

Member Conduct Complaint GOV 53 Councillor John Wyatt

Summary of Independent Investigation Report

1.0 Introduction

1.1. On 14 May 2018 Melton Borough Council's (MBC) Governance Sub-Committee 1 considered a complaint from Clawson in Action against Cllr John Wyatt in respect of the latter's conduct at the Planning Committee Meetings held on 9 November 2017 and 4 December 2017. The Sub Committee papers are available at this link :-

<https://democracy.melton.gov.uk/ieListDocuments.aspx?CId=154&MId=849&Ver=4>

1.2. The Sub-Committee resolved

(1) no action be taken in relation to Principle 1 - Selflessness;

(2) the complaint be referred to the Monitoring Officer for investigation, in relation to the following principles:

- Principle 4 – Accountability
- Principles 5 and 6 – Openness and Honesty
- General Obligations.

1.3 On 22 May 2018 Guy Goodman was appointed by the Monitoring Officer of MBC to investigate the complaint (Guy Goodman hereafter called the Investigating Officer (IO)).

1.4 The Investigating Officer (IO) invited Clawson in Action to submit further evidence which they kindly did on 31 May 2015.

1.5 On 5 July 2018 the IO interviewed Cllr Wyatt by telephone.

1.6 The IO has considered the papers considered by the Sub-Committee, the additional evidence from Clawson in Action and the response of Cllr Wyatt in interview in compiling this report.

1.7 The purpose of the investigation is to determine whether Cllr Wyatt has a case to answer ie. whether there is sufficient evidence to establish that there has been a potential breach of the MBC's Code of Conduct (see paragraphs 13 and 14 and the Flow Chart of MBC's Member Code of Conduct Complaints Process - Explanatory Notes included with the Sub Committee papers at the link above).

1.8 On 5 August 2018, a draft of the report was sent to the Clawson in Action and Cllr Wyatt. The IO received representations from Clawson in Action on 10 August 2018. The IO has taken their comments into account in finalising this report. Cllr Wyatt responded on 15 August 2018 with no comments.

2.0 **MBC's Code of Conduct**

2.1 MBC's Code of Conduct as approved at Full Council in February 2017 is in 3 parts :-

1. The Principles (the Committee on Standards in Public Life's 7 principles)
2. General Provisions (a list of unacceptable behaviours)
3. Interests

2.2 This complaint engages the 3 Principles of Accountability, Openness and Honesty. It also engages the following General Obligations :-

- 3(1) - treating others with respect
- 3(2)(b) – bullying
- 3(2)(c) – intimidation
- 3(2)(d) - compromising the impartiality of those who work for MBC
- 7(1) - have regard to any relevant advice provided to you by officers
- 7(2) - give reasons for decisions

3.0 **Legal principles**

3.1 For each area of the complaint as listed below, the report applies legal principles as appropriate including legislation, case law and advice from the now abolished Standards Board for England (SBE) :-

- Respect
- Bullying
- Intimidation
- Compromising impartiality
- Having regard to any advice
- Giving reasons for decisions

4.0 **Complaint and response**

4.1 The report includes the full complaint which is set out within the Sub Committee papers at the link at paragraph 1.1 above as well as the response of the Councillor.

5.0 **Discussion and findings**

5.1 At all material times Cllr Wyatt was undertaking his official duties as an elected councillor and therefore his actions fall within MBC's Code.

5.2 The IO considers each potential breach of MBC's Code set out in the complaint in turn.

Principle 4 – Accountability

5.3 This principle states "You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office".

In the context of an elected councillor this means to the public via the ballot box. It can also mean accountable in the legal sense but in the case of a planning decision any accountability is as part of a decision-making collective in which individuals express their views and decision is made by majority vote. I am not aware that the decision of the Planning Committee has been the subject of judicial challenge and therefore it remains a lawful one. Finally, a councillor is responsible for maintaining high ethical standards by compliance with their code of conduct and this includes co-operating with an investigation which Cllr Wyatt has done.

