

MONITORING OFFICER DECISION NOTICE

**Complaint Number COC01309
Cllr. Cooper of Holmer & Shelwick Parish Council**

DECISION

That Cllr. Cooper **DID** breach the following parts of Holmer & Shelwick Parish Council's Code of Conduct – in that Councillors:-

B.1 Should declare and resolve their interests in accordance with the law and with the provisions of this code of conduct

B.3 Should not act or take decisions in order to (or attempt to) confer or secure an advantage, disadvantage, financial gain or other material benefits for themselves, their family or close associations

C.1 Act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias

E.3 Do draw attention to any code of conduct interest when performing their duties as a member.

COMPLAINTS

The Council considered the following complaints, which arose in respect of a planning application being made at a nearby property, Lyde Court:-

Complaint 1

At a Parish Council meeting, Mr. Cooper suggested that they write an informal complaint on behalf of the parish council to the Duchy of Cornwall about the airstrip at Lyde Court. The letter to the Duchy of Cornwall from the complainant, which it is suggested appeared to be a formal letter from the parish council, was sent on 12 June 2020. The letter was acknowledged by the Duchy of Cornwall on 17 August 2020 and a copy was submitted by Mr. Cooper to Herefordshire Council as part of an objection to a planning application made by the complainant.

The complainant believes that Mr. Cooper misled the Duchy of Cornwall into believing that the letter of 12 June 2020 was a formal letter from the parish council. The complainant believes that Mr. Cooper sent further letters to the Duchy of Cornwall purporting to be representing the parish council when the subject member was in fact representing their own interests.

Complaint 2

Mr. Cooper spoke on behalf of the parish council at the Herefordshire Council Planning Committee. Although speaking on behalf of the parish council, Mr. Cooper appeared to rely on his own personal representations made as well as that submitted on behalf of the parish council. Mr. Cooper did not make the Committee aware that he had an interest.

Complaint 3

Mr. Cooper should have declared an interest (other declarable interest) in the Lyde Court airstrip from the outset. Mr. Cooper does in his objection dated 24 December 2021 state “he is a landowner close to Lyde Court”.

FINDINGS

Complaint 1

Mr. Cooper originally contacted the Duchy on 11 June and, other than an acknowledgement, he did not get a full response. He then sent a further email of 9 August 2020 where he says that ‘During this time, as a Parish Councillor, I have been inundated by local residents complaining.....’. He does then get a response from the Duchy on 19 August, where they provide information and advise him that the Parish Council should contact Herefordshire Council. The person who dealt with the matter is no longer employed. However on balance I consider that the Duchy felt that they were responding to a Parish Councillor as they have provided significant information relating to the complainant and refer to the Parish Council in their response. I think Mr. Cooper gained information that he would not have received had he not advised the Duchy that he was a parish councillor, and had they not felt they were responding to the Parish Council or a parish councillor.

Mr. Cooper disagrees with my conclusion as he feels it is circumstantial and that two other parishioners wrote and got the same information. I have not had sight of these letters, but given the amount of information provided by the Duchy, I think a reasonable person might assume that they thought that were responding to a Parish Councillor rather than to a member of the public.

In mitigation, Mr. Cooper did have to chase up the Duchy of Cornwall to respond to his correspondence, and it was at this point that he said that he was a Parish Councillor, which I think he added in an effort to get them to respond as he was being questioned by local residents.

Complaint 2

At the Planning Committee meeting of 29 July 2022, there was a change to the public speaking arrangements due to the interest in the application and that it spanned more than one parish. The Parish Councils had nine minutes total allocated to them, and Objectors/Supporters also had nine minutes allocated.

It would be reasonable to assume that there would be multiple objectors wanting to speak, as there was a high number of objections and that Mr. Cooper wouldn’t get much, if any, air time as an Objector. Mr. Cooper therefore put himself forward to speak on behalf of the Parish Council who were sharing the nine minutes between 3 parish councillors. Therefore speaking on behalf of the Parish Council could be seen to confer an advantage to Mr. Cooper as making a representation on behalf of the Parish Council could have more weight than speaking as a resident, and Mr. Cooper would have more speaking time for his objection.

