

AGENDA ITEM NO.6

CONDUCT COMMITTEE

Date **7 MARCH 2013**

Title **MEMBER CONDUCT COMPLAINT – COUNCILLOR CURTIS**

1. PURPOSE/SUMMARY

To consider a complaint under the member code of Conduct against Councillor Curtis of Fenland District Council.

2. KEY ISSUES

- A complaint has been raised by Mrs Phipps, a resident of Whittlesey about the Conduct of Councillor Curtis.
- Councillor Curtis has been offered the opportunity to provide an initial written response to the complaint; this is attached.
- The Conduct Committee is asked to consider the complaint and determine if it discloses a likely breach of the member code of conduct.

3. RECOMMENDATION(S)

Members consider the complaint and response and determine the initial consideration of the complaint.

Wards Affected	All
Forward Plan Reference No. (if applicable)	NA
Portfolio Holder(s)	
Report Originator	Ian Hunt, Chief Solicitor
Contact Officer(s)	Alan Pain, Corporate Director and Monitoring Officer Ian Hunt, Chief Solicitor and Deputy Monitoring Officer
Background Paper(s)	

1. BACKGROUND/INTRODUCTION

On the 3 July a complaint was received by Mrs A Phipps in respect of the conduct of Councillor Curtis. A copy of the complaint is attached.

Councillor Curtis was offered the opportunity of responding to the complaint and his response is also attached.

Members are advised that on the 24 August, following the publication of the committee report relating to the applications in question Councillor Curtis advised that he was no longer able to remain open minded in respect of the questions and thereafter declared that he was predetermined and did not sit as part of the Planning Committee membership.

Following this Councillor Curtis was asked if he wished to make any changes to the comments made, he confirmed he was happy with the response but wished to add the following:

"Having re-read the transcript I now realise where the comment about blagging came from. I am a massive fan of the rock group KISS. Earlier this year a friend of mine and editor of KISSINUK, a top website about said group was invited to a press conference about a book and album launch so I raised the prospect of my being able to blag my way in to the press conference. To my disappointment I was not able to do so, but the request was an entirely reasonable one and one that other members of the public also tried."

2. CONSIDERATIONS

Members must consider the complaint against the member code of conduct.

Members must consider whether or not there is a reasonable prospect of the complaint being proven based on the information held. In considering this members are to be aware of the fact that should an investigation occur further evidence or detail can be sought.

Members are advised that where a complaint contains a number of elements they may chose to consider each element separately or take the whole complaint together.

Where members consider that there is a reasonable prospect that a breach of the code of conduct has occurred they should give consideration as to whether or not there should be an investigation of the complaint. Members should consider the following points in determining whether an investigation should occur:

- Has the Complaint already been investigated, or is it already the subject of investigation?
- Is the Complaint more appropriately dealt with through another regulatory channel?
- Is the complaint about something which happened so long ago that there would be little benefit in taking action now?
- Is the complaint too trivial to warrant further action?
- Does the compliant appear to be malicious or simply tit for tat?

Where members consider that an investigation is appropriate the Monitoring Officer will be asked to make suitable arrangements for such an investigation. Members are asked to give any particular comments on the scope or direction of the investigation.

If members do not consider that there is a potential breach of the code of conduct or that there is no reasonable prospect of any breach being disclosed or that the complaint does not merit further investigation then no further action is taken in respect of the complaint save for notifying the member and the complainant.

Alexandria Phipps
[Address Supplied]

Dear sirs

I am writing in respect of Whittlesey Super Market planning, that continues to date, I was unfortunately mixed up in the Tesco planning application that was proposed on Syers Lane a couple of years ago as my house was situated on the proposed build site.

I write to you today with serious concern regarding Cllr Martin Curtis who I see has involved Whittlesey Supermarket planning in a public twitter debate putting his views on this matter in the most controversial way.

I do not agree with Twitter or Face Book or social website communication especially from a Councillor who is vice chairman to planning and will be at the planning committee when it is finally heard.

I was appalled to see Martin Curtis commenting and putting his personal view to the public on twitter and as a rate payer I expect Martin Curtis to refrain from public web sites and do the very important job as vice chairman that he is paid to do.