- 5.4 In this context there is no evidence of Cllr Wyatt lacking accountability.

Principles 5 and 6 - Openness and Honesty

- 5.5 The complainants say that they do not believe that the reasons given by Cllr Wyatt were considered planning reasons for permitting the North Canal Farm application.
- 5.6 It is not uncommon for Officers to assist Members in formulating their reasons in a planning decision. In this case, prior to the vote being taken, Mr Worley (Head of Regulatory Services) did just that as the transcript of the meeting indicates.
- 5.7 Mr Worley neatly summarised the position in his letter of 26 January 2018 to Dr Cooper.
- 5.8 As Mr Worley indicates the decision on the merits is that of the Members. They are not bound to follow the recommendation of the Planning Officer.
- 5.9 Whether the reasons for the decision in this case meets the legal test set out in s.70 of the Town and Country Planning Act 1990 is outside the scope of this investigation and is a matter for the courts (or possibly the Local Government and Social Care Ombudsman).
- 5.10 Principles 5 and 6 state “You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions”.
- 5.11 Cllr Wyatt articulated his reasons for his view on the North Canal Farm application as the transcript of the meeting demonstrates and was assisted by Mr Worley in summarising these into reasons for permitting the application. This is a perfectly acceptable practice.
- 5.12 There is no evidence of a breach of Principles 5 and 6.

Respect

- 5.13 Clawson in Action were entitled to express their views under Article 10 via their petition and covering letter and Cllr Wyatt and other Members were entitled to respond. This is an essential part of our democratic arrangements.

- 5.14 Cllr Wyatt as an elected local politician has “enhanced protection” under Article 10 and is free to speak his mind within the law and constraints set out in *Heesom*.
- 5.15 Cllr Wyatt says that his comments were neither personal nor insulting. The IO agrees. There were no gratuitous personal comments and Cllr Wyatt’s words as set out in the transcript from the meeting on 9 November 2017 clearly fall within the “enhanced protection” afforded to him.
- 5.16 There is no evidence of a breach of MBC’s Code.

Bullying

- 5.17 There is no evidence that the comments made by Cllr Wyatt at the meeting 9 November 2017 constituted the types of behaviours which fall within the SBE’s definition of bullying.
- 5.18 Cllr Wyatt was engaged in normal political discourse exercising his Article 10 rights with no gratuitous personal comments and there is no evidence of a breach of MBC’s Code.

Intimidation

- 5.19 This provision only applies to behaviour by the Member in respect of the complaints procedure.
- 5.20 There is no evidence of Cllr Wyatt behaving inappropriately in response to the complaint made by Clawson in Action by means of intimidation.
- 5.21 There is no evidence of a breach of MBC’s Code.

Compromising the impartiality of those who work for MBC

- 5.22 The IO sought clarification from the complainants about the factual basis for this element of the complaint. The clarification he received provided no additional evidence upon which this element could be founded.
- 5.23 There is no evidence that Cllr Wyatt attempted to put pressure on Officers to carry out their duties in a way that is biased or partisan.
- 5.24 There is no evidence of a breach of the MBC’s Code.

Have regard to any relevant advice provided by Officers

- 5.25 As the SBE guidance indicates “As a general principle, members should take account of the advice of officers. They do not need to follow it if they believe that they have good reason not to do so.”
- 5.26 There is no evidence to suggest that Cllr Wyatt and indeed the other Members of the Planning Committee had not read the papers, that they were not aware of the Officer’s recommendation and that they did not have regard to this.

5.27 As was his right Cllr Wyatt took a different view to the Planning Officer on the individual merits of the application.

5.28 There is no evidence of a breach of MBC's Code.

Give reasons for decisions

5.29 The IO dealt with this issue in paragraphs 5.3 – 5.10 above.

5.30 There is no evidence of a breach of MBC's Code.

6.0 Conclusion

6.1 Having carefully considered the complaint the IO has come to the view that there is no evidence that Cllr Wyatt has breached MBC's Code of Conduct.