

Town Clerk and Chief Executive
John Barradell



Ms Susan Pearson CC
Members' Room
Guildhall
EC2P 2EJ

Telephone 020 7332 3154
Fax 020 7796 2621
Email martin.newton
@cityoflondon.gov.uk

BY POST AND EMAIL

Date 29 May 2018
Our ref:
Your ref:

Dear Ms Pearson,

Decision of Hearing Sub (Standards) Committee – Ms Susan Pearson

As you are aware, the Hearing Sub-Committee of the Standards Committee met on 21 May 2018 to consider an allegation referred to them by the Assessments Sub (Standards) Committee. The allegation was that you had breached paragraph 13 of the Member Code of Conduct, insofar as you participated and voted on a matter in which you had a disclosable pecuniary interest at the Planning and Transportation Committee on 29 January 2018, without a dispensation allowing you to do so. I am instructed by the Sub-Committee to inform you of their decision.

The Sub-Committee consisted of Deputy Jamie Ingham Clark (Chairman), Caroline Addy, Deputy Edward Lord and Mark Greenburgh (co-opted member). Also present was Neil Asten, an “Independent Person” appointed under s.28 of the Localism Act 2011, whose views were sought by the Sub-Committee before reaching its decision.

The Sub-Committee’s consideration of the matter and its decision was as follows:-

A. The complaint

1. The complaint considered by the Sub-Committee is that Ms. Pearson acted in breach of paragraph 13 of the Code when, in the course of a meeting of the Planning and Transportation Committee that took place on 29 January 2018, she spoke on an item of business motion relating to the Richard Cloudesley Schools site (“the Site”). That matter was taken by the Committee as an urgent matter. The recommendation that the Committee was asked to agree was in the following terms

“It is recommended that the Planning and Transportation Committee:-

- *Request Court of Common Council to delegate the Planning and Transportation Committee’s function of deciding planning application ref: 17/00770/FULL (and any amendments) to the London borough of Islington under section 101(1)(b) of the Local Government Act 1972, subject to LB Islington’s agreement (and authorise any necessary*

agreement under section 101 of the Local Government Act 1972 to give effect to the delegation.)

- *The Chief Planning Officer and Development Director be authorised to send comments on planning application ref: 17/00770/FULL to the London Borough of Islington, subject to prior consultation on the comments with the Chairman and Deputy Chairman of the Planning and Transportation Committee.”*

For sake of convenience in these written reasons, we will refer to this recommendation as “the delegation recommendation”. The complaint is that Ms. Pearson should not have spoken or voted on this matter because of a registered disclosable pecuniary interest, namely a lease of property at 21 Hatfield House. Hatfield House is adjacent to the Site.

B. The Hearing

2. At the hearing before the Sub Committee (on 21 May 2018) Ms. Pearson was present together with Graeme Harrower (a Member for Bassishaw) who acted as her representative. The Sub Committee heard from Ms. Pearson, and heard submissions from Mr. Harrower. The Sub Committee heard evidence from John Austin, the Investigating Officer. He spoke to the matters contained in his investigation report dated May 2018. The Sub Committee was also assisted by the views stated by Neil Asten, who acted as the Independent Person.
3. In the course of the hearing which took place on 21 May 2018, Mr. Harrower raised various preliminary matters with the Sub Committee. These matters fell into three parts; Mr. Harrower addressed the Sub Committee on them, and the Sub Committee gave decisions on each, in turn. This document sets out the written reasons for the decision on the merits of the complaint against Ms. Pearson. This document does not seek to repeat the decisions given during the hearing, on the various preliminary matters.

(1) The facts

4. There was no material dispute of fact in the evidence before the Sub Committee. Ms. Pearson accepts that she spoke and voted at the Committee meeting on 29 January 2018 on the delegation recommendation. Further there is no dispute that on her election as a Councilman, Ms. Pearson declared her lease of 21 Hatfield House as a disclosable pecuniary interest. Hatfield House is adjacent to the Site. The issue for us has been how those matters fall to be assessed against the requirements of paragraph 13 of the Code.

(2) The Code

5. Paragraph 13 of the Code is in the following terms.

“Unless dispensation has been granted, you may not participate in any discussion of, or vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State.”

It is common ground that before speaking and voting on the delegation decision at the Committee meeting on 29 January 2018, Ms. Pearson had not obtained any dispensation to do so.