Mr. Cooper did agree with the former Chair that he could speak on behalf of the Parish Council if necessary, and he has also provided me with a copy of his email to Herefordshire Council where he says he will be objecting on behalf of the Parish Council but if this space is taken, then as an

Objector. I think this is at the heart of the matter; Mr. Cooper is mixing up his role as a parish councillor with his role as an objector, and he cannot be both at the same time.

Mr. Cooper should also have made his interest known to members of the Herefordshire Council planning committee prior to addressing them.

Complaint 3

Mr. Cooper does not consider his property is affected by the airstrip.

However, Mr. Cooper's first objection states 'As a landowner close to Lyde Court I have witnessed first-hand the noise and disturbance from the 100 flights that took place January to August 2021.' His second objection says that noise can be heard from 'inside the house(s)'. In an email of 23 April 2021 to the HC enforcement officers his complaint is of noise nuisance and lack of privacy by planes flying low over 'our properties'. In an email of 20 June 2020 to the Duchy of Cornwall Mr. Cooper states 'My farmland is directly adjoining Lyde Court and I have particular concerns over the environmental effects on my livestock'.

In Mr. Cooper's response, he says that he was writing on behalf of the five properties closest to the airstrip. However I think a reasonable person having sight of the plans and correspondence would think that Mr. Cooper was referring to his own property, even if that included others as well.

I therefore find that the planning application affected Mr. Cooper to a greater extent than others in the parish, and that he failed to declare such an interest and took part in decision making, in particular at the meeting of 9 December 2021, and in failing to draw attention to this interest at the Herefordshire Council planning committee when making representations (Para.E3).

In the circumstances, I do not consider that Mr. Cooper would be able to take an impartial decision on the planning application, which in itself is a breach of C1 of the Code of Conduct.

In mitigation, Mr. Cooper does say that he discussed whether he had a conflict of interest with the Chair. The test that Mr. Cooper appears to have applied is whether his land adjoins Lyde Court and he satisfied himself that he did not have an interest as his land does not adjoin. This is not the correct test; he should have applied:-

*Where a matter **affects** the financial interest or well-being:*

- *a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;*
- *b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest*

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

The Parish Clerk advised me that all members of the parish council knew where each other lived. Mr. Cooper says he was challenged by two councillors who had an interest themselves, but that he explained the position of his property to the Clerk & Chair, and that they didn't feel he had an interest. The former Parish Clerk does not recall having provided such advice to Mr. Cooper.

The former Chair told me that the advice that has always been is that 'there are two types of interest, pecuniary and non-pecuniary', and members are told that they have a pecuniary interest if their

land adjoins the application site. At every parish council meeting there is a declaration of interest. The Chair was assured by Mr. Cooper that none of his site adjoined the application site, and this was the criterion that was used when deciding whether Mr. Cooper had an interest.

PROCEDURE

An Investigator was asked to carry out an investigation into the facts. The evidence she collected and used to form her conclusions included:-

- Code of Conduct of Holmer & Shelwick Parish Council
- Copy of filed plan for Rosebank
- Transcript of HC Planning Committee meeting made from the recording of the meeting
- Copies of objections made to the planning application
- Correspondence between the Duchy of Cornwall & Mr. Cooper
- Interview notes with Mr. Cooper, the former Chair and the former Clerk
- Minutes of the meeting of Holmer & Shelwick Parish Council dated 9 December 2021
- Further plan provided by Mr. Cooper

CONCLUSION

I am satisfied that Mr. Cooper did not intentionally seek not to disclose his interest, but rather he (and the rest of the parish council) have been using an incorrect test. The types of interest (pecuniary and non-pecuniary) that the Chair refers to are no longer contained in the Holmer & Shelwick Parish Council code of conduct, nor indeed in the LGA Model Code.

I have therefore made the following recommendations to the Parish Council:-

- (1) that all Parish Councillors at Holmer & Shelwick Parish Council undertake training on the Code of Conduct
- (2) that all Parish Councillors at Holmer & Shelwick Parish Council are made aware that they should not use their position as a parish councillor in correspondence, unless first authorised by the Parish Clerk.

In accordance with S28(7) Localism Act 2011 I have sought and taken into account the views of two Independent Persons appointed by Herefordshire Council for the purposes of the Act. The Independent Persons agree that Cllr. Cooper has breached the above parts of the Holmer & Shelwick Parish Council Code of Conduct.

There is no right of appeal against this decision notice.



.....
Monitoring Officer

Dated: 9 August 2023