

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Hearings Sub-Committee - Epping **Date:** 26 July 2010
Forest Standards Committee

Place: Committee Room 1, Civic Offices, **Time:** 6.00 - 9.13 pm
High Street, Epping

Members Present: G Weltch (Independent Member) (Chairman), Councillor Mrs J H Whitehouse (District Council Appointee) and Councillor B Surtees (Parish/Town Council Representative)

Other Councillors:

Apologies: Councillor J Salter (Parish/Town Council Representative)

Officers Present: C O'Boyle (Monitoring Officer) and G Lunnun (Allegations Determination Manager)

Also in Attendance: I Willett (Deputy Monitoring Officer/Investigating Officer), J Guth (Independent Member observing proceedings), R Crone (Independent Member elect observing proceedings)

1. QUORUM

The Chairman reported that Councillor B Surtees (Parish/Town Council Representative) was substituting for Councillor J Salter (Parish/Town Council Representative) who was unwell. The Chairman advised that the three members of the Standards Committee present constituted a quorum for the Sub-Committee.

2. WELCOME AND INTRODUCTIONS

The Chairman welcomed those present and introduced members of the Sub-Committee. The officers present introduced themselves and explained their roles at the meeting.

Parish Councillor D Joslin advised that he would be presenting his case.

The Chairman advised that the purpose of the meeting was to consider alleged breaches of the Nazeing Parish Council's Members' Code of Conduct by Councillor Joslin.

3. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Council's Code of Conduct for Members.

4. MINUTES

The Sub-Committee was advised that Ms M Marshall (former Chairman of the Standards Committee) who had chaired the last meeting of the Hearings Sub-Committee had approved the draft minutes of the meeting held on 1 March 2010..

RESOLVED:

That the minutes of the meeting of the Sub-Committee held on 1 March 2010 be taken as read and signed by the Chairman as correct record.

5. EXCLUSION OF PUBLIC AND PRESS

The Chairman advised that both Councillor Joslin and Mr I Willett, Investigating Officer had stated that they had no objection to the meeting being held in public with full copies of the agenda and reports being made available to members of the public and the press present at the meeting.

The Sub-Committee considered the views of Councillor Joslin and Mr Willett. Account was also taken of the advice issued by Standards for England regarding the admission of the press and public to meetings of this nature. The Sub-Committee decided that there was nothing in the Investigating Officer's report which was either confidential or exempt information as defined in the Local Government Act 1972.

Mr I Willett referred to paragraph 14.13 of his report. He advised that in his opinion the nature of the comments made in the statement referred to therein were inappropriate for consideration in public session and that if this statement was to be disclosed it should be considered in private session. The Sub-Committee did not consider there was any need to disclose this document.

RESOLVED:

- (1) That the public and press be not excluded from the meeting;
- (2) That full copies of the agenda and the Investigating Officer's report be made available to members of the public and press present at the meeting and that those documents be published on the Council's website.

6. LOCAL ASSESSMENT CASE 3/2009**(a) Procedure and Witnesses**

The Chairman informed the meeting that an allegation about the conduct of Councillor Joslin had been investigated on behalf of the Monitoring Officer by Mr I Willett, Deputy Monitoring Officer, who was present at the meeting to present his report.

The Chairman outlined the procedure to be adopted at the hearing. He indicated that the process would follow closely the model procedure of Standards for England and he outlined three key stages of the hearing. First consideration of the facts of the matter; followed by consideration of whether, in the light of the facts, there had been a breach of Parish Council's Code of Conduct; and finally, if the Sub-Committee found that there had been a breach, consideration of the sanctions, if any, which were considered appropriate. He indicated that the Sub-Committee was likely to go into private session to discuss its findings after taking evidence in public, but that the Sub-Committee's findings would be announced in public session at the end of each key stage of the hearing. He emphasised there would be no cross-examination but that the parties would be able to ask each other questions directed through him. Councillor Joslin and Mr Willett signified their agreement to the procedure outlined.

