

LGA in Practice

Investigations

FINAL REPORT

CONFIDENTIAL

Case LGA/KM/121

REPORT OF AN INVESTIGATION UNDER SECTION 66 OF THE LOCAL GOVERNMENT ACT 2000 BY KRIS MALDE, INTO AN ALLEGATION CONCERNING COUNCILLOR RICHARD NIXON A MEMBER OF REIGATE AND BANSTEAD BOROUGH COUNCIL.

19 March 2007

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1. Summary of allegations

Allegation 1

- 1.1 Cllr Andrew Mountney, a member of Reigate and Banstead Borough Council alleges that Cllr Richard Nixon, also a member of Reigate and Banstead Borough Council, has lobbied members of Reigate and Banstead Borough Council Planning Committee, and also Council officers, regarding a planning application relating to Elbourne House, a development containing his residence, and by doing so, has used his position as a member improperly to secure for himself and other people an advantage.

Allegation 2

- 1.2 Cllr Mountney further alleges that by behaving in the manner as outlined above, Cllr Nixon has brought his office and the authority into disrepute.

2. The Relevant Sections of the Council's Code of Conduct

- 2.1 Members of Reigate and Banstead Borough Council adopted the model Code of Conduct (the "Code") on 8 September 2003.

- 2.2 Paragraph 4 of the Code states that,

"A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute"

- 2.3 Paragraph 5(a) of the Code states that,

"A member must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage....."

3. Evidence

Background

- 3.1 Cllr Nixon moved into his current home within the Elbourne House development in July 2004. At that time, Cllr Nixon was advised that an area for parking cars adjacent to the development was not for the sole use of residents of Elbourne House.
- 3.2 The building with attached car park was initially developed as a mixed used building of shops (ground floor), community centre (first floor) offices (second floor) and affordable housing (third floor). Car parking under the terms of a section 109 agreement between the developer, Gladedale Homes and Reigate & Banstead Borough Council was to provide use of the car park for the community centre during the day Monday to Friday and the general public including the residents of the affordable homes during the evening/night time and all day on bank holidays and at weekends.
- 3.3 Around October 2005, Cllr Nixon became aware that as the community centre and the office proposals fell through Gladedale Homes sought permission planning permission for private flats on the second floor with private secured parking behind a barrier in the middle of the car park.
- 3.4 At that time, Cllr Nixon kept abreast of any applications to develop this site by looking at Council files and speaking with Council officers.
- 3.5 Council records show that in November 2004, an application was received by the Council for a change of use of part Elbourne House. In January 2006, a request was made to the authority to vary this agreement under section 106 of the Town and Country Planning Act. This matter was further considered at a meeting of the planning committee on 12 July 2006
- 3.6 Cllr Nixon was elected as a member for Horley East in May 2006. At that time, Cllr Nixon was also a member of the Planning Committee.
- 3.7 Council records show that on 12 July 2006, when the Planning Committee considered the application regarding Elbourne House, Cllr Nixon declared a personal and prejudicial interest.
- 3.8 Council records also show that Cllr Nixon's wife, Mrs Michele Nixon and other residents of Elbourne House have previously raised objections to the proposed development at Elbourne House.

Investigation

- 3.9 Evidence has been sought from Cllrs S. Banwait, R. Bennett, N. Bramhall, A. De Save, S. Mantle, J. Meech, M. Miller, F. Moore, A. Mountney, R. Newstead, R. Nixon, D. Ross-Tomlin (all members of the Planning Committee), Mr Chris Cook (Democratic Services Manager), Mr G. Davies (Planning Officer) & M. Harbottle (Head of Building and Development Services.)
- 3.10 During interview, and in his letter of complaint, Cllr Mountney stated that he had been made aware that prior to the Planning Committee meeting on 12 July 2006, members of the Planning Committee had received an email and an attached letter from Mrs Nixon, Cllr Nixon's wife making representations regarding the planning application relating to Elbourne House.
- 3.11 He said that this email, which was dated 4 July 2006, and the attached letter dated 29 June 2006, was sent using an email account that was jointly owned by Cllr Nixon and his wife and was sent to all members of the Planning Committee.
- 3.12 Cllr Mountney further stated that, upon his request, Cllr Nixon then sent an email on 6 July 2006 to all members of the Planning Committee, using his Council email account, to apologise for his wife's previous email.
- 3.13 Copies of these emails are appended to this report.
- 3.14 Cllr Mountney said that he was also concerned about the letter that was attached to the email in that it could be construed that this letter was jointly written by Cllr Nixon and his wife. A copy of this letter is appended.
- 3.15 Cllr Mountney also stated that as far as he was aware, Cllr Nixon had previously spoken to planning officers regarding the planning application relating to Elbourne House and had also spoken to members of the Planning Committee.
- 3.16 Cllr Mountney concluded that although he had spoken to Cllr Nixon regarding his involvement with the Elbourne House planning application, Cllr Nixon had ignored this advice and continued to make representations to both members and officers about the application and proposed changes.
- 3.17 During interview, Cllrs Banwait, Bramhall, De Save, Mantle, Miller, Newstead and Meech all stated that they had not been lobbied by Cllr Nixon regarding the Elbourne House planning application and did not feel that he had tried to persuade them in any way.

