

Committee(s):	Date(s):
Assessment Sub (Standards) Committee	13 March 2018
Subject: Standards Committee Referral – Ms Susan Pearson	Non-Public
Report of: Comptroller & City Solicitor	For Decision
<p><u>Summary</u></p> <p>This report presents to the Sub-Committee for assessment a Standards Committee referral in respect of Ms Susan Pearson.</p> <p>Recommendations:</p> <ol style="list-style-type: none"> 1. That the Assessment Sub-Committee consider the report and determine what action, if any, to take in relation to the complaint. 2. That the Monitoring Officer produces a written summary of the Sub-committee’s consideration of the referral and its decision. 	

Main Report

History of the Allegation

1. Ms Susan Pearson is a member of the Planning and Transportation Committee. She has registered a disclosable pecuniary interest as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 in 21 Hatfield House, a block of flats adjacent to the Richard Cloudesley School site (“the Site”). The Site is the subject of a planning application by the Corporation to redevelop it to provide a new school and affordable housing. The majority of the Site is within the London Borough of Islington with a small parcel located in the City. It should be noted that Ms Pearson applied for a dispensation to speak and vote on matters relating to “housing & matters to do with Golden Lane Estate” where Hatfield House is situated in April 2017. This application was rejected by the Standards Committee on 19th May 2017 and has not been renewed.
2. The planning application is a complex one, involving time pressure, some local opposition (largely from City residents nearby), and two planning authorities, one of which, Islington, will be holding local elections in May 2018. Given these complexities and the small parcel under the Corporation’s jurisdiction, officers concluded that the most efficient and effective method of managing the process would be for the Corporation to delegate the determination of the application in relation to the City land to Islington. Accordingly, a report was presented to the Planning and Transportation Committee on the 29th January 2018, as an urgent item for various reasons involving timing and co-ordination with Islington, recommending that the Committee recommend to the Court of Common Council the delegation of the planning decision in respect of the City parcel to Islington.

3. The matter was debated by the Committee, and the recommendation defeated by 11 votes to 9 with no abstentions. Ms Pearson apparently spoke against the recommendation and voted. Although it was not recorded which way it is assumed she voted against. The vote is recorded in the draft minutes.
4. Following the meeting a member present at the meeting telephoned the Monitoring Officer, to express serious reservations about Ms Pearson's conduct in relation to her statutory obligations under s.31 of the Localism Act 2011 and paragraph 13 of the Code of Conduct. However, for various reasons the member was not prepared to make a formal complaint.
5. As the Sub-committee is aware, the Corporation's established procedure for handling allegations of misconduct by members requires the submission of a written complaint and a filtering exercise carried out by the Assessment Sub-committee which has the power to authorise investigations. No investigation can be carried out in respect of an allegation against a member without the sanction of the Assessment Sub-committee.
6. Notwithstanding this position, in circumstances where there are reasonable grounds to believe a breach of the Code of Conduct has occurred, of which the Corporation is aware from its own knowledge and records, such as participation in a decision despite a disclosable pecuniary interest, the Standards Committee and the Monitoring Officer have taken the view that the Standards Committee, of itself or through officer delegation under the urgency procedure is entitled to convene a meeting of the Assessment Sub-committee to determine whether there should be an investigation in the absence of a complaint. This is to avoid criticism and reputational damage which could arise from the Corporation being seen to ignore potential breaches of the Code and the statutory requirements in relation to disclosable pecuniary interests within its knowledge. Furthermore, it avoids the situation where powerful or influential members can avoid being held to account simply because no individual is prepared to be seen to challenge them. This appears to the Monitoring Officer to be a real issue where turning of an institutional "blind eye" is no longer acceptable and a more desirable approach than a senior officer or member being obliged to take on the role of complainant to achieve the same result.
7. Accordingly, following consultation with the Chairman and Deputy Chairman of the Standards Committee, the Town Clerk authorised, on 9th February, the convening of an Assessment Sub-committee and that the Monitoring Officer should refer the matter to the Commissioner of the City of London Police and inform Ms Pearson of the allegations against her and the action being taken.
8. This was duly done by the Monitoring Officer's letters of 12th February, which elicited Ms Pearson's response of 14th February and the further exchanges of 16th and 20th February to which the Sub-committee is referred. The Sub-committee will observe that Ms Pearson and her adviser not only consider that she has acted properly and that any suggestion she is in breach of s.31 and the Code is misconceived, but they strongly object to the Corporation's handling of the matter and their points are put in robust terms.