The Chairman drew attention to the following documents which had been circulated:

- (a) the report of the Investigating Officer;
- (b) appendices to the report of the Investigating Officer (restricted circulation); and
- (c) the pre-hearing process summary.

(b) Findings of Fact

Investigating Officer's Submissions

The Chairman invited Mr Willett to introduce his Investigator's Officer's report and to outline the facts of the case as set out in that report. Mr Willett advised that he had been instructed by the Monitoring Officer of Epping Forest District Council, acting on behalf of the Epping Forest District Standards Committee to conduct an investigation into a complaint by Councillor Mrs G Skipper of Nazeing Parish Council against Councillor D Joslin, also a member of that Council. Mr Willett advised that his report concerned an allegation that Councillor Joslin had blocked a public right of way across his land and that, following the complainant's report on the matter, as Parish footpath representative at a Parish Council meeting, Councillor Joslin has suggested that if Councillor Skipper were to try to walk the footpath, he would let his dogs out on her. The complainant had also alleged that Councillor Joslin's actions had brought the Parish Council into disrepute and could be perceived as Councillor Joslin using his position as a member of the Parish Council for his own gain.

Mr Willett continued that on 13 March 2009 the Assessment Sub-Committee of the Standards Committee had decided to take no action on this complaint. However, following the complainant's request for a review of that decision, the Reviews Sub-Committee had reached a different conclusion namely, one of referring the allegation for investigation.

The Sub-Committee noted that the events which had triggered the complaint by Councillor Skipper had taken place after a Parish Council meeting on 25 September 2008. Councillor Skipper's formal complaint had been dated 24 February 2009 and her request for a review had been dated 6 April 2009.

Mr Willett advised of the approach which he had taken to the investigation and drew attention to the legal advice which he had received from the District Council's Legal Section regarding closed footpaths. He emphasised that Essex County Council, the Highway Authority, which had a duty to assert and protect the rights of the public to use a highway had not commenced any legal proceedings in respect of the obstruction to footpath 59 which passed through Mr Joslin's property. The matter remained under consideration and at this time there was no suggestion of any criminal offence in relation to the closure of the footpath on Councillor Joslin's land.

Mr Willett summarised the facts relating to the complaint which were not disputed by Councillors Joslin and Skipper. He reported that footpath 59 had been closed at Councillor Joslin's property and that Councillor Joslin had controlled access through his property, by means of a main security gate and a smaller pedestrian gate. Footpath 59 had also been obstructed and closed by default further along its route, outside of the curtilage of Councillor Joslin's property. Mr Willett advised that Councillor Joslin was the joint owner of his property and that he had been in active discussions with Essex County Council over recent months regarding the re-opening or diversion of footpath 59. Mr Willett stated that Councillor Joslin had also indicated he was about to enter into discussions with Essex County Council regarding possible extinguishment of the footpath.

Mr Willett reported that Councillor Joslin had not declared an interest in footpath 59 when the subject had been raised by Councillor Skipper at the Parish Council meeting on 25 September 2008. He also reported that Councillor Joslin had engaged in a further discussion with Councillor Skipper regarding footpath 59 after the conclusion of the meeting on 25 September 2008. The Sub-Committee noted that Councillor Skipper was an appointed member of the Parish Council's Footpath Sub-Committee and thereby had a formal role on behalf of the Parish Council in liaison with Essex County Council regarding public rights of way issues within the parish. Mr Willett further advised that Councillor Joslin was the owner of several dogs, some pets and some of which roamed free within the property. He advised that he had seen the former and heard the latter during the visit to Councillor Joslin's property.