As you can see below he refers to Tesco as bullies, he concerns people with high court intervention, he speaks about his conversations with members of the public, saying members of the public state to him Sainsbury is the only option for Whittlesey!

He make the statement that Tesco would NOT build if it proved to be unviable, but how does he now this? he states he never did like the Station Road site! information that is for him to keep to himself and he reiterates that some feel Tesco are bullies he makes comment about the legal side of Tesco moving there planning permission, this being a job for a legal expert and not him, he openly request the opportunity to BLAG himself into various events that gives no confidence in him as a Councillor and he openly tweets out public support for Sainsbury.

I am by no way a Tesco supporter as I have suffered due to their previous planning intentions on Syers Lane, but I am a member of the public and I do expect my local councillors (Martin Curtis) to behave in a professional manner, I would like you to accept this letter as my official complaint against Martin Curtis and I would like

him expelled from the final planning committee, and that this letter be put on file.

Yours sincerely

Alexandria Phipps

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• Tweets



[30 Jun](#) [Martin Curtis@CllrMCurtis](#) [@rainbowtaylor](#) I suspect that this will be part of the basis for the inevitable high court case.



[30 Jun](#) [Martin Curtis@CllrMCurtis](#) [@rainbowtaylor](#) A vital part of the debate. Tesco say yes, Sainsbury and Co-op say no. I know planning and I have never seen it before._



[30 Jun](#) [Martin Curtis@CllrMCurtis](#) [@kevphotography1](#) Yesterday I had someone on Twitter telling me the Sbury option is the only one.



[30 Jun](#) [Martin Curtis@CllrMCurtis](#) [@kevphotography1](#) As I said - Tesco will only build on Stn Rd if it remains viable. It might not be. That is the crux of the argument at...



[30 Jun](#) [Martin Curtis@CllrMCurtis](#) [@kevphotography1](#) That is what is being tested at the moment.



[30 Jun](#) [Martin Curtis@CllrMCurtis](#) [@kevphotography1](#) Never did like Stn Road site. But S'bury view is that Tesco on Stn Rd unviable if any Eastrea Road site is developed.



[30 Jun](#) [Martin Curtis@CllrMCurtis](#) [@kevphotography1](#) No, because it was a better site, they knew it. It's about profit for both of them. Let's not dance around this fact.



[30 Jun](#) [Martin Curtis@CllrMCurtis](#) [@kevphotography1](#) They are moving to a site that will make them more profit because of accessibility. Both are here for profit.



[30 Jun](#) [Martin Curtis@CllrMCurtis](#) [@stevetierney](#) [@Kevphotography1](#) Although 1 in 5 responses so far wants both.


30 Jun  [Martin Curtis@CllrMCurtis](#) [@stevetierney](#) [@Kevphotography1](#) If 2 supermarkets effect on Town centre could be huge. Sort of stuff we have to get underneath.


30 Jun  [Martin Curtis@CllrMCurtis](#) [@kevphotography1](#) That same point about disregard could be made about both applications.

30 Jun  [Martin Curtis@CllrMCurtis](#) [@kevphotography1](#) I have had some say that Tesco approach is just downright bullying to get their own way.

30 Jun  [Martin Curtis@CllrMCurtis](#) [@kevphotography1](#) I'm interested in both sides. There are serious q's about legality of "transferring" planning permission.

30 Jun  [Martin Curtis@CllrMCurtis](#) [@kevphotography1](#) Which shopkeeper just out of interest? DM me if you prefer.

30 Jun  [Martin Curtis@CllrMCurtis](#) [@kevphotography1](#) A couple of facts they seem to have conveniently missed. There are two sides to this, that's what I'm trying to get under.

30 Jun  [Martin Curtis@CllrMCurtis](#) [#Whittlesey](#) Supermarket survey results so far. Most common National issue raised so far is Immigration. Biggest local issue: A605



31m [Martin Curtis@CllrMCurtis](#) [@Kevphotography1](#) and the first planning meeting was before 30th June.


