

## **Monitoring Officer Decision Notice Complaint Number COC062 Councillor Barry Shaw of Orcop Parish Council**

### **DECISION**

That Councillor Shaw **DID BREACH** the following parts of the Code of Conduct for Orcop Parish Council:-

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

That Councillor Shaw **DID NOT BREACH** the following:

**General principle: I act with integrity and honesty**

**General principle: I lead by example and act in a way that secures public confidence in the role of councillor**

**9.1 I register and disclose my interests**

### **COMPLAINT**

1. The Council received a complaint that Councillor Barry Shaw, an elected member of Orcop Parish Council had breached the Parish Council's Code of Conduct, by failing to declare an interest in an objection to a planning application, which was submitted to Herefordshire Council as an objection on behalf of Orcop Parish Council.
2. The relevant planning application was in fact an amendment to a previous planning application, which itself gave rise to a similar complaint under the Code of Conduct, considered in September 2023 under reference COC021. That investigation resulted in a published decision that Councillor Shaw was in breach of the Code of Conduct.
3. In February 2024, the Clerk emailed members of the Parish Council, seeking their views in relation to the relevant planning application, conducting this business by email because the deadline for representations fell before the next full council meeting.
4. The Complainant provided a copy of an objection noted on Herefordshire Council's planning portal in February 2024, which suggested that that document had been submitted by the Clerk as an objection on behalf of Orcop Parish Council, particularly noting that he had been asked to do so by two councillors, one of whom the Complainant believed to be Councillor Shaw.
5. This objection, noted by the Complainant in February 2024, was subsequently removed from Herefordshire Council's planning portal, and was replaced with an objection on behalf of Orcop Parish Council.

## **FINDINGS**

6. In accordance with the assessment of all Code of Conduct matters, I considered the evidence 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 the Subject Member has breached the Code of Conduct.
7. Section 27 (2) of the Localism Act provides that the Code of Conduct applies only when a member is acting in his or her capacity as a member.
8. At all material times, I find that Councillor Shaw was acting in his capacity as a member of Orcop Parish Council.

### **General principle: I act with integrity and honesty**

9. The Complainant alleged that, in responding to the Clerk by giving his views, which he knew would form part of a representation on behalf of the Parish Council as a whole, Councillor Shaw failed to act with integrity and honesty.
10. Councillor Shaw acknowledged that he should have declined to comment in response to the Clerk's request for comments on 06.02.24, on the basis that he had a declarable interest. He reflected that he would approach any similar issue differently in future.
11. Councillor Shaw said that he believed he was offering only views that were already in the public domain, having been submitted in relation to the previous planning application for the relevant site.
12. Immediately upon the Clerk informing members that the objection as originally lodged would have to be withdrawn, I understand, from his discussion with the Investigator, that Councillor Shaw realised he should not have replied to the Clerk including his comments about the planning application.
13. The Investigator's view was that Councillor Shaw genuinely thought he was reiterating commentary that was already in the public domain, and that he was doing so for the benefit of the parish.
14. I think that, at the point of responding to the Clerk, Councillor Shaw lacked a sound enough understanding of his responsibilities under the Code of Conduct, particularly in relation to ensuring he did not use, or attempt to use, his position improperly to the advantage of himself or anyone else.
15. In light of the proximity of this complaint, to the findings of breach against Councillor Shaw in September 2023, the Investigator weighed the evidence carefully in considering whether his conduct lacked integrity or honesty. I agreed that Councillor Shaw, in his efforts to make representations as he would wish, paid insufficient attention to his need to consider all of his responsibilities under the Code of Conduct and, although he declared an interest in the matter, in responding to the Clerk, he should also have considered declining to comment. He certainly recognised and distinguished his need to lodge an individual objection, which he later did.
16. The Investigator, upon interviewing Councillor Shaw, took into account his regret about the events leading to this complaint and I am persuaded, on a balance of probabilities, that he had reflected on events and regretted responding as he did to the Clerk.

17. My finding is that Councillor Shaw did not breach the general principle of acting with integrity and honesty but I urge him to reflect widely on his responsibilities under the Code of Conduct, given two similar complaints in less than a year. It would be very difficult, I think, for Councillor Shaw to rely again on regret after the event, and I think it is important that he demonstrates his regret on this occasion, by undertaking the training that is recommended below.

**I DO NOT find this to be a BREACH of this part of the general principles of the Code of Conduct**

**General principle: I lead by example and act in a way that secures public confidence in the role of councillor**

18. This allegation is concerned with the way in which the public might view the conduct of an elected member by bringing their role into disrepute. In general terms, this can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor's conduct in office will bring their role into disrepute if the conduct could reasonably be regarded as either reducing the public's confidence in them being able to fulfil their role, or adversely affecting the reputation of the authority's councillors, in being able to fulfil their role.
19. Councillor Shaw lodged an individual objection to the planning application and that was not a matter for the Code of Conduct, since in that action, he was not acting in his role as a councillor.
20. The Complainant and Councillor Shaw were clearly in disagreement about aspects of the planning application; that too was not a matter for the Code of Conduct, nor are the merits of the planning application.
21. Councillor Shaw described to the Investigator the issues that he was concerned about, relating to the planning application. I had no doubt that Councillor Shaw's views were genuinely held but I make no findings, nor do I take any view on the merits or issues involved; these rest correctly with the Planning Authority.
22. Councillor Shaw had no role in deciding whether the planning application was granted, and the objections that the Planning Authority will have had regard to reflect an objection on behalf of the Parish Council that was not written by Councillor Shaw, along with his individual objection, which he was entitled to make.
23. I do not think that a reasonable member of the public would, in these circumstances, think that Councillor Shaw had acted in a way that damages public confidence in his role.

