



DERBY CITY COUNCIL

STANDARDS COMMITTEE 3 August 2007

Report of the Corporate Director of Corporate and Adult Services

Investigation Relating to Complaint Against a Former Councillor, Councillor Samra

RECOMMENDATION

1. To note the report in Appendix 2 and endorse its conclusion, that in terms of the allegation against the former Councillor Samra, no breach of the Council's Code of Conduct has occurred.

SUPPORTING INFORMATION

- 2.1 The investigation relates to a complaint by Mr Wood of ADDC Architects against the former Councillor Samra, alleging that he may have failed to comply with the Council's Code of Conduct when dealing with a planning application, when the application was considered by the Planning Control Committee on 22 February and 22 March 2007.
- 2.2 The complaint was referred by the Standards Board for England and Wales to the Council's Monitoring Officer on 17 May 2007 to investigate and report to the Standards committee.
- 2.3 The report of the officer appointed to investigate the allegation is attached as Appendix 2

For more information contact: Stephen Teasdale Tel: 01332 255453
Background papers: e-mail: Stephen.teasdale@derby.gov.uk
List of appendices: Appendix 2 Officers Report

IMPLICATIONS

Financial

1. None.

Legal

2. None directly arising.

Personnel

3. None.

Equalities impact

4. None.

Corporate Values

5. The effective working of the Standards Committee contributes to the Council's Value: "We will be open, transparent and honest in everything we do"

STANDARDS INVESTIGATION REPORT

SBE18141 .07

Investigation Relating to Complaint Against a Former Councillor, Councillor Samra

Outline

The investigation relates to an allegation by Mr Wood of ADDC Architects against the former Councillor Samra that he may have failed to comply with the Councils Code of Conduct.

The complaint was referred by the Standards Board for England and Wales to the Council's monitoring officer on 17 May 2007 to investigate and report to the Standards committee.

A copy of the complaint can be found in Appendix A.

Conclusion

An investigation has been conducted and the conclusion is that in terms of the allegation no breach of the Councils Codes of Conduct has occurred. The more detailed findings are set out below.

Complaint

The complainant alleges in summary:

- That the former Councillor Samra had, or may have had, a personnel interest in a planning application (the relevant application being DER/11/06/01841/PRI relating to 59 Blagreaves Lane Littleover, Derby)
- That when the application came before the Council's Planning Control on 22 February 2007 and on 22 March 2007 Councillor Samra:
 - Failed to declare that interest, and
 - Actively took part in the debate as well as the final determination of the that application; and

- That in terms of the alleged personal interest, such arose out of Councillor Samra's antagonism with the applicants and their family arising out of a rift with the applicant's family.

Codes of Conduct

In terms of possible breaches of the Council's Code the complaint engages two articles of the code, namely;

1. Failure to declare a personal interest in accordance with Article 9, and
2. Using position to improperly confer an advantage or disadvantage in contravention of Article 5(a)

Investigation

As part of the investigation the interviews have been conducted with the Complainant, the former Councillor Samra, Councillor Baxter (the former Chair of the Planning Control Committee), Ian Woodhead (a Group Leader in Development Control) and Paul Clarke (Head of Development Control and Land Searches).

Background Details

Councillor Samra was a member of the Planning Control Committee between May 2003 May 2004 and May 2005 and May 2007. He acted as vice chair between May 2005 to May 2007. The Chair of the committee during this time was Councillor Baxter.

The planning application to which the complaint relates concerned an application to replace a house with a residential home at 59 Blagreaves Lane, Littleover, Derby.

The applicants were a Mr S Samra and Mr K Samra. The application was submitted on their behalf by their agent Mr Wood (the Complainant) in November 2006 and was registered on 26 November.

The application was reported to the pre agenda on the 6 February, which was attended by the Chair and Vice Chair, and first reported to Planning Control Committee on 22 February 2007. In between, it was the subject of a site visit by the Committee on 15 February at which Councillor Samra was unable to attend.

At the committee meeting it was reported that due to two windows having been moved slightly on the drawings at the request of the officers a further consultation period was required. The Assistant Director of Regeneration and Community recommended delegation of the matter to himself in consultation with the Chair and Vice Chair.

Councillor Samra opposed this recommendation and requested the matter should come back to committee, once the consultation period had expired. Councillor Samra's proposal was accepted by the committee, the matter was thus deferred.

The Complainant reported this back to his clients. It was at this stage that his clients confirmed that they knew Councillor Samra and indicated to him that if he knew they were the applicants that they felt he would not treat them fairly. Although Mr Wood sought guidance from the Council on what to do if he had a suspicion that a Councillor had an interest in a matter, on the applicants instructions Mr Wood did not take pursue his concerns.

Once the further information was received by the Council, the planning officer referred the application back to pre agenda on 6 March and then to Committee on 27 March 2007.