2h  [Martin Curtis@CllrMCurtis](#) [@Kevphotography1](#) No. Ludicrous. I read the doc they emailed me as v/c of planning and listened to what was said on 1st planning debate

1 Jul  [Martin Curtis@CllrMCurtis](#) [@kissinuk](#) When is press conf Tues? Any chance if blagging my way in?


30 Jun  [Martin Curtis@CllrMCurtis](#) [@rainbowtaylor](#) I suspect that this will be part of the basis for the inevitable high court case.


30 Jun [Martin Curtis@CllrMCurtis](#) [@rainbowtaylor](#) A vital part of the debate. Tesco say yes, Sainsbury and Co-op say no. I know planning and I have never seen it before.

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Supporting Statement – Cllr M Curtis

This complaint is, quite frankly, ludicrous.

I am perfectly entitled to engage in debate over any issue, including planning issues using any forum which I see fit. Indeed it is a positive thing for a Councillor to do. The planning system dictates that I am allowed to have and express a predisposed view – i.e. that I am leaning towards a certain decision, but I haven't finally made my mind up yet. I have not express any predisposed view at any point and the one-sided transcript that you have been provided actually proves that point. What I am not allowed to do is express a predetermined view – that I will only vote one way on a certain application.

Punishing me by investigating would be a poor move. It is my view that more Councillors need to engage using Social Media, to challenge and debate issues, any decision to investigate this would deter others to engage and furthermore, there is no case to investigate. I will deal with the issues in this complaint point by point:

1. **That Councillors should not be using twitter/facebook to put out their views.** I am perfectly entitled to put my views wherever and however I see fit. What I am not allowed to do is express a predetermined view. You will see from the exchange that I make the point a number of times that I am trying to get underneath a number of issues. Here are some quotes from the transcript "There are two sides to this, that is what I am trying to get under" and "That same point about disregard could be made about both applications" and "I am interested in both sides"

I would like to make the point that you are only seeing my comments in this. I have tried to get hold of the full conversation so you can see it in context and alongside the comments of the other party. However, this is not possible because, following a challenge from John Elworthy about identity, the other Tweeter in this engagement "Kevphotography1" deleted the account.

It is good practice to engage in debate. More Councillors should do it. I have never expressed a view on the outcome of this application anywhere, indeed I am still open minded about it and this engagement shows that. Arguably the only line in here that could be seen as controversial is "I have had some say that Tesco approach is just downright bullying to get their way", but this is absolutely true, some have said this. These are three other Tweets I have received in the last few days in response to a Tesco leaflet being distributed in Whittlesey:

"They always use minatory tactics Martin. They are no better than school bullies.JS and the country park for me." – this from "Fenboybanksy"

"blackmail !!!" – from "GarySwan2"

"So they are basically telling them to back them or suffer?" – "Daisy_Doo_Wop"

That I comment that people are saying this is not any suggestion of predetermination, just a clear fact and a point for debate . It does not mean I will not ensure I do my bit to get the best planning decision for Whittlesey and I will keep working and consulting to do this.

2. **That I am putting personal views on Twitter.** I am a politician, I am bound to have views. I am permitted to have and express views, but I have not even done that. My job as a Councillor must not be to hide from debate – even/especially as Vice-Chairman of Planning. Any finding against me will act as a deterrent to other Councillors to engage more.
3. **I referred to Tesco as bullies.** I did not do this, I reported what others have said and continue to say.
4. **I concern people with High Court intervention.** I don't concern others with it, but I do raise the issue that I believe the final decision on these planning applications will end up in the courts. I said at the first planning committee I felt this would be the case and I still believe it will be. That is not an expression of any predetermined view. Indeed I have used the fact that this will likely go to court to explain that it means we need a robust planning decision.
5. **That people have said to me that Sainsbury is the only option for Whittlesey.** This comment was made because "Kevphotography1" stated that Tesco was the only option – I was replying making the point that there was an alternate view. Again highlighting that more than one view exists is not in any sense predetermination. I repeat the point that the Twitter account "Kevphotography1" was deleted when his identity was challenged. I did not say this was in face to face conversations. I have been distributing a survey around Whittlesey North over the last month and that comment, or similar, regularly appears in the responses.
6. **That I have said Tesco will only build on Station Road if it is viable.** I said the same thing at the planning committee. It is a perfectly sensible and legitimate view. Indeed the planning committee decision was to defer these applications to test the viability of Station Road site in light of any approval on Eastrea Road.
7. **I talk about the legality of Tesco moving their site if given planning permission.** It is a matter of fact that both Co-op and Sainsbury have challenged the legality of this and it is a vital part of the debate. Those that want Tesco on Eastrea Road because they believe it will quash the Station Road permission need to understand that the legality is being questioned, highlighting that fact is in no way any sense predetermination. That is what I was doing in this situation. In fact I can reiterate my view that this is important by highlighting my, as yet, unanswered email to our officers of 30th June:

"It strikes me that the crux of the supermarket decision is this issue about quashing a permission on a site other than the one being decided upon.

