

Investigation into alleged contravention of the Members Code of Conduct

Councillor Paul Burgess – Chairman of Althorne Parish Council

Summary of Findings

The Complaint

1. District Councillors Brian Beale MBE and Beverley Acevedo made separate complaints on 8th December 2017 about Parish Councillor Paul Burgess who is the Chairman of Althorne Parish Council. Both complaints are annexed as annex 1 and 2.
2. The complaints are in essence the same;
 1. That Councillor Burgess spoke at the South Eastern Area Planning Committee (SEAPC) of Maldon District Council on the 6th November and 4th December 2017 by holding himself out as having authority to represent Althorne Parish Council when he did not have that authority;
 2. That Councillor Burgess spoke on both occasions making presentations that went beyond the reasons given by the Parish Council.

Evidence

3. I have interviewed Councillor Mrs Acevedo and Councillor Beale by phone. I have interviewed in person Joanna Jeffery

(Parish Clerk) , Tara Bird (Committee Services) and Councillor Burgess.

4. As Councillor Burgess had thought that a relative may have been the applicant for permission I spoke with Councillor Acevedo. She stated that she and her husband were the applicants. The planning application is marked as annex 3. There is some confusion caused by part 8 of the application making it appear that a relative is the applicant. However it is clear that the applicants live at Fiddlers Rest. This is Councillor Mrs Acevedo's home. It is therefore clear that Councillor Mrs Acevedo and her husband are the applicants.

Evidence of Joanna Jeffery

5. Mrs Jeffery has worked as Clerk since 2011. The Parish Council adopted the District Council's Code of Conduct in about 2013

6. On 18th October the Parish Council resolved to object to Mr and Mrs Acevedo's application for permission to build a new house. The only reason was that the site was outside the village development envelope. When Mrs Jeffery informed the District Council of the objection she mistakenly added sustainability as a second reason (see annex 4).

7. After Mrs Jeffery heard that Councillor Burgess had attended SEAPC on the 6th November as a representative of the Council she explained to him that he should not represent the Council without Council authorisation, having already taken advice from a different Deputy Monitoring Officer to me. Councillor Burgess replied to the effect that he was Chairman and that authorised him to attend the Committee. Furthermore he added that he "knew what this is about and it is personal and you

don't need to know about it". Mrs Jeffery understood that Councillor Burgess was referring to the poor relationship that exists between him and Councillor Mrs Acevedo..

8.The next Parish Council meeting was on 29th November (Mrs Jeffery was not present). Nothing is shown in the minutes that records that Councillor Burgess was authorised to represent the Council at the SEAPC on the 4th December.

9.After Mrs Jeffery heard that Councillor Burgess had represented the Council again without authority on the 4th December she challenged him. He stated that he was not allowed to speak as a resident so he decided to speak as the representative of the Council. Mrs Jeffery did not take the matter further because she was aware that a complaint would be made about a possible breach of the Code of Conduct.

10.After this Mrs Jeffery heard that Councillor Burgess had attended the SEAPC on previous occasions as a representative of the Council. He had never informed the Council that he had done so. There is a standing agenda item giving members the opportunity to inform the Council when they have attended events in their capacity as a Councillor. Mrs Jeffery would have expected Councillor Burgess to have mentioned that he had attended SEAPC or was expecting to attend. He has mentioned that he has attended other events but never SEAPC.

Evidence of Tara Bird

11.Miss Bird confirmed that she was present to take minutes at the SEAPC on the 6th November and 4th December 2017 as an employee of Maldon District Council.

12. Miss Bird confirmed that Councillor Burgess represented the Althorne PC on the 6th November. She recalls Mrs Acevedo objecting to her prior to the Committee stating that Councillor Burgess had no authority from the Parish Council. Miss Bird however did not consider it her place to challenge Councillor Burgess authority to speak for the Parish Council.

