

Report on a complaint against Cllr Mark Bassenger – Members’ Code of Conduct

1. The Complaint

On the 16th July Councillor R P F Dewick, as Chairman of South Eastern Area Planning Committee (SEAPC), informed me that he was concerned that Councillor M G Bassenger had failed to make the right declaration of his interest in relation to a planning application at Bridgemarksh Lane Marina, Althorne at the committee meeting on the 15th July. Subsequent to the meeting two members of the public also made complaints of a similar nature. Councillor R P F Dewick believed that Councillor M G Bassenger should have declared a Disclosable Pecuniary Interest (DPI) rather than a Non-Pecuniary Interest.

2. The Issues

- a) Should Councillor Bassenger have declared a DPI because the development was likely to affect Councillor Bassenger’s home in accordance with paragraphs 4.2, 7.1 and 8.1 of the Code of Conduct?
- b) If he should have declared a DPI, did he believe that he was bound to declare it or was it just poor judgement?

3. The basic facts

- 3.1 Councillor Bassenger has a beneficial interest in Creek View, Bridgemarksh Lane, Althorne. It is near the Bridgemarksh Marina which was the subject of a planning application for the use of part of it for a Clubhouse. This would mean the area could be used for the sale of food and alcohol. As the “crow flies” the site of the planning application is approximately 130 metres from Councillor Bassenger’s home (see **APPENDIX A** for a satellite picture).
- 3.2 At the start of the meeting Councillor Bassenger declared a non – pecuniary interest based on him being a “neighbour”. He later agreed to take Councillor Dewick’s advice and treat the interest as a DPI, but when the matter was debated Councillor Bassenger reverted to his position of having a non-pecuniary interest. He remained in the Chamber, participated in the discussion and voted against the development. The Committee however, by majority, agreed with the officer recommendation and approved the application (see **APPENDIX B** for a transcript of audio recording of the relevant parts as transcribed by Cllr Bassenger and **APPENDIX C** for the minutes)

4. My interview with Cllr Bassenger

- 4.1 Councillor Bassenger agreed that as the “crow flies” his property is about 130 metres from the planning application site to the Nautico Clubhouse. It is about 200 metres by road. The site is beyond the seawall on land that is reclaimed saltings.
- 4.2 Councillor Bassenger explained that it is not possible to see the site from his property, inside or outside, nor hear any noise from the operation of the Clubhouse which was operating unlawfully prior to the application. Moreover, he does not hear any noise from the Marina other than the occasional jangling of the cranes. While the Clubhouse operated there was no noticeable increase in traffic movements nor in noise. As no-one parks in the Lane there were no parking issues that affected his property.

- 4.3 During the debate on the application Councillor Bassenger raised Local Plan policy issues including whether the development would be inclusive for disabled people, visual impact and being outside the development envelope. He further raised issues about no parking allocation for the site in the Marina. His main reason for objecting to the application was that he felt the Marina is part of a sensitive conservation area and needs protection from this sort of development. On a personal level he did not use the Marina much and only for launching his canoe.
- 4.4 Cllr Bassenger believed that his declaration of having a non-pecuniary interest was right because he had made such declarations at the Parish Council on about 3 or 4 occasions. No-one had challenged those declarations, including one of the two other complainants who had attended the Parish Council meetings. He therefore felt that his declaration was correct. He declared the interest as non-pecuniary because he lives in the area but did not consider that the application would have any impact on the value of his property. He recognised that the use of the word “neighbour” and being “2 houses away” caused concern that his declaration should have been pecuniary.
- 4.5 Cllr Bassenger explained that he changed his mind about making a personal statement and then leaving the chamber because he wanted to speak clearly about an application he had called in. He felt that he was being unfairly treated by members and did not understand why he was being singled out. The offer of giving a personal statement was not clearly available because it was thought he could not do so as he had not made a written representation on the application. He also changed his mind when the committee came to the item because he genuinely did not, and still does not, believe he had a pecuniary interest.

5. Analysis

- 5.1 When deciding whether a councillor has a DPI the test is whether the matter in question “is related to or likely to affect” a financial interest of the councillor, in this case the value of Councillor Bassenger’s house. In determining the first issue an objective test should be applied, namely would an ordinary member of the public knowing all the facts consider it likely to affect the value or saleability of Councillor Bassenger’s house. Councillor Bassenger said that the planning application site cannot be seen from his house nor could anyone hear any noise from it. Furthermore, he asserts that there were no traffic noise or movements of any consequence. These are relevant factors and, in my view, Councillor Bassenger was right to take them into account. However, perception is also relevant. The new grant of permission for the Clubhouse that would result in on- site consumption of alcohol and food only 130 metres away. I believe that the ordinary member of the public would conclude that Councillor Bassenger’s house was close enough to make it likely that there would be a pecuniary effect, even if there were no hard evidence of visual or noise impacts. Any potential purchaser of Creek View is likely to be influenced by the near presence of the Clubhouse.
- 5.2 In my view Councillor Bassenger should have declared a DPI. I am not basing this on his own description of being a “neighbour” and “2 houses but more on the perception of an ordinary person applying his mind to the facts. I realise that although this is an objective test it is still a matter of opinion, but I am called upon to make that assessment. I have not found it easy to reach a conclusion, nor did Councillor

Bassenger, because he changed his mind twice. Initially I was persuaded by Councillor Bassenger's assessment that he could neither see the site nor hear anything from it, but I believe that there is the factor of perception to consider as well.

- 5.3 On the first issue I believe Councillor Bassenger should have declared a DPI.
- 5.4 This means I now need to address the second and equally important issue – what was Councillor Bassenger thinking in relation to the declaration. His change of mind twice during the meeting shows that Councillor Bassenger was trying to grapple with the challenge of deciding on the right declaration. Furthermore, he was not avoiding the matter by making no declaration. In fact, I was impressed with Councillor Bassenger's openness in the interview. I believe he honestly formed the view, albeit with some difficulty, that he had no pecuniary interest. His previous declaration at Parish level, and that no-one challenged those declarations, point in the direction that his judgement on this occasion was poor and that he was not dishonest. I think that his judgement was clouded by his sense that he needed to represent the public and that as ward member he ought to be heard during the debate, in fact I would go so far to say that he felt he had a public duty to participate in the decision.
- 5.5 On the second issue I conclude that Councillor Bassenger made an honest but poorly judged declaration.

6. A sanction

- 6.1 If the Committee agree with me on both issues, then the following options are available or a combination of them:
- A) Do nothing on the basis that it was an honest failure and this process in itself has been a salutary lesson;
 - B) Issue a formal censure in the form of a letter which is publicised on the Council's website;
 - C) Require that more training is undertaken to understand more clearly the requirements of the Code;
 - D) Recommend to Council that Councillor Bassenger should be removed from one or more committees for a set time, including South Eastern Area Planning Committee.

7. Final Word

- 7.1 Finally, I would like to thank Councillor Bassenger for his cooperation and for providing a transcript of part of the audio recording of the committee meeting. During the interview Councillor Heard was in attendance as a support to Councillor Bassenger and his contributions were helpful. I am grateful to both councillors.

Simon Quelch

Monitoring Officer

August 2019