- 3.18 During interview, Cllr Miller, Chair of the Planning Committee, stated that he, like other members of the planning committee had received an email from Cllr Nixon's wife and at that time Cllr Nixon was warned about the use of his joint email account. Cllr Miller further stated that as a result of this email, some members may have changed their view regarding the application.
- 3.19 During interview Cllr Bennett stated that he recalled the email from Cllr Nixon's wife. He said that it was quite possible that Cllr Nixon may have spoken to him about the Elbourne House planning application in his capacity as Vice Chair of the Planning Committee however, he did not consider that Cllr Nixon had tried to lobby him.
- 3.20 During interview Cllr Moore stated that Cllr Nixon had never spoken to him about the Elbourne House planning application. He said that he had seen the email sent by Cllr Nixon's wife.
- 3.21 During interview Cllr Ross-Tomlin stated that Cllr Nixon had spoken to her about the Elbourne House planning application. She said that Cllr Nixon was a new Councillor at the time and was asking her for advice about the correct course of action regarding the application.
- 3.22 Cllr Ross-Tomlin said although that Cllr Nixon was very enthusiastic he did not try to lobby her or influence her decision.
- 3.23 During interview Mr Chris Cook, Democratic Services Manager, stated that Cllr Nixon had spoken to him about the Elbourne House development.
- 3.24 Mr Cook provided a note of his conversation with Cllr Nixon, dated 7 June 2006, and said that during the meeting, he advised Cllr Nixon not to try to 'influence decision makers', and also that it would not be wise of him or his wife to approach the press. A copy of this file note is appended.
- 3.25 Mr Cook further stated that he made it clear to Cllr Nixon that any action taken by his wife could reflect upon him as a Cllr.
- 3.26 Mr Mark Harbottle, Head of Building and Development Services, stated during interview that he knew of Cllr Nixon before he became a Councillor. He said that he was aware that Cllr Nixon was a local resident who had an interest in the Elbourne House planning application.
- 3.27 Mr Harbottle stated that he had only spoken to Cllr Nixon on one occasion after he became elected. He said that Cllr Nixon had some "*simple*" concerns about the application which were "*not out of the ordinary*".

- 3.28 Mr Harbottle further stated that Cllr Nixon had not asked him to do anything that a local resident would ask and in no way did he feel that Cllr Nixon was *"trying to influence his judgement"*.
- 3.29 As part of this investigation, the planning file relating to Elbourne House was examined. Attached to this file, was a sub-file marked 'confidential'. A number of documents from this file were examined and copied.
- 3.30 Mr Harbottle confirmed that Cllr Nixon had not had access to the confidential sub-file nor had Cllr Nixon requested to view it.
- 3.31 The planning file contained letters from Mrs Nixon. One of the letters, which is appended, was attached to an email dated 14 June 2006 and addressed to a number of Cllrs including those on the Planning Committee. The email was sent using the joint email account of Cllr Nixon and his wife.
- 3.32 The letter attached to the email was a letter opposing the Elbourne House planning application. The header contained Cllr Nixon and his wife's joint email account address and also Cllr Nixon's mobile telephone number.
- 3.33 The second letter, which is also appended, was written to Gladedale Homes Limited and dated 11 July 2006. On this occasion, the header contained a private email address for Mrs Nixon but still had Cllr Nixon's mobile telephone number stated.
- 3.34 Cllr Nixon was frank and open during interview. He gave some background about his purchase of the property at Elbourne House and the proposed development of the site.
- 3.35 Cllr Nixon said that at the time of purchasing his property, in 2004, and up until he became a Councillor he had spoken to his MP and also an Officer of the Council regarding the development. He added that around the beginning of 2006, he would visit the Council offices about once a month to look at the Elbourne House planning file, take copies of relevant documents, and speak with the duty planning officer.
- 3.36 Cllr Nixon further stated that after becoming elected, he *"exercised his right to go the Planning department offices to look at the Elbourne House planning file"*. Cllr Nixon said that around May 2006 he spoke to Mr Harbottle about the planning application to express his concerns.
- 3.37 Cllr Nixon stated that as other local residents within Elbourne House were unaware of the proposed developments he gave them the email addresses of the members on the Planning Committee so that they could write to them expressing their concerns.

