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## HERTSMERE BOROUGH COUNCIL STANDARDS COMMITTEE

STANDARDS ASSESSMENT PANEL - 28 July 2017

### ASSESSMENT DECISION

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<b>Case No:</b>	<b>HBC/2017 /005</b>
<b>Complainant:</b>	<b>[REDACTED] (a resident)</b>
<b>Subject Member:</b>	<b>Councillor Thomas Ash Hertsmere Borough Council</b>
<b>Date Complaint Received:</b>	<b>22 February 2017</b>

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#### **Summary of Complaint:**

The complainant alleged that Councillor Thomas Ash had spoken at a meeting of the Planning Committee on 13 October 2016 in relation to a planning application when he had a conflict of interest in relation to that application. The planning application in question (16/1058/FUL) was a retrospective application for the change of use of a kiosk at Elstree & Borehamwood Railway Station to use as a taxi office. The Complainant considered that Councillor Ash had a conflict of interest because his entries in the Register of Members Interest revealed that he held a Transport for London Drivers Licence and because Councillor Ash had disclosed to the meeting that he had in the past provided consultation services to a North London based taxi-company. The complainant further alleged that Councillor Ash's declarations in the Register of Members Interests were misleading.

#### **Potentially Relevant provisions of the Members Code of Conduct of Hertsmere Borough Council**

##### Paragraph 2.2

*This Code has effect in relation to your conduct in an official capacity*

##### Paragraph 5.1

*You:*

- (a) *must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;*

##### Paragraphs 6.1(a) and 6.2.

*6.1 You have a disclosable pecuniary interest in any business of your authority if it is of a description set out in 6.2 below and is either:*

- (a) *An interest of yours.....*

*.6.2 It relates to or is likely to affect:*

*(a) any employment, office, trade, profession or vocation carried on by you or a relevant person for profit or gain*

Paragraph 7.1 (a)

*7.1 You have a pecuniary interest in any business of your authority where it relates to or is likely to affect:*

*(a) any person or body who employs or has appointed you.*

Paragraph 8.1 (d)

*You have a non -pecuniary interest in any business of your authority where it relates to or is likely to affect a decision in relation to that business that might reasonably be regarded as affecting your well-being or the well-being of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected by the decision*

Paragraph 9.1

*Subject to sub-paragraphs 9.2 to 9.5, where you have a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of your authority and you are present at a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your register of Interests or for which you have made a pending notification.*

Paragraph 11.1

*You may not:*

*(a) if present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority and*

*(b) you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and*

*(c) you are aware that sub-paragraph 11.1(b) is met:*

*participate, or participate further, in any discussion of the matter at the meeting, or*

*participate in any vote, or further vote, taken on the matter at the meeting and must withdraw from the room or chamber where the meeting considering the business is being held unless you have received a dispensation from the authority's proper officer;*

Paragraphs 12.1 and 12.2

*12.1 Subject to paragraph 13, you must, within 28 days of:*

*(a) this Code being adopted by or applied to your authority; or*

*(b) your election, re-election or appointment or re-appointment to office (where that is later), or co-opted onto the authority*

*register in your authority's register of members' interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of:*

*(i) disclosable pecuniary interests as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner in so far as you are aware of their interests at that time*

*(ii) pecuniary interests referred to in paragraph 7 that you have*

*12.2 subject to paragraph 13, you must within 28 days of becoming aware of any new disclosable pecuniary interest as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner or change to any disclosable pecuniary interest registered under paragraphs 12 by providing written notification to your authority's Monitoring Officer.*

### **Members of the Standards Assessment Panel**

Councillor Peter Knell - Chairman of Standards Committee (Chairman)

Mr. Jagat Chatrah - Independent Person

Harvey Patterson - Monitoring Officer, Hertsmere Borough Council

### **Panel Decision**

That no further action be taken in respect of this complaint.

### **Reasons for Decision**

#### Acting In an Official Capacity

- The Panel was satisfied that as a member of the Planning Committee present at a meeting of the Planning Committee Councillor Ash was acting in an official capacity and was therefore expected to comply with the requirements of the Member's Code of Conduct

#### Alleged Failure to Declare an Interest and Act Accordingly

- The Panel noted from the published minutes of the meeting of the Planning Committee held on 13 October 2016 that Councillor Ash had made a declaration of interest in relation to application 16/1054/FUL on the grounds that that he was currently providing consultancy services to a North London based Taxi company. However he did not consider that he had a conflict of interest and therefore would remain in the meeting during the consideration of this application. In complaining that Councillor Ash did have a conflict of interest and should not have spoken and voted on this application, the complainant was, in substance, alleging that Councillor Ash had a pecuniary interest in this item of business which required him to leave the meeting room during its consideration.
- The Member's Code of Conduct referred to two categories of pecuniary interest that had to be entered in the Register of Members Interests - Disclosable Pecuniary Interests and 'Other' Pecuniary Interests. In particular, paragraphs 6.1 and 6.2 of the Member's Code provided that a member had a Disclosable Pecuniary Interest in any business of the Council that related to was likely to affect any of the matters that by virtue of the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 had to be entered in the Register of Members Interests including 'any employment, office trade profession or vocation carried on by the member for profit or gain'. Consequently, Councillor Ash could only be considered to have a disclosable pecuniary interest to declare in relation to planning application 16/1054/FUL if a decision on the application - whether it be to grant or refuse planning permission - would relate to or be likely to affect any employment office, trade, profession or vocation carried on by Councillor Ash for profit or gain.