For this reason I want to spend some time examining the issue.

I am interested in the basis for deciding that if Tesco is supported on Eastrea Road, that the permission on Station Road can be quashed. For instance, where is the basis in any planning framework that says this is possible - and is there any case law behind it - in which case can someone give me the cases which are relevant so I can research?"

8. **That I don't like the Station Road site.** Quite rightly, I don't. I said so at the last planning meeting and have said so before, many members of the public also don't like it. However, the planning applications are for the Eastrea Road sites, and I am not so naïve as to realise that the fact that the Station Road site already has planning permission isn't a factor – which is why I asked for the viability assessment.
9. **That I am blagging my way into an event.** I have no idea what this means or refers to and I cannot see how this relates to this application.

I want to reiterate that the only misconduct for which an investigation could be considered would be if I had expressed a predetermined view – i.e. that I had stated there was only one application that I would support. There is no suggestion in any of this debate that this is the case, largely because I don't have one; I can still see clear circumstances where I would vote for either application. The only thing I am guilty of here is being open and honest with members of the public in highlighting some of the pertinent issues in this debate. It is worth stating that in this instance I was engaging with someone that was quite aggressively pro Tesco, therefore in engaging I was ensuring that any member of the public who followed the debate were aware that there are two sides to consider. However, you will see from the comments highlighted that I consistently use the point that there are two sides to an argument.

I take the fact that I represent Whittlesey residents very seriously. Supermarkets are the biggest area of debate in the Town at the moment and therefore I decided I would readily engage in the debate using whatever means I could as a means of informing my final decision. I have actively blogged about it, I am currently putting out a survey in my County Council division to try and get views and I have readily engaged in debate on Twitter (which I do on many issues). At no point have I ever done anything that is wrong, in particular I have never, ever, ever expressed a predetermined view, or indeed a predisposed one (even though that is permissible).

The current situation is that, if I wished, I could actively campaign for one side of this argument as long as I stated that I remained open-minded – something I have personally checked with a Special Adviser to the Minister for Communities and Local Government. I have not come anywhere near to this during this debate, not least because I don't have all the information I need to express a view.

Just to reinforce this point. Sainsbury recently published an analysis of the impact on Station Road of a Tesco on the site that currently has approval. Because I felt it contributed to the debate, I put it on my blog. When I posted it, qualified it with this comment:

“A word of caution - because it is a representative of Sainsbury challenging Tesco - but it seems to be based on factual evidence and, as such, is worthy of debate, which is why I have mentioned it.”

I believe this is proof that I am engaging in debate rather than putting one side of a story.

For clarity, I am linking here to the relevant posts on my blog which provide further evidence that I am doing what any good Councillor should do, which is to engage with residents over an issue that is vital for the Town:

<http://whittleseynorth.blogspot.co.uk/2012/07/possible-impact-of-tesco-on-station.html>

<http://whittleseynorth.blogspot.co.uk/2012/07/tesco-leaflet-whittlesey.html>

<http://whittleseynorth.blogspot.co.uk/2012/05/supermarket-planning-decision-or-rather.html>

I need to reiterate the point that for any finding against me, or any decision to investigate this issue further, there must be a clear suggestion of predetermination – that I have clearly made my mind up over how I will vote on this issue. That fact that I consistently make the case that there are two sides to the argument in this transcript is clear evidence that this is not the case. I can say now, quite categorically, that I can still see circumstances where I would support either.

It is quite clear to me that the only choice you have is to throw out the case against me on the basis that there is no evidence of me having expressed even a predisposed view, let alone having a predetermined view of how I will vote.