

STANDARDS AND ETHICS COMMITTEE

27 APRIL 2016

STANDARDS CASE LAW UPDATE

Recommendation

- 1. The Head of Legal and Democratic Services recommends that the Committee notes the recent case law and considers whether there are any lessons to be drawn from it.**

Case summary

2. A recent case relating to Wiltshire Council led to a Planning Committee decision being quashed. The grant of Planning Permission for a Residential Development including affordable housing had to be quashed as it was tainted by 'apparent bias'. One of the Councillors who had voted in favour of the development was a Director of the Housing Association likely to be awarded the contract to provide the affordable housing by the applicant developer.

Case details

3. The decision was successfully attacked by way of judicial review due to the actions of the Member in question. The developers had identified a local Housing Association as a prospective partner to provide the affordable housing element. One of the Councillors at the Planning Committee was a Director of that Association. He declared his Membership of the Board but decided to remain and vote on the planning application because the Association was only a prospective partner rather than the actual applicant. The planning application was passed by one vote, and he voted in favour. Had he withdrawn, the application apparently would have been refused. The Housing Association subsequently became the preferred bidder for the affordable housing element.

4. The court found that the Councillor did not have a Disclosable Pecuniary interest in the planning application - the Association was not the applicant and at the point of the decision it had no contract with the developers. The Councillor was therefore not disqualified under the DPI provisions.

5. However, the common law rule against bias or apparent bias continued to be relevant in Local Government decision making. The legal test was whether the fair-minded and informed observer, having regard to all material facts, would conclude that there was a real possibility of bias. The Councillor's participation in the planning application gave rise to an appearance of potential bias. It was plainly in the Association's interests, and those of the Councillor as a Director (although not for his personal benefit) for the planning application to be approved. The Association had committed a lot of resource to working with the developers and clearly believed it was likely to get the contract. It was therefore wrong for the Councillor to participate in the meeting, and the Committee's decision to grant Planning Permission was quashed because of his involvement.

Application of Code

6. The case is a useful reminder of how participation by Councillors in matters they should steer clear of can invalidate the decision. The case was not about the local Code of Conduct but the administrative law principles of bias, but there is a clear cross-over with Code issues.

7. Applying our own local Code of Conduct to the facts of the case, at this Council the Councillor would have had an Other Disclosable Interest - because an organisation with which he was associated had either a pecuniary interest or close connection with the matter under discussion. This would have required a declaration of that interest, as indeed happened in Wiltshire. Interestingly, the Worcestershire Code requires withdrawal from a meeting in some circumstances where the member has an ODI. Our Code at paragraph 12 (4) says that:

- if the interest affects your pecuniary interest or relates to the determination of a Planning or Regulatory matter and
- is one which a member of the public knowing these circumstances would reasonably regard as being likely to prejudice your judgement of what is in the public interest
- then the Member must leave the meeting and take no part.

8. It would seem from the Wiltshire case that the Worcestershire Code would have required the Member to remove himself from the meeting and avoid the difficulty Wiltshire found themselves in. It would have been a breach of our Code to have remained, even if the Member did not have a DPI in the matter.

9. The Committee is invited to consider the case and its implications and whether any action is needed to promote good conduct by our Councillors.

Contact Points

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Background Papers

In the opinion of the proper officer (in this case the Head of Legal and Democratic Services) there are no background papers relating to the subject matter of this report.