

Report to the Standards Committee

Date of meeting: 14 April 2009



Subject: R (on the application of Michael Gardner) (Claimant) v Harrogate Borough Council (Defendant) and Mr & Mrs Atkinson (Interested Party) (2008)

Officer contact for further information: Colleen O'Boyle – Monitoring Officer

Recommendation:

That the report be considered and noted.

Purpose of the Report

To advise members about a recent decision of the Administrative Court in R (on the application of Michael Gardner) (Claimant) v Harrogate Borough Council (Defendant) and Mr & Mrs Atkinson (Interested Party) (2008) relating to the judicial review of a planning decision.

Background Information

1. This case has been the subject of an investigation by both the Local Government Ombudsman and the Standards Board for England which reached two different conclusions. It has now been before the Administrative Court with Mr Justice Jeremy Sullivan giving judgement. It is noteworthy that the claimant was the Leader of Harrogate Borough Council (Mr Michael Gardner).
2. The Administrative Court decision was delivered on 19 November 2008.
3. The facts were, in March 2005, Councillor Atkinson of Harrogate Borough Council applied for outline planning permission for a permanent dwelling in the open countryside to replace a caravan. She did not attend the relevant meeting of the Planning Committee considering the application. Planning permission was granted on the casting vote of the Chairman of the Committee, contrary to the officer recommendation in breach of six material planning policies. The councillors on the Planning Committee gave no valid planning reasons for the committee decision. This prompted a local resident to lodge a complaint with the Local Government Ombudsman.
4. The complaint was upheld. She found that there had been maladministration leading to injustice, one reason being that Councillor Simms, the Chairman of the Planning Committee should have recused himself because of his relationship with Councillor Atkinson. It turned out that the Chairman was in the habit of driving Councillor Atkinson to Council meetings, they belonged to the same political party, and church functions, political events, village gatherings and mutual friends brought the two families together, on average, once a fortnight. This, concluded the Ombudsman, meant that the Chairman's involvement in the determination of the application gave rise to the existence of apparent bias.
5. The outcome in relation to a complaint made to the Standards Board for England was that the Ethical Standards Officer found that, in the circumstances of the case, no action needed to be taken.

6. The Ethical Standards Officer found that one Councillor stated that he often gave the applicant a lift to Council meetings as her house was the way there, but he did not believe this made them friends. The Councillor stated that the journey took about 15 minutes, during which they would make polite small talk. They met on occasions at political, church and large-scale social functions, but no particular friendship existed between them.

7. The Ethical Standards Officer did not consider that the personal interest stemmed from the applicant being a fellow Councillor, as the application was not related to the political group of which they were both Members and was submitted in the applicant's private capacity. The nature of the social contact between them was not enough to constitute a friendship under the Code of Conduct.

8. It should be noted that the revised Code of Conduct refers to "close associate" instead of "friend". The Standards Board Investigator did not consider bias, so its conclusion had little weight in the mind of the Administrative Court.

Report

9. If a local authority grants planning permission by mistake, Section 97 of the Town and Country Planning Act 1990 allows revocation of a planning permission, but this carries with it duty to compensate under Section 107. Only a Court Order can quash a planning permission but the local authority cannot litigate as both claimant and defendant in the same proceedings.

10. In this case the Leader of the local authority was nominated as claimant, with the local authority named as defendant. The local authority did not resist the claim, but it was resisted by an 'interested party' (in this case the beneficiary of the planning permission).

11. Mr Justice Jeremy Sullivan made the following observations in the Harrogate case which are of note:-

"35. *I of course give appropriate weight to Mrs Atkinson's evidence, but the critical question is not her perception of the relationship between herself and Councillor Simms, but how Councillor Simms' relationship with her would have appeared to the fair-minded and informed observer. Whatever the arguments as to the details of the extent of the social and other contact between them, on both the Ombudsman's and the Board's findings, that contact went beyond the contact which might normally be expected between fellow Councillors who were simply in the same political party. Although they were not friends, as defined by the Board, they were fairly described as "friendly acquaintances", and were plainly perceived as such by their fellow Councillors, including Councillors who were the political allies of Councillor Simms.*

37. *It is also relevant, as part of the surrounding circumstances, that his vote was not simply one amongst a large number of votes either in favour of or against a particular proposal, his was the casting vote. Moreover, it is of particular importance that his casting vote in favour of planning permission was a vote contrary not simply to one but to two very strong recommendations by the Planning Officers to refuse planning permission. I would readily accept the submission that officers recommend and Members decide, but in looking at all of the circumstances of this case, it is relevant to bear in mind that the officers' recommendations that planning permission should be refused on policy grounds were expressed in very strong terms. In the officers' view, this was not a finely balanced decision. There were very clear policy objections to the proposed development.*

39. *In these circumstances, in my judgement, any fair-minded and informed observer would conclude that there was indeed a real possibility of bias in the decision to grant planning permission."*

12. Against that background the Administrative Court held that the application for judicial review succeeded and accordingly the planning permission was quashed. Councillor Atkinson and her husband were ordered to pay costs.

Conclusion

13. This case shed some light on the 'close associate' 'friend' debate. The Administrative Court clearly took the view that the relationship between the two councillors was more than that of political colleagues, and this was a compelling reason for the chairman to recuse himself. The fact that the Chairman's vote was the casting vote, against officer recommendations was important.