Mr Willett also reported on his findings of fact in respect of which the evidence was disputed by the parties. He pointed out that the main area of dispute in the evidence related to the words used and the demeanour of Councillor Joslin in his discussion with Councillor Skipper after the Parish Council meeting on 25 September 2008. Councillor Skipper had stated that Councillor Joslin had approached her and asked whether she was having a vendetta against him over the footpath. She had also stated that further comments had been made about her being out to get Councillor Joslin and that Councillor Joslin had threatened her by stating that if she attempted to try to walk the footpath through his property he would let his dogs out on her. Mr Willett advised that Councillor Joslin had denied the remarks ascribed to him by Councillor Skipper. Councillor Joslin had stated that he had merely asked what Councillor Skipper was trying to achieve and had warned that anyone walking the footpath would need to contend with his dogs. Mr Willett stated that Councillor Joslin had confirmed that Councillor E Cullen had been within earshot of the conversation.

In relation to Councillor Joslin's demeanour, Councillor Skipper had described him as being sneering and aggressive and having spittle around his mouth and with his eyes bulging. Councillor Cullen had recalled Councillor Joslin as being very aggressive and with his voice raised. Councillor Cullen had not repeated the words quoted by Councillor Skipper in any of his evidence. Mr Willett further advised that Councillor M Ballard had recalled Councillor Joslin walking over to Councillor Skipper after the meeting and had seen Councillor Cullen standing very nearby. Councillor Ballard had confirmed that he had been unable to hear the conversation between Councillors Joslin and Skipper but that his recollection was that it had not been a heated discussion. Councillor Ballard has also recalled a further conversation on that same evening between Councillors Joslin and Skipper. He had stated that Councillor Joslin had said to Councillor Skipper as she exited the building that all he was asking was that he that he was given notice of anyone wishing to walk the footpath so he could put his dogs away. Mr Willett advised that Councillor Skipper had been asked about this second conversation and had said that it was at that time that Councillor Cullen had commented to Councillor Joslin on his approach. Councillor Joslin had also recollected a second conversation but had not recalled what had been said.

Mr Willett advised that his task had been to reach an opinion on the disputed evidence about what had been said in the first conversation on 25 September 2008 because the accounts of Councillor Joslin and Councillor Mrs Skipper were in direct conflict. He said he had taken account of the fact that Councillor Ballard had not heard what was said and that Councillor Cullen's account had been broadly in accord with Councillor Skipper's version without repeating the exact words. He had concluded therefore that greater weight should be placed on the account of Councillor Skipper as it had been largely confirmed by Councillor Cullen.

Mr Willett reported that having taken account of the comments made regarding the second conversation he had concluded that it had been the first conversation within the hearing of Councillor Cullen that had triggered the complaint.

In relation to Councillor Joslin's demeanour, Mr Willett reported that he had accepted the account of Councillor Skipper and Councillor Cullen regarding the aggressiveness of Councillor Joslin's approach to Councillor Skipper. He pointed out that Councillor Ballard had not recalled anything other than the normal conversation between the three members but that he had not been as close to the offence as Councillor Cullen and it was the latter's confirmation of Councillor Skipper's account which had led him to accept that Councillor Joslin's demeanour had been aggressive towards Councillor Skipper.

Mr Willett advised that his assessment of the other evidence was that footpath 59 had been closed at Councillor's Joslin property and that Councillor Joslin had dogs which roamed free within his property and which could be a threat or deterrent to the wellbeing of any walker who entered the property along the route of the footpath. Mr Willett said he had also found that the ability to access the route of footpath 59 through Councillor Joslin's property was controlled by Councillor Joslin according to whether the dogs which roamed the grounds were actually kennelled at any particular time. Finally, Mr Willett advised that he had found access through footpath 59 had for a substantial period been unproductive due to an obstruction outside the property owned by Councillor Joslin.

Questions put to the Investigating Officer

The Chairman invited Councillor Joslin to ask Mr Willett any questions regarding his findings of fact.

Councillor Joslin asked Mr Willett to comment on an email sent by Councillor Joslin to Mr Willett on 11 January 2010 which indicated that the section of footpath 59 through Councillor Joslin's property was now open. Mr Willett stated that a separate pedestrian gate had been provided where the footpath entered Councillor Joslin's property. He recalled that when he had visited the property the vehicle gate had been secured and the pedestrian gate had been padlocked. The approach being taken appeared to be that the pedestrian gate would be opened after Councillor Joslin's dogs had been put away. Essex County Council was of the view that the footpath should be available at all times. The County Council had also confirmed that the footpath was closed elsewhere at a location outside of the curtilage of Councillor Joslin's property.