Documents

9. An indexed and paginated bundle of documents appears in the Appendix containing the following documents:
 - (a) Report to the Planning & Transportation Committee on 29th January 2018 concerning the Richard Cloudesley School Site
 - (b) Draft Minutes of the Planning & Transportation Committee on 29th January 2018
 - (c) Site Plan
 - (d) Register of Members' Interests Form – Ms Susan Pearson
 - (e) Dispensation request dated 18th April 2017 & Minute of Dispensations Subcommittee dated 19th May 2017.
 - (f) Urgency Decision – Standards Committee dated 9th February 2018
 - (g) DCLG Guidance (Openness and transparency on personal interests) September 2013
 - (h) Exchange of Correspondence (letters dated 12th and 14th, 16th and 20th, 27th February and 1st March 2018)
 - (i) Opinion of James Goudie Q.C. dated 26th February 2018

Relevant Legislation and Provisions of the Code

10. S.31(1) of the Localism Act 2011 provides that if a member or co-opted member of a relevant authority (i.e. the Corporation qua local authority):

- “(a) is present at a meeting of the authority or of any committee...of the authority,
- (b) has a disclosable pecuniary interest in any matter to be considered or being considered at the meeting; and
- (c) is aware that the condition in paragraph (b) is met”.

then the restrictions set out in s.31(4) apply, namely –

“The member or co-opted member may not –

- (a) Participate, or participate further, in any discussion of the matter at the meeting, or
- (b) Participate in any vote, or further vote, taken on the matter at the meeting”.

These restrictions are subject to the provisions in relation to dispensations.

Paragraph 13 of the Code reflects s.31 and provides:-

“Unless dispensation has been granted, you may not participate in any discussion of, 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”.

Issues

11. The key issue of course is whether Ms Pearson has breached her obligations under s.31 of the Localism Act 2011 and Paragraph 13 the Corporation's Code of Conduct. It appears to be agreed that Ms Pearson has a disclosable pecuniary interest in the decision to determine the planning application in relation to the land adjacent to the block of flats in which she lives. The Monitoring Officer's interpretation is that the "matter" in which she has a pecuniary interest is the planning application for the site and that therefore any committee decision which materially affects how that application is dealt with is covered by the s.31 restrictions. An information item for noting, simply outlining the decision was upcoming at a future meeting would not, on this basis trigger the s.31 restrictions. However, a recommendation to the Court of Common Council that it delegates the planning decision to Islington – which Ms Pearson characterises as merely an inter-authority jurisdictional matter – does have a material effect on how the application will be dealt with, not least because it directly affects the influence Corporation members themselves will have on the ultimate decision. Opponents of the scheme are largely the nearby City residents. Ms Pearson explicitly states that it is her intention to apply for a dispensation to speak on the application on behalf of her constituents at a subsequent Committee meeting. Whilst Ms Pearson points out that the Committee had no power to delegate the determination of the planning application to Islington itself, it is inconceivable that the Court of Common Council would delegate the matter to Islington without the recommendation of its Planning Committee. The fact that there is no pecuniary impact arising from this is, in the Monitoring Officer's opinion, immaterial. This interpretation accords with the DCLG Guidance which states:

"If you are present at a meeting of your council or authority...or of any committee...of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not: participate in any discussion..." etc.

Reasonable Excuse

12. If Ms Pearson is caught by the restriction in s.31 then in the Monitoring Officer's opinion the fact that the item in question was taken under the urgency procedure under s.100B of the Local Government Act 1972 is immaterial and does not amount to a reasonable excuse for failure to comply with s.31 obligations. Whilst there is a right to apply for a dispensation under s.33 of the Act there is no right to be granted one and the authority has a wide discretion, bearing in mind that s.33(2)(c) and (e) are the only grounds upon which an application could be founded (i.e. the dispensation is in the interests of persons living in the area or that it is otherwise appropriate to grant a dispensation). If Ms Pearson is correct then urgent decisions may be frustrated by the need to enable any member with a disclosable pecuniary interest to apply for a dispensation. It seems reasonable to ask members to anticipate disclosable pecuniary interests arising – particularly in Ms Pearson's case where she is a local resident sitting on the Planning Committee, and wishing to represent her constituents. Reference has already been made to the dispensation application that Ms Pearson submitted in April 2017, that was refused.