**I DO NOT find this to be a BREACH of this part of the general principles of the Code of Conduct.**

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

24. When the Clerk to the Parish Council asked for his views about the planning application, Councillor Shaw had to consider whether he had an 'other registerable interest' or 'non-registerable interest' in this matter, because he lived very close to the site that was the

subject of the application for planning permission. He appears to have been cognizant of this, since he mentioned it in his response to the Clerk, and said he would be lodging an objection as an individual.

25. The Code says that an elected member should not participate in the relevant business of the Council in two circumstances:
  - (i) When a matter directly relates to your interest; or
  - (ii) 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 therefore believe that your view of the public interest would be affected.
26. I considered whether the planning application 'affects' Councillor Shaw more than it affects the majority of people in the area and in my view, it does, since Councillor Shaw lives in close proximity to the site and has strong views about the development.
27. I considered whether a reasonable member of the public knowing all the facts would believe that Councillor Shaw's judgment of the wider public interest would be affected and I find that a member of the public would consider that Mr. Shaw's judgment would be affected, due to his previous objections to the application and the proximity of his own property to the development site.
28. Although Councillor Shaw noted his interest, in responding to the Clerk, I find that he should also have declined to comment. I note the Investigator's observation that, when she met with Councillor Shaw, he appeared to realise that this would have been the correct approach.
29. It is unfortunate that Councillor Shaw's experience of the same issues, which resulted in a finding that he had been in breach of the Code of Conduct, only six months previously, did not cause him to reflect, or to take advice had he been in any doubt upon the point.
30. I did not doubt the sincerity of Councillor Shaw's views but highlight his responsibilities that he agreed, upon becoming a parish councillor, to abide by the Code of Conduct.
31. I had no doubt that Councillor Shaw knew he had a declarable interest in the planning application that the Clerk sought members' views upon. In light of my finding that Councillor Shaw had breached the Code of Conduct in September 2023, this should have led him to have a much clearer understanding of his responsibility to both declare an interest *and* to make no comments in response to the Clerk's enquiry, and I find that he ought to have responded to that effect.
32. Although he declared his interest, in responding to the Clerk, he went on to provide detailed comments in his response, which I find he knew would become part of the Parish Council's objection to be lodged with the Planning Authority. Whilst Councillor Shaw appears to have recognised his mistake, I do find that he used his position improperly, in an attempt to advantage his own views in relation to the planning application.

**I DO find this to be a BREACH of paragraph 6.1 of the Code of Conduct: I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

### **Paragraph 9.1: I register and disclose my interests**

33. Councillor Shaw was open in discussing with the Investigator what had happened in relation to this matter. He said that he thought he was reiterating comments that were already in the public domain. He knew that he had a disclosable interest and he said so, in responding to the Clerk.

34. I find that Councillor Shaw knew that he had a declarable interest and did declare this.

35. In my view, it would have been preferable had he declined to make any further comment when he replied to the Clerk. However, having informed the Clerk of his interest, I do not find that Councillor Shaw breached the Code of Conduct on this point.

**I DO NOT find this to be a BREACH of paragraph 9.1 of the Code of Conduct: I register and disclose my interests.**

### **PROCEDURE**

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

- Code of Conduct of Orcop Parish Council
- Complaint dated 20.02.24
- Response from Councillor Shaw dated 27.02.24
- Notes of meeting with the Complainant dated 11.03.24
- Notes of meeting with the Clerk to Orcop Parish Council on 06.03.24
- Notes of meeting with Councillor Shaw dated 14.03.24
- Decision Notice on COC021
- 'Supporting document to the complaint', being the objection noted on Herefordshire Council's planning portal February 2024
- Email evidence provided by the Clerk to Orcop Parish Council to the Monitoring Officer
- Consideration of comments received on draft report

### **CONCLUSION**

37. 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 and they are in agreement with my decision.

38. I find that Councillor Shaw has breached the following parts of the Orcop Parish Council Code of Conduct:

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

39. I find that Councillor Shaw has not breached the following parts of the Orcop Parish Council Code of Conduct:

- General principle: I act with integrity and honesty
- General principle: I lead by example and act in a way that secures public confidence in the role of councillor
- 9.1 I register and disclose my interests

40. I made recommendations in September 2023 on the same issue that is the subject of this complaint. These included the recommendation of training for the Parish Council members. Councillor Shaw disagreed with the suggestion that Code of Conduct training was needed in September 2023. However, I conclude that it was appropriate then, and is now of crucial importance, since I have been asked to consider this complaint only six months after deciding that Councillor Shaw had breached the Code of Conduct on a similar issue.
41. The Council's procedure for dealing with Code of Conduct complaints states that the Monitoring Officer has the following options upon completion of a formal investigation:
1. There has been no breach and therefore no further action will be taken;
  2. There have been one or more breaches, but no further action is needed;
  3. There have been one or more breaches, but the matters should be resolved in a way other than by a hearing; or
  4. That the matters be referred to a hearing.
42. In light of the recommendations for resolution in the final investigation report, and my findings in this matter, I proposed a resolution, in accordance with point 3, that there have been one or more breaches, but that matters should be resolved in a way other than by a hearing.
43. Accordingly, I have recommended to the Parish Council that the following actions be undertaken:-
- (a) Councillor Shaw apologises to the Parish Council for improper use of his position, in having provided comments to the Clerk that he knew were to be used to inform a whole parish council objection to a planning application in which he had an interest; and
  - (b) Councillor Shaw should undertake Code of Conduct training within three months of any Decision Notice published by the Monitoring Officer.

There is no right of appeal against this decision notice.



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Monitoring Officer

Dated: 24<sup>th</sup> May 2024