

# CODE OF CONDUCT PANEL

## NORTHERN MIDLANDS COUNCIL CODE OF CONDUCT

**Complaint by Mr Matthew Brooks against Councillor (Cr) Dick Adams**

**Determination made 9 January 2019**

***Local Government Act 1993***

### **Code of Conduct Panel:**

Sue Smith (Chairperson), Anthony Mihal (Legal Member) and David Sales (Member)

### **1. SUMMARY OF THE COMPLAINT**

Mr Matthew Brooks submitted a Code of Conduct Complaint (the complaint) to the General Manager of the Northern Midlands Council on 23 September 2018. The fee to accompany the complaint was paid on 27 September 2018 and the complaint was forwarded to the Code of Conduct Panel on 28 September 2018.

The complaint alleges that, by his actions at the Northern Midlands Council Meeting on 20 August 2018, Cr Adams breached the following provisions of the Northern Midlands Council Code of Conduct (the Code):

1. Decision Making - 1.1, 1.2, 1.3, 1.4, and
2. Conflict of Interest - 2.1, 2.2, 2.3, 2.4, 2.5, 2.6.

An extract of the relevant provisions of the Code is included below:

#### **1. DECISION-MAKING**

- 1.1** *A councillor must bring an open and unprejudiced mind to all matters being decided upon in the course of his or her duties, including when making planning decisions as part of the Council's role as a Planning Authority.*
- 1.2** *A councillor must make decisions free from personal bias or prejudgement.*
- 1.3** *In making decisions, a councillor must give genuine and impartial consideration to all relevant information known to him or her, or of which he or she should have reasonably been aware.*
- 1.4** *A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.*

#### **2. CONFLICT OF INTEREST**

- 2.1** *When carrying out his or her public duty, a councillor must not be unduly influenced, nor be seen to be unduly influenced, by personal or private interests that he or she may have.*
- 2.2** *A councillor must act openly and honestly in the public interest.*

- 2.3** *A councillor must uphold the principles of transparency and honesty and declare actual, potential or perceived conflicts of interest at any meeting of the Council and at any workshop or any meeting of a body to which the councillor is appointed or nominated by the Council.*
- 2.4** *A councillor must act in good faith and exercise reasonable judgement to determine whether he or she has an actual, potential or perceived conflict of interest.*
- 2.5** *A councillor must avoid, and remove himself or herself from, positions of conflict of interest as far as reasonably possible.*
- 2.6** *A councillor who has an actual, potential or perceived conflict of interest in a matter before the Council must –*
- (a) declare the conflict of interest before discussion on the matter begins; and*
- (b) act in good faith and exercise reasonable judgement to determine whether the conflict of interest is so material that it requires removing himself or herself physically from any Council discussion and remaining out of the room until the matter is decided by the Council.*

## 2. INVESTIGATION

The Respondent, Cr Adams, was informed of the complaint by letter dated 23 October 2018 and asked to respond by way of Statutory Declaration. Cr Adams provided his response by declaration dated 25 October 2018.

The Panel asked Mr Brooks to provide further information in the form of a Statutory Declaration in respect of each matter referred to in the complaint. Mr Brooks responded to that request by declaration dated 26 November 2018.

In essence, Mr Brooks believes Cr Adams should have removed himself from the Northern Midlands Council Meeting of 20 August 2018 for Planning Application PLN-18-151-01 which related to a proposal to place a shipping container in the grounds of a school. The Council had received one formal representation objecting to the Application, noted in the Planner's Report to Council published in the Council's Minutes of 20 August 2018. The formal objection was from Ms Dee Alty, the personal domestic partner of Cr Adams. Cr Adams remained in the meeting during discussion of the Planning Application without declaring an interest, and moved the motion of approval with an additional condition that the shipping container be removed within two years.

Mr Brooks alleges that in doing so, Cr Adams did not bring an open unprejudiced mind, did not make the decision free from personal bias or prejudice, did not give genuine and impartial consideration to all relevant information known to him, took irrelevant matters into consideration, was unduly influenced by or was seen to be unduly influenced by personal or private interests, did not act honestly in the public interest, did not uphold the principles of transparency and honesty and did not declare an actual, potential or perceived conflict of interest at the Council meeting, did not act in good faith, nor exercise reasonable judgment to determine whether he had a

conflict of interest, did not remove himself from a position of conflict, and did not declare a conflict of interest before discussion on the Application began, thus breaching the provisions of the Code set out above.