6. The regulations referred to in paragraph 13 of the Code are the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (“the 2012 Regulations”). Those regulations were made under powers contained in the Localism Act 2011 (“the 2011 Act”). Regulation 2 states that the pecuniary interests specified Chapter 7 of Part 1 of the 2011 Act “... *are the interests specified in the second column of the Schedule to these Regulations*”. In the Schedule against the subject heading “*land*”, the following is identified as a pecuniary interest: “*Any beneficial interest in land which is within the area of the relevant authority*”.

(3) *The case for Ms. Pearson*

7. This letter will not seek to set out all the points made by Mr. Harrower in the course of the hearing. However, Mr. Harrower’s submissions focussed on two related points. The first was that the “matter” at the Committee meeting (i.e. the delegation recommendation) was not properly to be regarded as the planning application relating to the Site, but rather, was no more than a decision on which of the Corporation or the London Borough of Islington would be responsible for the substantive determination of the planning application. He drew our attention to the specific wording of the recommendations that were before the Committee on 29 January 2018. The second point was that the Committee’s decision on the delegation recommendation could not have affected the value of Ms. Pearson’s leasehold interest in 21 Hatfield House. This, he said, underlined the fact that the “matter” considered by the Committee on 29 February 2018 was not one in which Ms. Pearson had any pecuniary interest.

(4) *Legal advice to the Sub-Committee*

8. The Sub Committee received legal advice from Jonathan Swift QC who was the legal adviser to the Sub Committee for the purposes of the hearing of this complaint. He provided advice on three issues. The first was the meaning of the pecuniary interest relating to “*land*”, provided for in the 2012 Regulations. He informed us that the relevant pecuniary interest was as stated in the second column of the Schedule to the 2012 Regulations – i.e., it was the beneficial interest in land. It was irrelevant to the determination of the complaint, whether the act complained of could, or did, have any impact on the value of that pecuniary interest.
9. The second issue on which he provided advice was the meaning of the words in paragraph 13 of the Code “... *you may not participate in any discussion of, or vote on ...any matter in which you have a pecuniary interest ...*” (emphasis added). His advice was as follows.
 - (1) Paragraph 13 of the Code was clearly intended to give effect to section 31(1)(b) of the 2011 Act, which refers to whether a “... *member ... of a relevant authority ... has a disclosable pecuniary interest in any matter to be considered, or being considered at [a meeting of the authority or of any committee]* ...”, and paragraph 13 should be understood accordingly.

- (2) There were two relevant questions for the Sub-Committee: (a) what was “the matter” being considered at the meeting; and (b) did Ms. Pearson have a disclosable pecuniary interest in that matter?
 - (3) The phrase “*the matter being considered at the meeting*” is not further defined in the 2011 Act. The phrase should therefore be applied on the basis of the ordinary meaning of the words, in the context in which they fall to be applied.
 - (4) The approach to identifying the “matter” being considered at the meeting should be realistic, and should focus on substance rather than form. Whether it is appropriate to break down any single issue (such as a planning application) into distinct parts (each being a different “matter”) depends on sensible judgement, taking account of all the circumstances of the situation in hand.
 - (5) In the present case, the question on the application of paragraph 13 of the Code is whether, when identifying the “matter” before the Committee on 29 January 2018, it is appropriate to draw a distinction between a decision on the substantive merits of the planning application, and a decision to determine whether the Corporation was to be responsible determining the substantive merits of the part of the application relating to land within the area for which the Corporation is responsible.
10. The third issue on which Mr. Swift provided advice was in respect to specific submissions made by Mr. Harrower on the meaning of paragraph 13 of the Code by reference to provisions within section 31 of the 2011 Act. These were (a) that by reference to what is said at section 31(1)(c) of the 2011 Act, a breach of paragraph 13 of the Code could only occur if the Councilman knew that she had a disclosable pecuniary interest in the matter being considered at the meeting (referred to by Mr. Harrower as a *mens rea* requirement); and (b) that by reference to section 34(1) of the 2011 Act, that no breach of paragraph 13 of the Code could occur if the Councilman had reasonable excuse for participating in the relevant discussion or vote.
11. Mr. Swift advised that neither of these points was a good point, so far as concerns the meaning of paragraph 13 of the Code. Neither provision forms part of paragraph 13 of the Code as drafted. The “no reasonable excuse” provision appears in section 34(1) as part of the formulation of a criminal offence; the *mens rea* requirement at section 31(1)(c) is also a matter that is explicable given that section 31(1) is the premise for the prohibition at section 31(4) which is in turn one of the bases for criminal liability under section 34 of the 2011 Act. Thus, whilst the matters relied on by Mr. Harrower, may be material to the criminal offence created by sections 31 and 34 of the 2011 Act, are not matters which ought (let alone need) to be read-in to paragraph 13 of the Code.