- 3.38 With regards to the email sent to members of the Planning Committee by his wife, Cllr Nixon said that he had seen the email but was not involved in writing it. He said that Cllr Mountney had spoken to him about this email and advised him that this was a serious matter.
- 3.39 Cllr Nixon said that he understood the gravity of the situation and sent an apology to the members of the Planning Committee as advised by Cllr Mountney following a discussion after a Conservative Group meeting.
- 3.40 Cllr Nixon stated that as he was a new Councillor he was not fully aware of his responsibilities. He said that he had previously sought advice from Democratic Services regarding his rights to oppose a planning application.
- 3.41 Cllr Nixon said that he was advised that if he wrote a letter opposing a planning application, this may have more influence than if a letter was written by a member of the public. He was also advised that if a letter was written by his wife, this was "*equally as bad*".
- 3.42 Cllr Nixon further stated that he may have spoken to a few members of the Planning Committee about the Elbourne House planning application. He said that he spoke to Cllrs Meech and Miller who both had personal and prejudicial interest about the planning application as they were members of the town council who were going to benefit from the application going ahead and therefore anything he said to them was not going to make any difference as they would not be in the meeting for the agenda item on Elbourne House.
- 3.43 Cllr Nixon said that he also briefly spoke to Cllr Ross Tomlins, who was his election agent, about how his fellow residents could raise objections after the three week consultation period had finished. He said that he did not talk about the specifics of the case and as a county councillor she was fully aware of the application history and the proposed changes that the developer was proposing.
- 3.44 An email from Cllr Nixon to Mr Harbottle dated 2 June 2006, contained in the Elbourne House planning file was copied and put to Cllr Nixon during interview. A copy of this email is appended.
- 3.45 In summary, the email, which appears to be personal, states that it is a formal opposition to the development of Elbourne House, outlines a number of reasons for the opposition, and is signed off as Cllr Nixon.

- 3.46 Cllr Nixon again stated that he sent this email in response to an email sent by Mr Harbottle to members of the Planning Committee and was *"just a confirmation that I opposed the application which he knew already....."*
- 3.47 Cllr Nixon said *"I did not fully know what I was doing"*. He added, at first, he did not fully grasp the reality of what he could do regarding planning applications.
- 3.48 Cllr Nixon concluded that although he was aware his wife was writing letters to fellow residents opposing the application he did not know that she was using their joint email account to send them or that his personal mobile number was included on the letter head.
- 3.49 With regards to training, Cllr Nixon stated that he attended Probity and Ethics training in September having missed the July meeting due to being stuck in a traffic jam in Crystal Palace which meant that he did not get home in time to attend the meeting.
- 3.50 Council records show that apart from the training received in September, Cllr Nixon also received Planning Committee training on 22 May 2006 which covered probity aspects.

4 Findings of Fact

- 4.1 It is not disputed that Cllr Nixon's wife sent an email to members of the Planning Committee from an email account jointly owned with Cllr Nixon.
- 4.2 Furthermore, it is not disputed that this was the second occasion that Mrs Nixon had emailed members of the Planning Committee using the joint email account.
- 4.3 It is also not disputed that Cllr Nixon sent an email to members of the Planning Committee apologising for his wife's email.
- 4.4 It is not disputed that Cllr Nixon spoke to Mr Harbottle or some members of the Planning Committee.
- 4.5 However, it is disputed whether by speaking with Council officers or members, Cllr Nixon tried to influence them, thus securing for himself an advantage.

5 Reasoning

Allegation 1

- 5.1 Paragraph 5(a) of the Code of Conduct is explicit in that a member must not secure for himself or another person an advantage.
- 5.2 I consider it irresponsible of Cllr Nixon to allow his wife to send an email and letter to members of the Planning Committee using a joint email account. This matter is further aggravated by Cllr Nixon's mobile number and joint email address being stated in the header of the attached letter.
- 5.3 Further to this, Cllr Nixon admitted to speaking with members of the Planning Committee about the Elbourne House planning application.
- 5.4 I have considered the evidence of the majority of the members of the Planning Committee and Planning Officers in that they did not feel that they were lobbied or asked to take a particular view regarding the application. However, Cllr Nixon has admitted to talking about the application to a few members and also admitted to speaking with Council officers about his concerns.
- 5.5 Further to this, although the email from Cllr Nixon to Mr Harbottle dated 2 June 2006 does not seek to influence Mr Harbottle, the fact remains that the email is signed off as Cllr Nixon. I note Cllr Nixon's comment that this email was in response from an email sent from Mr Harbottle, however, it appears that Cllr Nixon has used this opportunity to reiterate his opposition to the proposed development.
- 5.6 In my view, Cllr Nixon was fully aware, and also warned accordingly, that an email or letter written by a Cllr regarding this matter would carry more weight than a letter or email sent by a 'normal' member of the public, and as such I consider that Cllr Nixon sought to use his position as a member improperly to secure for himself and other people an advantage.