Councillor Joslin drew attention to Mr Willett's interview with the Essex County Council's Public Rights of Way Enforcement and Liaison Officer. He asked Mr Willett to confirm that the County Council Officer had acknowledge that footpath 59 needed to be reopened and that although the process of achieving this had been protracted this needed to be seen in the context of that footpath having been closed for decades. Councillor Joslin also asked Mr Willett to confirm that the County Council Officer had said that the Ramblers' Association had never made any complaint about the section of footpath 59 through his property. Mr Willett confirmed that both statements had been made by the County Council Officer.

Councillor Joslin drew attention to an email from the County County Rights of Way Liaison and Enforcement Officer sent to Mr Willett on 29 October 2009. He asked Mr Willett if the County Council Officer had indicated acceptance of the provision of a separate pedestrian gate where footpath 59 entered his property. Mr Willett stated that the officer had confirmed the County Council's position as being that it was willing to accept a conciliatory situation whereby the path passed through the pedestrian gate adjacent to Councillor Joslin's main driveway gates, provided that Councillor Joslin cooperated with the County Council to achieve the opening of the route of the footpath.

Councillor Joslin asked Mr Willett to confirm that at the current time Essex County Council was not contemplating legal action against him. Mr Willett confirmed this was the case and that discussions were continuing between Councillor Joslin and the County Council.

At this point the Monitoring Officer reminded all present that it was not for the Sub-Committee to decide whether there had been obstruction of the footpath. Mr Willett pointed out that he had pursued this aspect as some sections of the Code of Conduct only applied to a member when acting in an official capacity. He said that he accepted that in relation to Councillor Joslin's actions on the footpath these related to him as a landowner and not as an elected representative.

Councillor Joslin again referred to Mr Willett's interview with the County Council Rights of Way Liaison and Enforcement Officer. He asked Mr Willett to explain the County Council's Officer's views on reopening the whole length of footpath 59. Mr Willett advised that Essex County Council had concluded that it would be unreasonable to reopen the footpath so long as the route was not fully accessible, even though the authority could insist that Councillor Joslin opened up his section immediately. Mr Willett added that he understood Essex County Council proposed to clear the obstruction of the footpath outside of the curtilage of Councillor Joslin's property by engaging some volunteers.

The Chairman invited Members of the Sub-Committee to ask Mr Willett questions about his findings of fact.

Mr Willett was asked for his opinion about the manner in which the Nazeing Parish Council Footpath Committee operated. Mr Willett stated that he had been advised that three members of the Parish Council served on the Committee. However, he did not believe that they met formally as a Committee but constituted a group of enthusiastic people assisting the County Council in looking after public rights of way throughout the Parish. He stated that members of the Sub-Committee reported to the Parish Council and/or the County Council. Mr Willett advised that his investigations had not revealed Councillor Joslin being involved in the activities of the Sub-Committee. Mr Willett confirmed that he had seen a minute of the Parish Council formally setting up the Sub-Committee with named Councillors.

Mr Willett was asked if he had any evidence about the date when the footpath fingerpost had been removed. Mr Willett said that he had raised this with Essex County Council and the County Council Officers had no knowledge of when the sign had disappeared.

Mr Willett was asked if he had been able to establish the names of two members of the public who it was alleged had been prevented from walking the footpath. Mr Willett said that reference had been made to two elderly people but names had not been volunteered as there had appeared to be some concern about naming them. Mr Willett was asked how easily the people he had interviewed could remember the details of an incident in 2008 bearing in mind that his interviews appeared to have only been carried out within the last few months. Mr Willett stated that many of the interviews had been carried out earlier than suggested and the Sub-Committee should bear in mind that the incident had occurred in September 2008 and the complaint had not been made until April 2009. He stated that the complainant had been clear in expressing her version of the events and Councillor Joslin had been equally clear about his recollection of the events. It was clear from the interviews that there had been a conversation between the complainant and Councillor Joslin after the Parish Council meeting but there was a dispute about what had been said and the manner in which certain comments were made.