Cr Adams, in his response to the complaint, submitted that the Council is in the process of preparing a policy on shipping containers which he has supported and spoken to at various times as he believes some people are trying to circumvent the planning scheme using containers instead of building a specific use building. Cr Adams stated that the draft policy had been circulated to Councillors and the Local District Committees for comment.

Cr Adams stated further that he is Council's representative on the Longford District Committee. The Longford Committee discussed the shipping container policy and agreed it would be better if containers were only allowed as temporary structures within town boundaries, particularly those with historic precincts.

An application came to Council for a shipping container to be placed at the local school and was advertised as a discretionary application. Discretionary applications are circulated to District Committees for comment but cannot be taken up formally by Committees. Dee Alty is on the Longford Committee but acted in her own right. It was pointed out that as a State Government establishment the school should be setting an example to other landowners.

Cr Adams did not believe he had any conflict or self-interest as he and others had spoken on this issue in Council and his views were known.

The parties were asked for submissions as to the Panel's proposal to investigate the complaint without a hearing. There were no submissions that a party would be disadvantaged if a hearing was not held or that a hearing was necessary. The parties were also asked for written submissions as to the appropriate sanction in the event that the complaint is upheld or upheld in part.

The Panel had the opportunity to listen to and consider a recording of the part of the Council meeting of 20 August 2018 which dealt with the Planning Application.

After considering the material referred to above, the Panel determined, under section 28ZG (2)(b) of the Act, that a hearing was unnecessary as the investigation could be adequately conducted by means of written submissions.

### 3. DETERMINATION

The Panel reviewed all information received from both parties, and ensured that both the Complainant and the Respondent were provided with all relevant documentation and given fair and reasonable timelines for comment.

After considering all of the information the Panel concludes that, in relation to the parts of the complaint that allege breaches of the Code clauses 1.1, 1.2, 1.3, 1.4, 2.1, 2.2, 2.4 and 2.5, there is no evidence to convince the Panel that those parts of the complaint should be upheld.

In particular, the Panel finds that there is no evidence that Cr Adams :

- did not bring an open, unprejudiced mind to his consideration of the relevant Application
- was biased or prejudged in relation to the Application
- did not give genuine consideration to information relevant to the Application
- took into account irrelevant information
- was influenced or was seen to be influenced by personal or private interests
- was dishonest, displayed lack of good faith, or failed to exercise reasonable judgment.

However the Panel concludes that because his personal partner had made a representation against the relevant Application, Cr Adams had at least a perceived conflict of interest in considering the Application. Cr Adams had an interest in maintaining domestic harmony and it could be perceived that supporting his partner's objection would achieve that end.

The Panel finds that Cr Adams breached Clause 2.3 of the Code by failing to declare the interest or perceived interest that arose because of his partner's representation to the Planning Application PLN-18-151-01 at the meeting of Council on 20 August 2018.

Cr Adams breached Clause 2.6(a) of the Code by failing to declare his interest before discussion of that Application began. The Panel does not consider that the conflict was such that Cr Adams ought to have removed himself from discussion of the Application or left the room when it was considered.

The Panel upholds the parts of the complaint which relate to Cr Adams breaching clauses 2.3 and 2.6(a) of the Code by not declaring an interest because of his relationship with the only formal objector to the Planning Application PLN-18-151-01.


The Panel dismisses the remainder of the complaint.

#### 4. SANCTION

As per section 28ZL (2) of the Act, the Panel imposes a sanction of a CAUTION to Cr Adams.

#### 5. RIGHT TO REVIEW

Under s28ZJ of the Act, a person aggrieved by the determination of the Panel is entitled to apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on the ground that the Panel has failed to comply with the rules of natural justice.



**Sue Smith**  
Chairperson



**Anthony Mihal**  
Legal Member



**David Sales**  
Member