Leading Counsel's Opinion

13. Given the terms of Ms Pearson's response the Monitoring Officer has sought leading counsel's opinion on the interpretation of s.31 so that the Sub-committee has the benefit of an independent opinion. Leading counsel was asked to advise in writing:-

- (a) Whether a breach of s.31 and Paragraph 13 of the Code had occurred;
- (b) if so, whether an offence under s.34 is likely to have been committed or whether a reasonable excuse exists;
- (c) whether any breach of the rules of fairness/natural justice have occurred in relation to the process thus far; and
- (d) generally.

The Sub-committee has not been provided with the Instructions to Counsel, the substance of which forms the backbone of this report, in the interests of keeping the papers more manageable. However, a copy of the Instructions is available on request.

14. A copy of the opinion has been provided to Ms Pearson and her comments on it are set out in her letter of 1st March 2018. Suffice it to say that she remains adamant that she is not in breach and that the approach taken is misconceived and inappropriate.

Position of the City of London Police

15. The Monitoring Officer wrote to the Commissioner outlining the facts on 12th February 2018 and as a result met with a Detective Sergeant of the City of London Police, who notwithstanding Ms Pearson's submissions in her letter of 14th February was of the view that there were reasonable grounds to believe an offence had been committed. He advised that the Police are however content to allow the Corporation's procedures to run their course before assessing whether they should take any action.

Considerations

16. The Sub-committee should consider whether the allegations would, if proven amount to a breach of the Code of Conduct. The complaint should also be assessed against the current Corporation Assessment Criteria which includes consideration of the following matters:-

- Does the Sub-committee have enough information to satisfy itself that the allegation should be investigated?
- Is the allegation too trivial to warrant further action?
- Does the allegation appear to be simply malicious, politically motivated or tit for tat?

In doing so, the Sub-committee should also consider all the documents provided and in particular Ms Pearson's submissions and the opinion of leading counsel.

Conclusion & Action Required

17. The Sub-Committee is invited to consider the report and must determine whether:-

- (a) to refer any of the allegations to the Monitoring Officer for investigation; or
- (b) decide that no action should be taken; or
- (c) decide that other action is appropriate and instruct the Monitoring Officer accordingly.

In doing so it should take into account the views of the independent person.

Contact:
Michael Cogher
Comptroller and City Solicitor
Monitoring Officer

ASSESSMENT SUB (STANDARDS) COMMITTEE

Tuesday, 13 March 2018

Minutes of the meeting of the Assessment Sub (Standards) Committee held at Committee Room 1, 2nd Floor, West Wing, Guildhall on Tuesday 13 March 2018 at 3.00 pm

Present

Members:

Mark Greenburgh (Co-opted Member)

Deputy Jamie Ingham Clark
Deputy Edward Lord

In attendance:

Neil Asten (Independent Person)

Officers:

Michael Cogher

- Comptroller and City Solicitor

Edward Wood

- Comptroller and City Solicitor's Department

Martin Newton

- Town Clerk's Department

1. ELECTION OF A CHAIRMAN

After Deputy Edward Lord proposed that Deputy Jamie Ingham Clark should 'take the chair' for this meeting, it was

RESOLVED – That Deputy Jamie Ingham Clark be elected Chairman for the duration of this meeting of the Sub Committee.

2. QUESTIONS ON MATTERS RELATING TO THE WORK OF THE ASSESSMENTS SUB (STANDARDS) COMMITTEE

The Sub Committee noted the complaints procedure, Code of Conduct and guidance on it.

3. ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT

There was no other urgent business.

4. EXCLUSION OF THE PUBLIC

RESOLVED – That under Section 100(A) of the Local Government Act 1972, the public be excluded from the meeting for the following item on the grounds that it may involve the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Local Government Act.

5. ALLEGED BREACH OF THE MEMBERS' CODE OF CONDUCT

The Sub Committee considered a report and associated papers of the Comptroller and City Solicitor on an alleged breach of the Members' Code of Conduct.

The meeting closed at 3.50 pm

Chairman

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