Councillor Joslin's Submissions

The Chairman invited Councillor Joslin to make submissions in respect of the Investigating Officer's findings of fact.

Councillor Joslin circulated a summary of his submissions. He advised that paragraph 8.1 of the Investigating Officer's report and the map attached as document 20 provided a good description of the location of footpath 59. He pointed out that the Essex County Council's Public Rights of Way Enforcement and Liaison Officer had accepted that footpath 59 had been closed for decades. Councillor Joslin submitted that the footpath had been closed for at least 30 years and had probably not been used for 40 years. He drew attention to the evidence of the County Council Officer regarding the opening up of the footpath at its Waltham Road end, outside of the curtilage of his property.

Councillor Joslin also referred to the lack of complaints made to Essex County Council about the footpath. He submitted that the only knowledge that Essex County Council had regarding threats being made by him against those wishing the use the footpath had been those reported by Councillors Cullen and Skipper and no evidence had been provided to support those claims. He pointed out the Essex County Council Officer had referred to his regular correspondence with the Ramblers Association and that at no time had that Association made any complaint about Councillor Joslin's behaviour.

In relation to the work required to open up the footpath on his neighbour's land he advised that a fence and hedge had been removed and a gate installed but the gate had been put in the wrong place and since been removed. The fence had been reinstated but not the hedge and as a result approximately £1,000 had been wasted. Whilst Essex County Council had expected this work to be completed by Christmas 2009 it was now likely to be at least a year later.

Councillor Joslin advised that representations had also been made to the County Council that the footpath had been extinguished as a result of the erosion of the banks of the adjoining stream. A response to these representations was awaited.

In relation to the discussion at the Nazeing Parish Council meeting on 25 September 2008, Councillor Joslin stated that there had been a discussion about footpath 59 but that as he was not generally interested in footpaths from a Parish council point of view he had not been paying a great deal of attention to the discussion. He had of course been aware of the public footpath across his land but had not associated this as being footpath 59.

Councillor Joslin stated that he agreed with the findings of fact in Mr Willett's report under the heading evidence which was not disputed. In relation to the findings of fact under the heading evidence which was disputed he pointed out that the letter of complaint had been dated 19 February 2009 and received on 23 February 2009 some five months after the event to which the complainant referred. He advised the Sub-Committee that no explanation had been given for this delay. It had been difficult for him to recall exactly what had happened some five months previously and this delay had been prejudicial to him. If the matter had been raised shortly after the event he could have approached the Clerk of the Council who had also been present at the time. Councillor Joslin pointed out that the letter of complaint dated 19 February 2009 had referred to a meeting held on 4 September 2008. The complainant had subsequently accepted that this was an error and that the relevant meeting had been held on 25 September 2008. He submitted that if the complainant had been mistaken about this fundamental point she could well be mistaken in respect of other matters. Councillor Joslin pointed out that the minutes of the Parish Council meeting on 25 September 2008 did not refer to the complainant having given an update as to the position in relation to footpath 59 and it was likely that it was in fact only mentioned in passing.

He suggested that had the complainant drawn his attention to her complaint within a reasonable time after the meeting there was little doubt that the matter could have been disposed of without the necessity of a formal complaint. Councillor Joslin stated that he would have been willing to apologise if necessary and he drew attention to an apology which he had given to another Parish Councillor about another issue in 2006. He suggested that the deadline for registering a complaint was six months from the date of the event and the complaint against him had only just met this timescale.

The Monitoring Officer advised the Committee that the timescale for considering complaints was 12 months from the date of an event.

