

WAVERLEY BOROUGH COUNCIL

COUNCIL

12 FEBRUARY 2019

Title:

STANDARDS PANEL, 1 FEBRUARY 2019 – DECISION

A Meeting of the Standards Panel was held on Friday, 1 February 2019 to consider the External Investigator's report on two complaints against Waverley Borough Councillor Jerry Hyman.

The decision of the Panel is set out below and, in accordance with Waverley's *Arrangements for dealing with Standards Allegations against Councillors and co-opted Members under the Localism Act 2011* (paragraph 8), is reported to Council for noting.

CONFIRMATION OF PANEL DECISION

The Panel heard evidence from Mr Taylor (Monitoring Officer), Mr Oram (External Investigator), Mr Bainbridge (Complainant), Cllr Isherwood (Complainant), Cllr Hyman (Subject Member) and Ms Cameron (the Independent Person).

The facts about what was said by Cllr Hyman at the specific planning meetings and which led to the complaints are not in dispute. The Panel watched the webcasts and has seen the transcripts of what was said.

Cllr Hyman has set out a lot of detail about the background and his beliefs about the legal position in respect of various planning issues. Mr Oram and others pointed out on many occasions that their conclusions did not determine whether Cllr Hyman or officers were correct on these legal points, as that was not the issue to be determined. The issue was whether the manner in which Cllr Hyman conducted himself when challenging officers breached the Council's member code of conduct.

Having considered all of the evidence carefully, and taken into account the views of the Independent Person, the Panel unanimously concluded that:

1. Cllr Hyman was acting in his capacity as a member of Waverley BC when attending the relevant meetings;
2. The allegations were set out in Mr Oram's report in some detail including transcripts of the exchanges between Cllr Hyman and officers and Cllr Hyman and the Chairman at Planning Committee meetings on 16 November 2016 and 29 March 2017.
3. The Panel considered the Members Code of Conduct and in particular paragraph 2:

- a. 2(1) You must always treat member colleagues, officers, other organisations and members of the public with respect.
 - b. 2(2) You must not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct by members.
4. The Panel also considered carefully the Officer /Member Protocol and in particular at paragraph 20, where it is stated that Members should:
 - Avoid criticising officers particularly at meetings open to the public or in the media
 - Avoid actions or words that may appear to others to be attaching blame to an officer(s) particularly when the officer(s) is not present
 - avoid words or actions that may serve to undermine the professionalism and integrity of officers;
5. The Panel noted and was very mindful of the fact (as set out in the Investigating Officer's report) that the code is not intended to stifle the expressions of passion and frustration that often accompany discussion about the efficient running of the Council. The Panel fully accepts that members can and should be allowed to challenge officers. However, it is important that members do this appropriately and in a way that treats officers with respect.
6. The Panel formed a view, in accordance with the views of the Investigating Officer that Cllr Hyman's conduct towards the legal officers was not deliberately malicious. However, it did strongly appear that Cllr Hyman did not give any thought, or was not aware of how his conduct might impact on officers.
7. The Panel was disappointed firstly that the complaints have taken so long to determine and secondly that it was necessary to have a hearing rather than resolve the matter informally.
8. Having heard all of the evidence and representations and recognizing the circumstances and context put forward, the Panel found that Cllr Hyman's conduct at the relevant planning meetings did breach the Member Code of Conduct and the Member /Officer Protocol. The Panel agreed with the Investigating Officer's and Independent Person's views that Cllr Hyman's conduct crossed the line between challenging officers in an acceptable way and therefore breached the code. The Panel does consider that members can and should challenge officers. However this must be done in a respectful way. Having heard the evidence, the Panel considered that Cllr Hyman's conduct was not respectful to officers in respect of the specific complaints and therefore breached the code.

The Panel wishes to make it clear to Cllr Hyman that such conduct is not considered acceptable at WBC.

9. The Panel carefully considered Cllr Hyman's rights to freedom of expression under Article 10 of the Human Rights Act. The Panel was very mindful of the need to balance Cllr Hyman's rights to express political opinions against the rights of officers to be treated with respect. The Panel considered carefully the points set out by Cllr Hyman and the Investigating Officer in his report and the enhanced

protections afforded to politicians. The Panel considered that a finding that Cllr Hyman had breached the code should not represent a disproportionate restriction on his freedom of expression.

The Panel resolved to:

- (i) publish its findings in respect of Cllr Hyman's conduct, in accordance with paragraph 8.1 of the Council's Arrangements for Dealing with Standards Allegations Against Councillors;
- (ii) report its findings to the Council, in accordance with paragraph 8.2 of the Council's Arrangements for Dealing with Standards Allegations Against Councillors; and
- (iii) instruct the Monitoring Officer to arrange training on councillor/officer protocols and working relationships, to be carried out within 42 days, in accordance with paragraph 8.5 of the Council's Arrangements for Dealing with Standards Allegations Against Councillors.

NOTE: If Cllr Hyman chooses, within 14 days, to appeal against the decision of the Standards Panel, the decision will be reviewed by another three members of the Standards Committee who have not been involved.

Recommendation

That Council notes the decision of the Standards Panel held on 1 February 2019.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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