Croydon Council

REPORT TO: STANDARDS COMMITTEE – 5 May 2009

AGENDA ITEM:

SUBJECT: RECENT ADJUDICATION PANEL FOR ENGLAND DECISION

LEAD OFFICER: COUNCIL SOLICITOR AND MONITORING OFFICER

CABINET MEMBER: COUNCILLOR TIM POLLARD, DEPUTY LEADER (PERFORMANCE MANAGEMENT) & CABINET MEMBER FOR CHILDREN, YOUNG PEOPLE AND LEARNERS

WARDS: ALL

CORPORATE PRIORITY/POLICY CONTEXT: The continued development of the Standards Committee is a key component of the Council’s approach to ethical and corporate governance.

FINANCIAL SUMMARY: There are no additional costs arising from this report.

FORWARD PLAN KEY DECISION REFERENCE NO.: This is not a key decision.

For general release

1. RECOMMENDATIONS

That Members:

1.1 Consider and note the contents of the decision.

2. EXECUTIVE SUMMARY

2.1 This report provides information about a recent Adjudication Panel for England (APE) decision for members’ consideration.

3. DETAIL

3.1 The APE decision can be viewed in full at http://www.adjudicationpanel.co.uk/documents/ape_0414_final_full_decision.pdf
3.2 The decision is of relevance to the Committee as it shows clearly the reasoning process which the APE followed in reaching a conclusion on issues of disrespect and disrepute and also illustrates the matters they consider in determining whether a Member is acting in and official capacity.

3.3 The Appellant had appealed against the Standards Committee’s finding that he had failed to follow paragraphs 3(1) and 5 of the Council’s Code of Conduct. The Appellant had been reported in a local newspaper under a headline “Planning Chief attacks own department.” The report quoted him as saying that the relevant council department was not performing as it should. He was also quoted as saying that there was a problem in Berwick about the Council being officer-led and that people who came into jobs in the Council lacked local knowledge and a commitment on the future of Berwick.

Findings of the Sub-committee:

3.4 The Hearings Sub-committee of the Council’s Standards Committee found that the Appellant had made the comments attributed to him in the press article and rejected his claim to have been misquoted. The Hearings Sub-committee found that the Code of Conduct did apply to the Appellant during his conversation with the journalist.

3.5 The Hearings Sub-committee found that the Appellant had failed to treat the staff of the Development Services department with respect. The reason given was that the comments had been made in a very public forum, rather than through the appropriate channels within the authority, which had given the staff concerned no opportunity for redress.

3.6 The Hearings Sub-committee also found that the Appellant had conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute. The reason given was that in their view, the comments were likely to result in a reduction in public confidence not just in the Development Services staff and the planning function but also in the local authority generally. They noted that the Appellant had shown no remorse in respect of his comments at any time despite the obvious concern and distress which these had caused the Development Control Services staff at the Council.

3.7 The Appellant has appealed against the action, which the Standards Committee decided to take in the light of their decision that he had failed to follow the provisions of the Code of Conduct. That action was to suspend the Councillor for six months.

3.8 Because the Councillor disputed the accuracy of the content of the press article which lay at the heart of the alleged breaches of the Code, the APE considered it necessary to hear evidence as to what was said from the author of that article and from the Councillor.

APE Consideration:

3.9 The APE considered that there were three matters for determination:
(a) Whether when talking to the reporter on the telephone, the Appellant was acting in his official capacity for the purposes of the Code i.e. conducting the business of the Council or acting, claiming to act or giving the impression that he was acting as a representative of the Council;

(b) If so, whether what he said:
   (i) failed to treat others with respect and/or
   (ii) was such as could reasonably be regarded as bringing his office or the Council into disrepute.

3.10 In the APE’s view, the content of the interview coupled with the statements made by the Appellant to the investigating officer in his interview during the investigation were such that the Appellant did give the impression that he was wearing his Councillor hat and acting as a representative of his authority. The Code therefore applied to his conduct in giving the interview notwithstanding that he regarded it as “off the record”.

3.11 In respect of the findings of failure to treat others with respect, the APE indicated that this will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another. The circumstances in which the behaviour occurred is relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.

3.12 In relation to disrepute, the Oxford English dictionary defines disrepute as “lack of good reputation or respectability”. A member will have failed to comply with the Code if his or her conduct could “reasonably be regarded” by an objective observer as bringing the member’s office or authority into disrepute. Anything which diminishes the member’s office or their authority, or which harms or could harm the reputation of an authority, will bring that office or authority into disrepute.

3.13 In considering whether the Councillor had breached paragraphs 3(1) and 5 of the Code, the APE had regard to Article 10 of the European Convention on Human Rights which relates to a right to freedom of expression and opinion.

3.14 A key issue for the APE’s determination was thus whether a finding of a breach of the Code on the facts as found, would represent no greater an impairment to the Appellant’s right to freedom of expression than is necessary to accomplish the legislative objective of the Code.

3.15 This required a factual investigation of the nature of the words used in order to determine whether they constitute expression relating to matters within the legitimate concern of the member as a Councillor (political or quasi political comment which benefit from a high level of protection), or whether they are no more than expressions of personal anger and personal abuse. In the latter case, the high degree of protection required by the authorities is not engaged.
It is important that the restraints should not extend beyond what is necessary to maintain proper standards in public life and that political expression is afforded a higher level of protection. In the APE’s view, it is important that members should be able to express in robust terms, concerns that they may have about any aspect of the running of the Council and this can include expressing disagreement with officers and can include criticism of the way in which a department or an officer handles particular matters.

The concept of “treating others with respect” is one that allows the essential balance required by Article 10(2) to be performed, as does the phrase “bringing his office into disrepute” used in paragraph 5 of the Code.