13.On the 4th December Miss Bird recalls Councillor Burgess asking to speak as an objector in his individual capacity at the SEAPC. She explained that he was not permitted because he had not filed a letter of representation in relation. He then said that he wished to speak on behalf of the Parish Council . Miss Bird asked if he had authority to do so bearing in mind the issue raised by Councillor Mrs Acevedo on the 6th November. Councillor Burgess replied that as he spoke for the Parish Council on the 6th November he had authority to do so. Miss Bird did not consider that she had any authority to challenge his authorisation but relied on what Cllr Burgess said.

Evidence of Councillor Brian Beale MBE

14.Councillor Beale stated that Councillor Burgess mentioned 3 matters as part of his presentations for the Parish Council at both committees. That the development was outside the village envelope, unsustainability, including mention of bus routes, and that there had been previous refusals for development in the area.

15.Councillor Beale also mentioned that Councillor Burgess does not normally attend committee when the Parish Council objects to a development. On this occasion he attended both committees.

He appeared to be in opposition to Councillor Mrs Acevedo rather than the planning application itself.

Evidence of Councillor Paul Burgess

16.Councillor Burgess has been a parish member for 8-10 years and Parish Chairman since 2014.

17.Councillor Burgess has attended SEAPC on several occasions as a representative of the PC. He has never been challenged about his authority to speak for the Parish Council.

18.The Parish Council do not have a protocol about speaking on behalf of the Council at SEAPC. Councillor Burgess believes that as Chairman it is his responsibility and obligation to speak for the community.

19.Councillor Burgess accepts that he attended and spoke at SEAPC on the 6th November on behalf of the Parish Council. He had attended because Mrs Jeffery informed him that the application of Councillor Mrs Acevedo had been called in. He told Mrs Jeffery that he would attending the committee and believed that she would have understood that he was going to attend to speak on behalf of the Parish Council, though he accepts that he did not explicitly say that.

20.Following his attendance at the Committee Councillor Burgess agrees that Mrs Jeffery advised him that he could not speak on behalf of the Parish Council without authorisation. He agrees that he said that the matter was a personal one and that Mrs Jeffery did not need to know about it. He meant that this was a matter between him and Councillor Beale, who he believed was using Mrs Jeffery to intimidate him on a dubious planning application; he was not referring to his relationship with Mrs Acevedo as Mrs Jeffery had thought.

21.On the 4th December Councillor Burgess intended to speak in his private capacity and wanted to heed Mrs Jeffery's advice as he did not wish to cause problems. He agrees with Miss Bird's version of events but added that the report on the deferred application did not show the Parish Council as an objector. Miss Bird explained that this had been corrected to show the Parish Council as an objector. As Councillor Burgess was not allowed to speak in his private capacity he said he would speak on behalf of the Parish Council as Chairman.

22.Councillor Burgess believes that he did not need to follow Mrs Jeffery's advice because he had spoken already on behalf of the Parish Council and that Councillor Beale only wished to intimidate him through Mrs Jeffery; she is also the clerk at Southminster PC in Councillor Beale's ward.

23.Councillor Burgess spoke on the matter of sustainability at both committees and his scripts for both committees are marked as annexes 5 and 6. He elaborated on the sustainability ground. Councillor Burgess was not aware that the minutes of the Parish Council of 18th October only gave one reason of objection that the application site is outside the development envelope. Councillor Burgess was not present at that meeting. It was only after the December committee that Councillor Burgess became aware that the development envelope reason was the sole one.

The committee reports of the 6th November 4th December and members final updates

24.The committee reports did not record the Parish Council as having made any objection however this was corrected in both members final updates. Both updates recorded an objection from the Parish Council on grounds of development outside the development envelope and unsustainability.

Analysis of Evidence

The first allegation

25.As a matter fact there is no general written protocol entitling the Chairman of the Council to represent the Council at SEAPC nor a specific authorisation for this particular planning application.

26.Councillor Burgess view is that as Chairman he had the authority to represent the Council . This appears to be a personal view and not some general understanding within the Council . However had there been this general understanding , then Councillor Burgess could have, in my opinion, legitimately relied on his office to make representations at the SEAPC. However the fact that the Parish Clerk advised Councillor Burgess that he should not represent the Council without authorisations indicates that no such general understanding existed.