C. Decision

12. The Sub Committee accepted the legal advice provided by Mr. Swift, and reached its decision taking that advice and the advice of Mr Goudie QC and Mr Sharpe QC into account.
13. As the Sub Committee saw it, and given the absence of any relevant dispute of fact (see above at paragraph 5), the key issue is to identify what was the “matter” that was discussed and voted

on at the Committee meeting on 29 January 2018. Although the Sub Committee carefully considered the submissions made by Mr. Harrower it decided, unanimously, that they are incorrect. As a matter of substance, the “matter” discussed at, and voted on, was the planning application for the Site. The decision before the Committee was whether the Corporation ought to determine that application so far as it concerned land in the Corporation’s area, or whether that decision should be taken by the London Borough of Islington. That decision was capable of being a final decision and the effective disposal of the planning application so far as concerned the Corporation. That being so, the Sub Committee did not consider that it is appropriate to distinguish between the planning application as a whole and the decision on the role that the Corporation should play in the determination of that application.

15. In the course of his submissions, Mr. Harrower suggested that the matter before the Committee on 29 January 2018 was no different in substance to a decision by (say) the Planning and Transportation Committee that a particular recommendation should be considered by it on one date rather than another, or at the morning session of a meeting rather than an afternoon session of the same meeting. Such procedural decisions (contends Mr. Harrower) could not be matters relevant to any pecuniary interest in the substantive matter before the committee, and the present situation is materially the same. The Sub Committee disagreed. The substance of such situations and the situation now before it is entirely different. As has been explained above, the decision for the Committee on 29 January 2018 was not a “mere” procedural matter but went to whether the Corporation would continue to consider the planning application for the Site and the delegation of representations on behalf of the Corporation, to the Borough of Islington, to the Head of Planning.
16. Alternatively, the submissions by Mr Harrower included that it was material to the determination of the Planning Application, which authority(ies) considered the application. The Sub Committee agreed with those submissions, but that led them to the conclusion that the ‘matter’ before the Committee for disposal was indeed material to the planning application, and therefore part of the ‘matter’ under consideration before it.
17. For all these reasons the Sub Committee concluded that Ms. Pearson did, when she spoke and voted on the delegation recommendations, act contrary to the requirements of paragraph 13 of the Code. The Sub Committee reached this conclusion with regret. As at January 2018 Ms. Pearson had been a Councilman for less than a year, but had attended initial induction training soon after election in March 2017 and a further training session on the Code of Conduct and Protocol on Member / Officer relations on 22 January 2018, a week prior to the Planning and Transportation Committee meeting. The Sub Committee listened carefully to what she told it at the hearing, and the Sub Committee is entirely satisfied that Ms. Pearson acted as she did without any thought for personal advantage, but only because she believed it was in the interests of her constituents that she speak and vote at the meeting. It also accepted that because the delegation recommendation was considered by the Committee as an urgent matter, Ms. Pearson had very limited (but sufficient) time (between late on Friday afternoon and 10am the following Monday morning, which was the day of the Committee meeting) to consider the best approach to take. However, and perhaps particularly as a recently elected Councilman, Ms. Pearson should have sought guidance either from the Monitoring Officer or the Clerk to the Committee. Had she done so, the course of this allegation might have been entirely different. It is highly regrettable that she failed to do this.

D. Next steps

17. The Sub Committee now needs to decide what steps should be taken in consequence of its decision that Ms. Pearson acted in breach of paragraph 13 of the Code. As explained at the end of the hearing, it invites Ms. Pearson to make any representations she may wish to, in writing, within 7 days from the day on which she receives these written reasons.

The Sub-Committee will then consider the matter, and will for this purpose too, take account of the views of Mr. Asten, the Independent Person.

Yours sincerely,

Martin Newton
Committee and Member Services Officer