At the Committee, Councillor Samra spoke against the application. The Committee resolved to refuse planning permission on the grounds of the impact on the street scene, height, bulk massing and over intensification.

The Chair, Councillor Baxter, after the decision nominated Councillor Samra to represent the council at any subsequent appeal, a nomination accepted by Councillor Samra.

The basis of the Complainants case as summarised

Mr Wood's complaint is based on a suspicion that Councillor Samra was likely to have known who the applicants were and he accordingly considers that possibility should be properly investigated.

Mr Wood does not claim that he has either knowledge or any proof that would show or substantiate that Councillor Samra knew either, the identity of the applicants, or even their names, rather he considers there are good grounds to assume such, based on his understanding as to the relationship between Councillor Samra's and the applicant's family.

Mr Wood's suspicion is based on two assumptions, namely:

- a. He suggests that Councillor Samra is likely to have known that the applicants were involved in the application because of the family connections, in particular because the applicant's father and Councillor Samra's father were old time friends and associates. As the intention was that the applicant's parents would move into the care home once it was completed it was, in Mr Wood's view, likely that Councillor Samra's father would have been aware of the applicants' involvement in the property. Mr Wood suggests in his own words that "Knowing how families work" and due to "people within the family talking about the application", that this information would undoubtedly be

passed between the respective fathers, and would likely then have been passed to Councillor Samra by his father; and

- b. If Councillor Samra knew that the applicants had the same family name then in Mr Wood view it would have been reasonable to assume Councillor Samra would have assumed a connection or at least raised the possibility of such a connection.

In terms of the Councillors relationship with the applicants Mr Wood claims the following:

- In terms of his clients relationship with Councillor Samra the complainant didn't believe there was any close family relationship.
- The families had originated from the same village in India
- One of his clients had previously been employed by Councillor Samra many years previously and Councillor Samra had attended his wedding again many years ago. That same client claims to have attended Councillor Samra's wedding.
- Councillor Samra's family and the applicant's family were well acquainted with each other. One of the applicants it was claimed was also a close friend of Councillor Samra's brother and their fathers were also well acquainted with each other.
- The basis of the allegation however was not friendship or family relationship but rather of hostility and enmity.

Response by Councillor Samra

Councillor Samra's response to the allegation was as follows:

That prior to the determination of the application on 22 March 2007 he was not aware of:

- The identity of the applicants, or

- The name of the applicant, or
- That the applicants or their families had any involvement or interest in the property to which the application.

Further that had he known who the applicants were at that time he would have certainly declared an interest and not taken any part in considering the application. And in the case of being made aware of the name of the applicants he would have investigated to see whether they were connected to him.

He confirmed that he knew both of the applicants but he didn't become aware of their involvement with the application until after it had been determined as a result of receiving the complaint.

He confirms attending the pre agenda on 6 February 2006, the committee on the 22 February, and the committee on the 22 March. He believes he also attended the pre agenda on 6 March but he didn't attend the site visit on 15 February 2007.

In terms of the papers provided by officers he confirmed that he had been provided with the draft report at pre agenda, the final report for committee and that the letters of objection from the public had been made available, as was the custom, in Member's room prior to the Committee.

He states at no stage in considering the matter was the identity or name of the applicants made known to him, either by officers, members or any other person.

The former Councillor confirmed he hadn't viewed the related planning application file and had never had call to do this.

He describes the relationship with the applicants as follows;

- Neither applicant were directly or closely related to him or his family;
- One of the applicants had previously worked for him prior to buying his own shop in 1988.
- the relationship with his former employee at that time he would describe as friendly and as far as he was aware there hadn't been any falling out with either of the applicants, pointing to him having subsequently helped them with the submission of a planning application as well as attending one of their weddings in 1991. He couldn't recall either applicant attending his own wedding in 1979 and didn't believe they had.
- He was no longer in contact with them and accepted they didn't speak, but he didn't accept that there was any antagonism between himself and either applicant. He couldn't explain why they might claim such to be the case, apart perhaps from the fact that the former Councillor had for some time not been on speaking terms with his brother and he suspected that Sam being a very close friend of his brother, and that this may have influenced their attitude towards him.
- He had no direct contact with either of the brothers and would no longer consider them friends. He was aware that they still had the shop in Allestree and a restaurant off the A38 but he had no other knowledge of their business dealings and wasn't aware of whether they were involved in care homes or similar types of developments.
- In terms of the suggestion that he may have learnt of the applicants involvement and interest with the development through his father he explained that beyond acknowledging each other he had little direct communication with his father so that even if his father was aware of such he wouldn't have spoken to him about it.

Findings /Conclusion

Arising from the allegation are two key initial questions, namely;

1. Did Councillor Samra know the identity of the applicants?
2. and if he did, what was his relationship with them?

At the time of dealing with the application Councillor Samra denies knowing the identity of the applicants or even the name of the applicants. He says that had he been made aware of the applicants name he certainly would have investigated to see whether there was any connection, and had he been aware of whom the applicants were he most definitely would have declared an interest and not taken part in determining the application.