27.I am of the view that following the Parish Clerk's advice about representation Councillor Burgess recognised there was, at the very least ,a serious question mark over his authority to represent the Parish Council. This is reflected by his decision to speak in his private capacity on the 4th December. When he found out that he could not he then wrongly made the decision to rely on his office as Chairman to speak for the Council, despite being challenged by Miss Bird. It seems to me that Councillor Burgess was determined that he should be heard one way or the other and that determination overrode his sense that his authority to speak for the Council had been brought into serious doubt. In my opinion following the Parish Clerk's advice Councillor Burgess should have either emailed all of his fellow Councillors asking for permission to represent their collective view or sought permission at the Parish Council meeting of the 29th November

28.With regard to the first allegation I am satisfied that Councillor Burgess did not have authority from Althorne Parish Council to represent them and wrongly held himself out as having that authority on the 6th November and 4th December. The 4th December incident was the more serious of the two because he knowingly held himself out as a legitimate representative of the Parish Council when he knew that there was a serious doubt .

The second allegation

29.At the Parish Council meeting on the 18th October it was resolved that the Council would object for the single reason that the site was outside the village development envelope. Councillor Burgess went beyond that reason at both planning committees. However I accept that Councillor Burgess believed for good reason that there was the additional reason of unsustainability; he says that he only discovered the true position after the 4th December meeting. The information sent in by the Clerk at annex 4 would have been available on the District Council's website and was included in the members final update. His representations at both planning committees focussed on that reason with significant elaboration . Nevertheless his comments were within that second reason.

30. Even though Councillor Burgess went beyond the reason given by the Parish Council he had good grounds to believe that unsustainability was a genuine ground. However what surprised me was that as Chairman he had not verified what the minutes of the 18th October said prior to holding himself out as a representative of the Parish Council. Had he done so he would have seen that the sustainability reason was not part of the Parish Council's reasons for objection and had been added by mistake

31. With regard to the second allegation I am of the view that Councillor Burgess went beyond the single reason of objection by the Parish Council but he believed for good reason that the sustainability reason was part of the objection.

Application to the Members Code of Conduct

32. The 2 parts of the Code that are relevant are;

1. "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute" para graph 3.5(e);
2. "You must not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage" paragraph 3.7 (a).

33. I believe that Councillor Burgess genuinely, but wrongly, thought his position gave him authority to represent the Parish Council on the 6th November. I am of the view that he realised that there were serious doubts about his authorisation on the 4th December. He knowingly used his position as Chairman to speak for the Parish Council with those serious doubts in his mind. This was a misuse of his office as Chairman and in my view he crossed the line when he chose to speak for the Parish Council on the 4th December.

34. With regard to the first allegation there is in my opinion, a breach of paragraph 3.5(e) of the Code (although not a serious one), by bringing his office as Chairman into disrepute in connection with the 4th December. This though does not, in my opinion, apply to the 6th November.

35. As there are grounds for concluding that Councillor Burgess thought that the sustainability reason was a genuine one I cannot see that he contravened either of the 2 parts of the Code in relation to the second allegation.

36. With regard to the second allegation I do not believe that there has been a breach of the Code.

Options

37. If the Joint Standards Committee agrees with me that there has been a breach of the Code there are 5 options available to the Committee depending on how seriously the breach is assessed. My view is that the breach is not a serious one. The options are listed in order of severity and are not mutually exclusive. A combination of the options could be proposed. They are;

1. Recommending to the Parish Council that they establish a procedure or protocol when Councillor Burgess in his role as Chairman may attend SEAPC to present the Parish Council;
2. Recommending to Althorne Parish Council and to Councillor Burgess that he undergoes training to understand better the role of Chairman;

3. Publicising on the District Council's website the breach of the Code of conduct and recommending to the Parish Council that they do the same;
4. Recommending that the Parish Council place a public notice in a local newspaper about the contravention of the Code of Conduct;
5. Recommending to the Parish Council that Councillor Burgess is voted out of the role of Chairman.

Simon Quelch (Deputy Monitoring Officer)

19th January 2018