In the APE’s view, the threshold for a failure to treat another with respect and a failure to comply with paragraph 5 of the Code in the case of expressions of view, has to be set at a level that allows for the passion and fervour that often accompanies political debate or debates relating to the efficient running of a Council and which allows for appropriate and robust criticism of the performance of a Council function. This is entirely consistent with the objective of maintaining proper standards in public life.

The APE did not consider that any of the statements made to the reporter by the Appellant failed to treat any other person with respect within the scope of the Code.

Having regard to the evidence before the APE in the form of various reports on the Council’s performance in the processing of planning applications, it was a fair comment, having regard to the requirement for timely determination planning applications, that the Development Services Department was not performing as it should be. The APE noted the conclusion of the Investigating Officer that what he termed the Appellant’s “frustration” on this issue was “entirely justified”.

The comment was not unfair, unreasonable or demeaning. It was not on any assessment disrespectful. It was not expressed in intemperate or offensive terms. Whilst Council officers might have wished for such criticism to be made directly and privately to them, with an opportunity to respond, this was criticism directed at the functioning of a department of the Council within the context of an interview in which the Appellant’s view on what he would do to improve the situation was being elicited. There was no personal criticism raising issues of competence or integrity levelled at any individual and the APE was satisfied that none was intended. This was generalised comment of a political nature.

The APE considered that the Appellant was perfectly entitled to raise such an issue in a public forum without notice, irrespective of whether there might have been a more palatable alternative approach viewed from the perspective of staff of the criticised department. The comment addressed concerns he held and reflected concern expressed by others to him Appellant as a Councillor. Those who elected him would expect him to voice concerns of this kind on their behalf.

As to the reference to the Council being “officer led”, the Appellant’s genuinely held view was that the history of the Council and in particular, an historic
urban/rural division between elected members, had led to an executive weakness which officers had, of necessity, to respond to. In his view, this led to the Council being perceived to be officer led. That might be an unpalatable view to some which they might regard as offensive. It might have little or no justification. However, it was the Appellant’s genuinely held view on the balance of power within the Council and his expression of it was a political statement. It was not derogatory of any individual nor on its face, capable of being seen as an attack on the integrity of any individual or body of officers. It was not expressed in a way which was unreasonable, unfair or demeaning to any identifiable individual or body of officers. It did not as a matter of fact fail to treat any person with respect.

3.24 As an expression of view as to the Council’s recruitment policies and the need for staff to have a local residence to demonstrate commitment, this may have been regarded by others as misguided, naïve and unsupported by evidence. However, it is the Appellant’s view and, given the substance of it, he was entitled to express it. This was an off the cuff, general comment of a political or quasi political nature made in the context of a single, ad hoc telephone interview, discussing the Council’s performance as planning authority generally. It was not of a personal nature, there is no evidence of any “history” between the Appellant and planning officers from which a personal attack could be implied, nor any evidence that the Appellant was engaged in a course of conduct intended to undermine any individual officer or, indeed the small department as a whole.

3.25 Looked at in the context of all of the circumstances, this comment could not reasonably have been taken to be a criticism of any existing individual officers in any department of the Council nor did it fail to treat any person with respect. It does not meet the threshold for a breach of paragraph 3(1) of the Code and, in the Appeal Tribunal’s view; it would be a disproportionate restriction on the Appellant’s right to freedom of expression to find such a breach.

3.26 Finally on the allegation of a failure to treat others with respect, it is implicit in the Standards Committee decision, that, had the Appellant said what he did, not to the reporter, but to the Council’s Head of Development Services, there would have been no breach of the Code. It must follow that in their view, there was nothing disrespectful in the words used; rather it was the public utterance of them and the claimed absence of any opportunity to respond. The Appeals Tribunal did not accept this reasoning. If there is nothing disrespectful in the nature of the words used, or the tone or manner in which they are expressed and their substance is not of such a nature that (because of personal or other sensitivity) it is dealt with by convention in private, it matters not whether they are publicly or privately expressed or whether those who may regard themselves as within the class being commented upon have a right of response.

3.27 Turning to the issue of disrepute and the comments about the Council being “officer led” and in relation to the absence of commitment to the future of Berwick of those without local knowledge; in the Appeals Tribunal’s view, expressing these views does not meet the threshold set by the words of paragraph 5. Neither looked at objectively would have any material bearing on
public confidence in either the office of councillor or the authority itself. Both are comments of a very general political or quasi political kind which respect for the freedom of expression of (possibly) unpalatable views in the political context must allow for. Their content properly understood, the manner and forum in which they were expressed and the absence of any personal criticism are such that they could not reasonably be regarded as affecting the essential trust between officers and the Councillor and his ability to perform his functions. In the Appeals Tribunal’s view it would not be proportionate for the Code to operate to prevent the expression of such genuinely held views even though they may be contentious.

3.28 For these reasons, the Appeals Tribunal has determined that the Appellant did not fail to follow the provisions of the Code.

3.29 The Appeals Tribunal rejected the finding of the Standards Committee and the decision of the Standards Committee ceased immediately to have effect.

4. CONSULTATION

4.1 None

5. FINANCIAL AND OTHER CONSIDERATIONS

5.1 There are no specific financial, legal, personnel, equalities, environmental, crime and disorder or human rights considerations arising from this report.

6. FREEDOM OF INFORMATION/DATA PROTECTION CONSIDERATIONS

6.1 The contents of this report will be included on the Council’s Website as part of the Council’s Publication Scheme for the purposes of the Freedom of Information (FOI) Act 2000. There are no further or Data Protection issues arising from the proposals in the report.

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BACKGROUND DOCUMENTS: The APE decision: http://www.adjudicationpanel.co.uk/documents/ape_0414_final_full_decision.pdf