish, in order to find predetermination, something more than a mere expression of concern or opinion. There must be credible evidence that he had a closed mind and was not willing to listen to contrary arguments.
80. He denies having a predisposition in this application. I have to consider that facing an investigation is a difficult and upsetting situation. It can make individuals more defensive and less candid.
81. That a Councillor has a predisposition is nothing to criticise, so too a failure to admit a predisposition should not weigh against them when assessing the credibility of any account they may give.
82. The question arises as to whether he went further than holding a predisposition.
83. The document he sent the evening before to fellow members should have been communicated to the Applicant. In not doing so the fairness of the proceedings were jeopardised.
84. It is also clear from watching the meeting that some members of the planning committee took that document into consideration in their decision making. This is important.

85. I note that the Applicant was not legally represented, I further note that the documents existence was not brought to his attention. He was not given an opportunity to consider its contents and either seek legal advice, ask for adjournment or deal with the issues raised in the short time he had to speak before the Planning Committee.
86. There is a world of difference between a communication that may, for example, summarise objections or supporting comments already on the public portal, and a document that brings new evidence to the debate unbeknown to the public.
87. I am of the view that the failure to provide a copy of the document to the Applicant or to offer to do so was a serious failure. However, as it was written and distributed under the guise of being for members only, I am of the view it was intended by him not to be provided to the Applicant. The fact that Councillors need to communicate with each other is undeniable. However, not to bring matters to the attention of the public or participants undermines the integrity of the decision-making process. The planning portal used by the Council was established to uphold such integrity and was circumvented by this action.
88. Why is this failure relevant to the complaint against Cllr Patch?
89. I am of the view that a fair minded and informed observer would conclude that the content of the document was an objection to the Application. It was not a critique alone, it added new evidence. Such an observer would be concerned that the author had a predetermined view on the matter. The merits are irrelevant.
90. The issue of declaration of any interest is one for each individual councillor. No officer can tell a councillor to recuse him or herself. Public trust in local authorities is reinforced by the knowledge that however heated a debate may get, Councillors are expected to follow their conscience. When they

fail to do so by the standards of a fair minded and informed observer considering the facts, public confidence is diminished.

91. That Cllr Patch had availed himself of training is not in dispute. More importantly the email thread from the previous month (para 53-56 ante) combined with the reinforcement of the rules surrounding predetermination by the Chair of the Committee shows that Cllr Patch was aware of the issue and had at a previous meeting understood the consequences of having a predetermination.
92. Cllr Patch relies upon these emails as a defence to the dissemination of the document. It is clear that these emails relate to a different issue and a different application. It is also clear that the issue of predetermination had been reinforced by the Chair of the Committee to all members.
93. Communication amongst councillors is acceptable and should be encouraged, however, using these channels to seek to persuade outside the crucible of debate and hidden from the public gaze is not.
94. His email was not a summary of objections on the portal available to all parties. It was a series of specific objections to the application and evidence in support of that objection.
95. In considering the evidence, in my view he failed to declare his interest, namely that he had predetermined the planning application.
96. The video of the meeting, combined with the content of the document sent to members, undermines any assertion that Cllr Patch was merely predisposed to refuse and makes it clear that he had a predetermination and should have withdrawn.
97. The video shows that Cllr Patch moved his motion to refuse at the conclusion of his first intervention. At no stage did he ask that his questions be answered, neither did he wait for them to be answered by Officers or

others before proposing this motion. It is this act that is the “**something more**” and I find is evidence of a closed mind.

98. Furthermore, this is corroborated by the impression that questions were rhetorical, they were not directed at anyone. In essence his early contribution was that of an objector.
99. I do not however, find that the spectre of a judicial review and the comments relating to it achieve the standard required for an allegation of bringing his Office or the Council into disrepute.
100. I have watched the video of this part of the hearing on numerous occasions. His comments do not reflect well on him personally, they were ill advised but the evidence I have considered cannot discount his assertion that they were impromptu.
101. I form this conclusion because I must consider what was said in the context of the actual debate and the interactions that were taking place.
102. In my view the conduct of Cllr Patch in failing to adhere to para 6.4 of the Code is proven on the balance of probabilities.
103. As I indicated at para. 14 ante there are sets of circumstances that can give rise to a breach of more than one aspect of the Code. Just because 4.7 of the Code has not been engaged in relation to the issues and findings in the debate, does not mean it has not been engaged in relation to his conduct that I find proven.
104. I remind myself of the agreed facts
105. The issue of **diminishing public confidence** is therefore one I must further consider outside of the issue of his comments about judicial review. I do so because he had been reminded of his responsibilities, and he chose, in this instance, to seek to circumvent them. I ask myself this question.... **As a**

member of the public, someone who supports an application or opposes it, should a trained Councillor seek to influence other members of any committee that I rely upon to make a decision? Should he or she use their unique access to other Councillors without me being aware of that?

106. I take into consideration, that in this matter, he could have properly uploaded his concerns to the TDC planning portal and spoke in the same manner as he had done on other matters. With the public on both sides being able to consider his views.

107. I bear in mind that he acted and had access as a Councillor and used that position to disseminate his views.

108. I conclude that, just as he disregarded the Code in failing to declare his interest, he brought his Office into disrepute by sending the document outside of the portal contrary to 4.7 of the Code.

109. I considered at length as to how two breaches could arise out of the same facts.

110. I conclude that the failure to declare an interest is separate from the sending of the document to the rest of the committee. He knew that the applicant did not have a copy.

111. I make this second finding on the balance of probabilities.

Conclusion

112. I find on the balance of probabilities that Cllr Patch breached both 4.7 and 6.4 of the Code.

Conduct of Cllr Patch in response to the investigations

113. The Sub-Committee have before them the responses of Cllr Patch to the lawful and proper investigation into the complaints made. It is a matter for them to consider as to whether the responses give rise to any concern or generate a need for censure. The Sub-Committee will be fully aware of the obligations and responsibilities of individual Councillors under the Code of Conduct.

Available and Recommended Sanctions

114. In submitting the complaint, the complainant advocates that Cllr Patch should be removed from the planning committee.

115. In the event the Standards Committee determines that Cllr Patch breached the Code the following sanctions are potentially relevant to this case:

- (a) Censure or reprimand the councillor;
- (b) Publish its findings;
- (c) The councillor should receive training e.g. on conduct and role of planning committee members; and / or
- (d) Recommend to the councillor's group leader that he is removed from the planning committee or make a recommendation to full Council to that effect, which for example might apply particularly if training is not received and successful.

David Campbell

Magdalen Chambers

Exeter

4th May 2021

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