- Councillor Ash declared in the Register of Members Interests that he carried on for profit or gain the trade or profession of Communications and Web Marketing Consultant and Transport for London (TFL) Licensed Public Carriage Driver. In relation to the former, Councillor Ash had already declared to the meeting that at that time was carrying out consultancy services for a North London based Taxi company, that is to say a company outside the Borough of Hertsmere and not licensed by Hertsmere Borough Council - and in relation to the latter, his TFL drivers licence did not authorise him to drive a private hire vehicle in the Borough of Hertsmere. Consequently, the Panel was satisfied that an application for planning permission for a retrospective change of use of a kiosk at Elstree & Borehamwood Railway Station to a private hire operators office did not relate and would not be likely to affect these interests. It followed that at the meeting of the planning committee held on 13 October 2016, Councillor Ash did not have a disclosable pecuniary interest to declare in relation to planning application 16/1054/FUL.
- The Panel was also satisfied that Councillor Ash did not have to declare an 'Other' Pecuniary Interest as defined by paragraph 7.1(a) of the Member Code of Conduct because it was clear that a decision on the planning application did not relate to or affect any person who employed or appointed Councillor Ash. In this regard the Panel took particular note of the fact that Councillor Ash had never provided services to, been employed by, or been a customer of, the private hire operator who intended to continue to use the kiosk at Elstree & Borehamwood Railway Station if planning permission was granted.
- As Councillor Ash had neither a Disclosable Pecuniary Interests or Other Pecuniary Interest to declare he was entitled to remain in the meeting of the Planning Committee during the consideration of planning application 16/1054/FUL and to speak, move motions and vote on the application. It followed that the Panel did not consider that Councillor Ash had failed to comply with the requirements of Paragraph 11 of the Member's Code of Conduct
- The Panel also concluded that Councillor Ash did not have a non-pecuniary interest within the meaning of Paragraph 8 of the Member's Code of Conduct because a decision on the application would not in the opinion of the Panel have affected the well-being of Councillor Ash to a greater extent than the majority of the Council tax payers, ratepayers or inhabitants of the electoral ward affected by the decision - albeit that having a non-pecuniary interest would still have entitled Councillor Ash to participate in the determination of this planning application. Nevertheless, Councillor Ash had acted in an open and transparent manner by voluntarily disclosing his consultancy work with a taxi company located outside the Borough
- Consequently, as Councillor Ash had neither a pecuniary or non-pecuniary interest to declare in relation to this planning application, it followed that Councillor Ash had not failed to comply with the requirements of Paragraph 5.1(a) of the Members Code of Conduct by using or attempting to use his position as a member improperly to confer on, or secure for himself or any other person, an advantage or disadvantage.

#### Alleged Misleading Entries in the Register of Members Interests

- The Panel noted that the complainant alleged that Councillor Ash's entries in the Register of Member's Interests were misleading and that his allegation in this

regard relied on two items of 'twitter' correspondence with Councillor Ash in October and December 2016. The Panel noted that Councillor Ash was not required by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 or the Member's Code of Conduct to declare that he held a TFL Private Hire Drivers Licence but to state any employment, office, trade profession or vocation he carried on for profit or gain. In this context the Panel considered that the declaration by Councillor Ash that he was a TFL Licensed Public Carriage Driver adequately satisfied this requirement - although the Panel also noted that Councillor Ash had stated that he had never utilised this licence, a point he had also made to the to the complainant in the October 2016 tweet.

- For the same reason the Panel did not consider that the entry by Councillor Ash in the Register of Members Interests of 'Communications and Web Marketing Consultant' was misleading. Councillor Ash was self-employed and therefore was required to declare in the Register the nature of the trade, profession or vocation he carried on for profit or gain - not as the complainant appeared to consider, the identity of his clients or the nature of their businesses. Consequently, the fact that Councillor Ash provided communication services to private hire companies unrelated to the company seeking planning permission in respect of the kiosk at Elstree & Borehamwood Railway Station, did not require Councillor Ash to amend this entry in the Register of Member's Interests.
- It followed that the Panel did not consider that Councillor Ash had failed to comply with any of the requirements of Paragraph 12 of the Member's Code of Conduct

### **Finality of Decision**

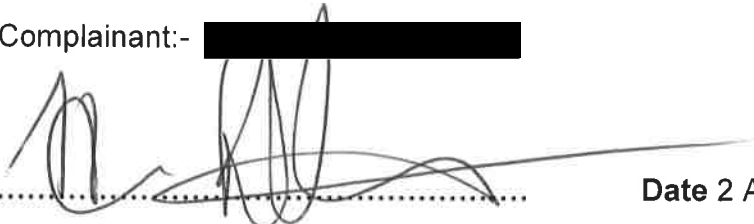
There is no right to appeal the decisions of the Standards Assessment Panel

### **Distribution**

In accordance with the Council adopted arrangements, copies of this decision will be provided to:-

- The Subject Member:- Councillor Thomas Ash of Hertsmere Borough Council
- The Subject Member's Group Leader:- Councillor Morris Bright of Hertsmere Borough Council
- The Complainant:- [REDACTED]

Signed .....



Date 2 August 2017

**Monitoring Officer - on behalf of Chairman of the Standards Assessment Panel**

