

MONITORING OFFICER DECISION NOTICE

Complaint Number COC021
Cllr. Shaw of Orcop Parish Council

DECISION

That Mr. Shaw did **BREACH** the following parts of the Code of Conduct for Orcop Parish Council:-

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

9.1 I register and disclose my interests.

COMPLAINT

The Council received a complaint from Mr. Ryan Taylor that Mr Shaw had addressed the Council's Planning & Regulatory Committee on 16 March 2022. He claimed to be representing Orcop Parish Council, and progressed by raising his own concern about the proximity to his own property and the impact of the frontage on his property. Such comments included the planning site being 'only 25 metres from my property' and has 'a ridge height 5 metres higher than mine'.

The complainant also felt that Mr. Shaw misrepresented planning issues, as follows:-

- He claimed there was no identified undersupply of housing, in direct conflict with the Council's planning officers report
- He claimed that there was insufficient drainage testing at the property although the Council have approved the drainage tests
- He claimed that drainage at No.2 had failed although these comments were redacted from others reports as being factually inaccurate

Mr. Shaw submitted an objection to the planning application. He identified in his objection that he lived 25 metres from the property. Mr Shaw did not declare an interest at Parish Council meetings when this application was discussed.

Mr Shaw was witness to the 3rd round of drainage testing that was completed on this site for the new live application which had been requested by the case officer based on 'local knowledge' from Mr Shaw amongst others. It is unlikely that members of the public were invited to the drainage testing and Cllr. Shaw could have used his position to improperly gain an advantage.

FINDINGS

As with the assessment of all ethical standards matters this is considered on the balance of probabilities, that is; would a reasonable person in possession of all the facts and viewing them objectively, consider that it is more likely than not that Mr. Shaw has breached the Code of Conduct.

Parish Council meeting of 15 March 2023. Mr. Shaw explained to the Investigator that he did not declare an interest for the item on the application site, because he was speaking on behalf of residents in the hamlet rather than for himself. He did not mention anything associated with his property and the Parish Council letter of objection doesn't contain anything to do with his property. Mr. Shaw says he did not declare an interest because he would not have been able to speak.

He also said that everyone on the Parish Council knows where he lives and that he had put in his own objection.

Mr. Shaw should have considered whether he had an 'other registerable interest' or 'non-registerable interest' in this matter, because he lived very close to the application site. The Code says you should not participate in the relevant business of the Council in two circumstances;

1. When a matter directly relates to your interest; or
2. When a matter affects that interest to a greater extent than it affects the majority of inhabitants and a reasonable member of the public would thereby believe that your view of the public interest would be affected

I have considered whether the application 'affects' Mr. Shaw more than it affects the majority of people in the area. I conclude that it does, as Mr. Shaw lives in close proximity and is very concerned about the effect on drainage. I also considered whether a reasonable member of the public knowing all the facts would believe that his judgment of the wider public interest would be affected. I think that a member of the public would consider that Mr. Shaw's judgment would be affected, due to his previous objections to the application.

It is important that the public know about any interest that might have to be disclosed by councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of councillors is maintained.

I do find that Mr. Shaw did **BREACH** the following parts of the Code of Conduct for Orcop Parish Council:-

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

9.1 I register and disclose my interests.

Mr. Shaw did not try to cover up that he had remained in the room and spoken, and was very clear that he did not want to declare an interest because he knew he would not be able to speak on the matter. I consider that he failed to think through the test of 'what would a reasonable member of the public think' given knowledge of all of the facts. The test isn't 'what would residents of your local parish think of your action'. All of the Council (and presumably the Clerk) were aware of Mr. Shaw's objection and the proximity of his property, and yet no-one else mentioned that Mr. Shaw might have an interest.

Mr. Shaw feels that his actions (or lack of) in not declaring an interest are questionable but considerate of his neighbouring residents, rather than a lack of knowledge of codes of practice. He feels it is part of his duty to report and support resident's concerns, and says 'Orcop Hill is a tiny hamlet of thirty or so houses and everything affects everyone'. I am sure that this is the case, but nonetheless when agreeing to become a parish councillor, you agree to abide by the Code of Conduct which applies to your council, regardless of whether you feel it allows you to carry out your responsibilities.

Being a parish councillor provides opportunities and responsibilities and can involve making decisions which will have an impact on others. Involving yourself in a decision in which you have an interest, to seek to benefit yourself or another, is using your position improperly to the advantage or disadvantage of someone else. I consider that Mr. Shaw remaining in the room to speak on the planning matter in which he had an interest, was an improper use of his position. I accept that Mr. Shaw felt that he was speaking on behalf of other residents, but the test is also 'to seek to benefit yourself or another'.

PROCEDURE

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

Complaint

Attachment 2 – Code of Conduct of Orcop Parish Council

Attachment 3 – Notes of meeting with Mr. Shaw

Attachment 4 – Further information from the complainant

Attachment 5 – Minutes of the meeting of the Parish Council of 15 March 2023

Attachment 6 - Parish Council objection dated 18 March 2023

Attachment 7 - Register of Interests of Mr. Shaw

Attachment 8 - Response from Mr. Shaw

CONCLUSION

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. Shaw has breached the following parts of the Orcop Parish Council Code of Conduct:

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

9.1 I register and disclose my interests.

I have recommended to the Parish Council that the following actions be undertaken:-

- (a) all members of the Parish Council undertake Code of Conduct training and
- (b) that Mr. Shaw apologise to the Parish Council for his failure to declare an interest

There is no right of appeal against this decision notice.



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Monitoring Officer

Dated: 11 September 2023