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Date : 24 January 2023

Cllr David Roache
By email
david.roache@tysoe.org.uk

Dear Cllr Roach,

Self-referral – Possible breach of the Tysoe Parish Council Code of Conduct

I refer to your self-referral, seeking a view from the Monitoring Officer on whether you have breached the Tysoe Parish Council Code of Conduct. The Monitoring Officer has asked me to consider this matter. Tysoe Parish Council have adopted the Local Government Association Model Councillor Code of Conduct.

Background

You indicate you may have breached the following parts of the Code:

- I treat other councillors and members of the public with respect.
- I do not bully any person.
- I do not harass any person.
- I do not bring my role or local authority into disrepute.
- I register and disclose my interests.

I have considered all the documents you submitted, sought comments from the Independent Persons and had regard to the Local Government Association Guidance on the Model Councillor Code of Conduct.

The Guidance states that in general terms, **disrepute** can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct a councillor's behaviour in office will bring their role into disrepute if the conduct could reasonably be regarded as reducing the public's confidence in them being able to fulfil their role; or adversely affecting the reputation of their authority's councillors, in being able to fulfil their role. Conduct by a councillor which could reasonably be regarded as reducing public confidence in their local authority being able to fulfil its functions and duties will bring the authority into disrepute.

The Guidance states that **bullying** may be characterised as offensive, intimidating, malicious, insulting, or humiliating behaviour, an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened.

The Guidance states that the Protection from Harassment Act 1997 states that **harassment** includes behaviour which alarms a person or causes a person distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a victim in a manner that could be expected to cause distress or fear in any reasonable person.

The Guidance states that failure to treat others with **respect** will occur when unreasonable or demeaning behaviour is directed by one person against or about another.

My remit is limited to whether there may have been a breach of the Code of Conduct and whether such breach warrants further investigation or how the breach should otherwise be dealt with.

Decision

I have found that your conduct demonstrates a breach of the Code. I set out my reasoning below together with my proposal on how the matter should be resolved.

This matter relates to a dispute between neighbours on Badgers Lane concerning ownership and rights over a strip of grass verge. Messrs Green and Kelly dispute Mr & Mrs Forrester's right to mow and place a planter on this strip of land. It appears Mr & Mrs Forrester own the strip of land, although it is not within my remit to come to any conclusions about that. It appears to be undisputed that the land also has village green status. I note from the map you provided that you also live on Badgers Lane, in fairly close proximity to the contentious strip of land.

You have provided me with a large volume of e-mail correspondence. The start of the matter appears to be on 15/3/22 when Mr Green wrote to you asking whether the Parish Council own the strip of land, whether there is precedent for people to mow the verge outside their properties and whether people are permitted to cultivate or plant areas without the permission of the Parish Council. You replied from your Parish Council email address to say that it is custom and practice for residents to maintain the grass verge in front of their property, that this doesn't alter the fact that the verge is likely to be village green, and it is very doubtful a resident would be granted permission by the Parish Council to cultivate the verge as it would in effect be turning the verge into a garden. This email was sent at the outset of the episode and in my view may have contributed to the subsequent escalation of matters.

In an e-mail to other parish councillors and the clerk dated 11/4/22 you said:

"I'm getting embroiled in a dispute between the Forresters and my neighbours, James Green. There is a strip of grass in front of James's house across which their drive goes. Forresters assert that they own this grass and the drive. It has all of the hallmarks of being "village green". In a text that Simon sent to James yesterday he says that he owns the land in conjunction with the parish council and Highways. Clearly this can't be the case, only one party can own the land.

Do we have access to the Land Registry so we can try to prove ownership?"

From then on you and the Parish Council became increasingly involved. I don't doubt that your intention was to be helpful and to try and resolve a neighbour dispute and to provide advice to the parties who had asked you for it. Unfortunately, these interventions do appear to have inflamed the situation. I say this because there were inaccuracies in your emails which potentially made matters worse. For example:

- In your email of 10/4/22 to Mr Green and Mr Forrester you say, *"If it turns out that the land is indeed village green then it will be up to the Parish Council, solely, to determine what can be done to or on the land"*. This is not the case. It seems to me that subject to any private law rights arising from adverse possession, the owners of the land can deal with it as they see fit, provided they do not do anything with the land which is inconsistent with its status as village green land, e.g., they can't fence it off or deny public access.
- In your email dated 14/4/22 to Mr Forrester in capacity as Chairman of the Parish Council you say *"If, as appears to be the case, the verge is village green then in common with the grass verges along Badgers Lane, the occupier of the property immediately adjacent to the verge should manage it and any change (i.e. taking up the grass or planting with anything other than grass) should be subject to the Parish Council's permission"*. This is also incorrect for the reason mentioned above.
- In an email from you (using your Parish Council email address) to Mr Forrester dated 18/4/22 you say that all the available evidence points to the verge being owned by the Parish Council. This would explain why in your earlier emails you said the Parish Council's permission would be needed to determine what can be done on the land. You appear to have conflated village green status with Parish Council ownership. You say in this email that Mr Forrester should consider removing the planter placed on the land and suggest the Greens are given unfettered access to mow it and maintain it. In my view, however, unless the Parish Council own the land, this is overstating their powers. You do say you would re-think the situation if Mr Forrester can prove ownership.
- I understand that Mr & Mrs Forrester provided you with their Land Registry title on 19/4/22.
- The Parish Council clerk, on behalf of the Parish Council, sent an email to Mr & Mrs Forrester on 10/5/22. This was sent on behalf of the Parish Council rather than you as an individual councillor, although you drafted the email. Nevertheless, it contains potentially misleading statements. It suggests that the County Council's solicitor says that the Greens have prescriptive rights over the verge. Actually, in an email to you dated 25/5/22 the County Council's solicitor says the Greens may have acquired such rights but that is a private law matter.

The Parish Council's email goes on to state: *"We would therefore ask that you recognise the Greens' unfettered rights to continue to maintain the verge and that you do not interfere with the verge in any way"*. I consider that this is potentially wrong (if the Greens have no prescriptive rights) and is overstepping what the Parish Council can properly ask, particularly where the Parish Council were previously provided with documents purporting to evidence Mr & Mrs Forrester's ownership.

- On 7/6/22 the clerk advised you that she had spoken to WALC who said *"ask your Chair to step back, not contact either parties as it will put the Council at risk"*.

Conclusion

Unfortunately, I consider that your role in this episode has been to exacerbate the situation, which in my view has brought the role of councillor and the Parish Council into disrepute. I say this because the matter was a dispute between neighbours over who could mow a strip of grass verge, which was not properly a matter for the Parish Council, especially when it was clear the Parish Council did not own the land. You and the Parish Council also mis-understood the legal position relating to the interaction between land ownership and village green status which was reflected in emails to the parties. I suspect your e-mail to Mr Green at the outset of the episode made the situation worse. As probably did the comments that it is up to the Parish Council what can be done on the land and that the Greens should be given unfettered access to mow it and maintain it. The Parish Council should not have made such an intervention without seeking legal advice so that they could be confident about the correct legal position. The position taken by you and the Parish Council has clearly caused some distress to Mr & Mrs Forrester.

In your synopsis of the complaint, you reflect that you should perhaps have asked another councillor to handle this matter because of your proximity to both parties. It is possible that as a resident of Badgers Lane familiar with the occupants of the Barn mowing the verge outside their properties over many years, which you said was common practice on the Lane, you were perhaps pre-disposed to side with Messrs Kelly & Green in this matter. There is a hint of that in your email to parish councillors dated 11/4/22 where you refer to "the Forresters and my neighbours". A councillor who did not live in such close proximity should perhaps have taken the lead (although as I say, the Parish Council shouldn't have become embroiled in this episode, a view shared by WALC).

Did your contact with Mr & Mrs Forrester amount to bullying, harassment or disrespect? On balance, I do not think so. I think you made an error of judgment in allowing the Parish Council to become embroiled in the situation and proceeded to intervene without a correct understanding of the legal position. I do not consider, however, that the content or tone of your correspondence with Mr & Mrs Forrester amounted to conduct which was disrespectful or constituted bullying or harassment.

In relation to declarations of interest, from the material I have seen, it does not appear that you have failed to properly declare any interests at council meetings

where this matter was discussed. It does not appear that you or those close to you stood to lose or gain from the matter. There is some evidence, however, that having got involved you did not deal with both parties fairly, as I mentioned above. I consider this adds weight to my conclusions in relation to disrepute.

Next steps

I have concluded that your self-referral complaint has merit, i.e., the evidence demonstrates a breach of the Code in relation to not bringing your role or the local authority into disrepute. I note you have proposed a private letter of apology to Mr & Mrs Forrester. I am not sure if this has been sent or not.

I have considered whether the matter warrants a full investigation. In my view, however, the public interest is better served by an informal resolution. To this end I propose that you acknowledge your conduct was unacceptable and make a public apology to Mr & Mrs Forrester on behalf of yourself and the Parish Council.

I would be grateful if could confirm whether you accept this course of action.

Yours sincerely

R Chambers

Ross Chambers
Solicitor & Deputy Monitoring Officer
Legal Services
Stratford-on-Avon District Council

Cc Phil Grafton, Monitoring Officer
Independent Persons
Parish Council clerk