Allegation 2

- 5.7 From the evidence available to me, I consider that although Cllr Nixon sought to secure an advantage by allowing his wife to email members of the Planning Committee and also by sending a further email to members, I do not consider that Cllr Nixon's actions were such that they bring the authority into disrepute.

- 5.8 However, in saying this, Cllr Nixon was previously warned by experienced members and officers to be careful about his actions regarding the proposed Elbourne House planning development. In addition to this, by his own admission, Cllr Nixon had an interest in this development prior to becoming a Cllr and renewed this interest once becoming elected.
- 5.9 As previously stated, Cllr Nixon was fully aware that officers, and members, would take 'more' notice of an email or letter sent by a Cllr as opposed to a member of the public. This is not to say that emails and letters sent by members of the public are ignored but in this particular instance, Cllr Nixon was aware that members would give greater credence to the letter and email sent by his wife if he allowed his joint email address and his mobile number to be used.
- 5.10 I have also noted Cllr Nixon's immediate action in remedying the situation by sending an email apologising for his wife's actions
- 5.11 Therefore, be considering all of the evidence available to me, I conclude that Cllr Nixon behaved in a manner that could be regarded as bringing his office into disrepute.

6 Finding as to whether there has been a failure to comply with the Code of Conduct

Allegation 1

- 6.1 It must be noted that this was the second occasion that Mrs Nixon contacted members of the Planning Committee (the first being on 14 June 2006) using the joint email account. This was also the second occasion that Mrs Nixon sent a letter with the joint email address and Cllr Nixon's mobile telephone number stated in the header.
- 6.2 Although I have considered Cllr Nixon's comment that he has insufficient training at that time evidence shows that Cllr Nixon had actually received Planning Committee training on 22 May 2006 and this involved probity aspects. In addition to this, the Democratic Services Manager also expressed concerns to Cllr Nixon about his involvement with the Elbourne House development in a meeting on 7 June 2006.
- 6.3 For these reasons and the reasons stated in Section 5, my finding is that Cllr Nixon used his position as a member improperly to secure for himself, and other people an advantage.

- 6.4 Accordingly I find that Cllr Nixon failed to comply with paragraph 5(a) of Reigate and Banstead Borough Council's Code of Conduct.

Allegation 2

- 6.5 From the evidence available to me, I consider that Cllr Nixon did not behave in a manner that could be regarded as bringing the Authority into disrepute.
- 6.6 However, I consider that Cllr Nixon was fully aware of the implications of speaking with members and officers about the proposed Elbourne House planning development and also about the implications of his wife sending emails and letters to members of the Planning Committee. This was done on two occasions.
- 6.7 In addition to this, evidence shows that Mrs Nixon had access to a private email account and there is concern why this account was not used when emailing members of the Planning Committee. This may have gone some way towards assisting Cllr Nixon to retain some 'distance' from the emails and letters written by Mrs Nixon.
- 6.8 Therefore, for these reasons and the reasons stated in section 5 I find that Cllr Nixon behaved in a manner that could be considered as bringing his office into disrepute, thus failing to comply with paragraph 4 of Reigate and Banstead Borough Council's Code of Conduct.

7 Schedule of documents

- (i) Members Code of Conduct
- (ii) Email from Mrs Nixon to members of Reigate and Banstead Planning Committee dated 4 July 2006.
- (iii) Letter from Mrs Nixon dated 29 June 2006, attached to above email.
- (iv) Apology email from Cllr Nixon dated 6 July 2006.
- (v) File note of meeting between Mr C. Cook and Cllr Nixon dated 7 June 2006.
- (vi) Email from Mrs Nixon to members of Reigate and Banstead Planning Committee dated 14 June 2006 with letter attached
- (vii) Letter from Mrs Nixon dated 11 July 2006 with private email address stated in header.
- (viii) Email from Cllr Nixon to Mr Harbottle dated 2 June 2006 (contains Mr Harbottle's response)