The Complainant states that his allegation is based on assumption and that he does not know whether in fact Councillor Samra had actual knowledge of either the identity of the applicants or their names, nor has he any proof that would clearly show such knowledge.

Councillor Baxter, the Chair at the time, advised that it is practice when dealing with planning applications, both at pre agenda and at committee, not to have the identity of the applicant revealed. He confirmed that this practice was followed in the particular case and that at no stage in the process including the pre agendas and at committee were the applicant's names or identity revealed to him or the Vice Chair by the officers. Whilst the identity of the owner of the site was made known during the site visit, he didn't become aware of the identity of the applicants until the complaint was made, and similarly he had no reason to believe that the same didn't similarly apply to the Vice Chair.

The planning case officer and the Head of Development Control confirm that they did not discuss or pass any details to Councillor Samra that might have named or identified the

applicants. They also confirmed Councillors Baxter's comments that it is not practice when dealing with applications to reveal the identity of the applicant to the Committee.

In terms of papers provided; none of the papers provided to Councillor Samra either at pre agenda or committee, including the 44 letters resulting from the public consultation made available before the committee, indicated the identity or name of the applicants.

Whilst not provided specifically to Councillors as part of the process the name of the applicants was certainly within the public domain and as such were available for public viewing both in the application file and in the information giving details of the application published on the website. These documents are made available primarily for the public. Councillor Samra says he did not and would not have viewed these. Officers confirm that rarely, if ever at all, would a Councillor request to view the application file and in terms of committee members there would be no reason to do so, as the relevant details are provided to them in the officers report.

Based on the above I therefore conclude that nothing in the formal process would have revealed the identity or names of the applicant to Councillor Samra.

The Complainant suggests that because of the relationship between the applicant's and Councillor's Samra's families that it was highly likely that Councillor Samra would have been made aware of the applicant's involvement in the application. In fact not having any direct evidence of certain knowledge this is the complaint's principle basis for the allegation. It is clearly an assumption and is primarily based on the friendship between one of the applicants and Councillor's brother and/or between their respective fathers.

No evidence has been provided that any such communication did in fact take place or even that any members of Councillor's Samras family were in fact aware of the application or the applicant's involvement. The Complainant simply says in support that he assumes that they would have been aware and that they would have mentioned it to Councillor Samra as that is the way families work.

The assumption itself assumes particular relationships within Councillor Samra's family which do not appear to exist.

In view of this I am satisfied not only that no such conversation with either his brother or father or other member of his family took place but also that such would not likely to have occurred.

I would in addition add that I am not satisfied that any member of Councillor Samra's family were actually aware of the application or the applicant's interest.

In conclusion I am completely satisfied that Councillor Samra did not know the name or identity of the applicants at any time when considering the application nor could he have been expected to realise such.

It follows that:

1. in terms of article 9 (failure to declare a prejudicial interest), even if Councillor Samra had de facto a personal interest in the application he wasn't aware of such and couldn't declare it; and
2. in terms of article 5(a) (using position to improperly confer an advantage or disadvantage), knowledge of the identity being a prerequisite for a breach to have occurred clearly no such breach arises.

Based on that finding alone I accordingly find no breach of the Members Code of Conduct
by Councillor Samra

In terms of whether a personal interest arose in the particular case I am not convinced from the details of the relationship provided by the complainant and by Councillor Samra that a personal interest would have arisen.

Councillor Samra states that, as he always preferred to err on the side of caution, had he known the applicants identity he would certainly have declared an interest and not taken part. Councillor Baxter lends support to Councillor Samra normally taking a very cautious approach in such matters.

In terms of the personal relationship test the Councillor was not a relative of the applicant, or a friend. Clearly sometime in the past a friendship had existed, evidenced by Councillor attending the wedding of one of the applicants; and there had also previously been an employer-employee relationship. All evidence however suggests that this friendship had long since ceased.

In considering the converse position, the issue for consideration is whether the decision may have affected the Councillor's own personal wellbeing in terms of any gratification they may derive from disadvantaging someone they may dislike. In this regard the complainant alleges that this earlier relationship had been replaced by one of enmity, an accusation totally denied at least on his part by Councillor Samra.

Whilst the applicants clearly consider an enmity existed Councillor Samra denies such at least on his part. Nothing has been presented in the way of past actions of Councillor Samra towards the applicant that would support such an accusation. It follows therefore that I have not been convinced that any such enmity actually existed on the part of Councillor Samra at the time of making the decision or that he would have taken any gratification in the decision.

Therefore in terms of the relationship between Councillor Samra and the applicants I am not convinced that the Code of Conduct is engaged.

End of Findings