Councillor Joslin referred to his email sent to Mr Willett on 2 March 2010 in which he had stated that he did not challenge the findings of fact in the draft report but there were some statements contained within the evidence of the complainant which he did not agree with and on which he had commented. He said that he had not associated the footpath through his property as being footpath 59 and there had been no question of him pretending to be unaware of its existence. He agreed that it was likely when he had approached the complainant after the meeting that to some extent his demeanour had been aggressive because the opening of the footpath would put the security of his family, home and property at risk. However, he denied sneering at the complainant and submitted that she had exaggerated the truth. He pointed out that the complainant's observations had not been corroborated by Councillor Cullen who had stood nearby at the time of the event.

Councillor Joslin said that he knew the two elderly disabled gentlemen who it was alleged had complained about the footpath being obstructed. Both had invalid carriages which were unable to negotiate the path. He repeated that during the 30 years or so that he had lived at his property no attempt had ever been made by anyone to assess the footpath. Although he had not encouraged the opening of the footpath to the best of his knowledge it had already fallen out of use before the house on his property had been built more than 30 years ago.

Councillor Joslin said that he did not challenge Mr Willett's findings which he appreciated had been reached after considering all of the evidence. However, he did wish to place on record that he took issue with Mr Willett's conclusion that he had sought to use improper influence on the complainant. Councillor Joslin referred to the evidence of Councillor Cullen in which it had been alleged that members of the public had been abused and threatened on site about access to the footpath. Councillor Joslin categorically denied this allegation and pointed out that no evidence had been produced to support it. He also drew attention to the evidence of Councillor Cullen who had referred him as being very aggressive with his voice raised during the discussion with the complainant. Councillor Joslin contrasted this description with that given by the complainant. Councillor Joslin asked the Sub-Committee to accept Councillor Cullen's description of his demeanour. Councillor Joslin referred to letters and statements which had been made by former Nazeing Parish Councillors and submitted that these should be ignored as being irrelevant to the matter before the Sub-Committee.

Councillor Joslin called Councillor M Ballard to give evidence. Councillor Ballard drew attention to the notes of his interview with Mr Willett held on 19 November 2009. He stated that he had recalled seeing Councillor Joslin walk over to Councillor Skipper after the Parish Council meeting and that a conversation had taken place. He had not recalled the conversation as being heated but he had been too far away to hear what had been being said. Following the discussion between Councillors Joslin and Skipper, Councillor Joslin had explained to him that all he had asked was that he was given notice of anyone who wished to walk the footpath so that he could put his dogs away. He said that

Councillor Skipper had heard this remark but had walked away from the discussion. In view of the earlier confrontation he had been surprised at her attitude. In relation to the two elderly gentlemen he suggested that they regularly travelled from their home to the shops and generally did so along the roads. It was not a practical proposition for them to get to the shops via footpath 59 bearing in mind that they travelled in invalid carriages.

Questions put to Councillor Joslin

The Chairman asked Mr Willett if he wished to ask Councillor Joslin or Councillor Ballard any questions about their submissions regarding the findings of fact.

Mr Willett stated that he had no questions to ask but he wished to make some factual observations on the statements made by Councillor Joslin.

The Chairman agreed to Mr Willett expressing his observations.

Mr Willett stated that all of the information he had collected indicated that footpath 59 had been closed for a very long time. Essex County Council had been unable to say how long. The only complaints made to Essex County Council about the footpath had been by Councillor Skipper and her colleagues on the Parish Council. Mr Willett advised that Councillor Skipper had advised him of the reasons for the delay in the submission of the complaint and whilst this delay had concerned him he had accepted Councillor Skipper's explanation of the reasons. He stated that it was not surprising Councillor Skipper had quoted the wrong date for the Parish Council meeting as there had been a history of problems in relation to the minuting of Parish Council meetings. In relation to the statement he had taken from a former Parish Councillor he pointed out that similar words appeared to have been used in an exchange with Councillor Joslin to those used in the incident with Councillor Skipper. Accordingly, he considered that it was relevant to take this into consideration. Mr Willett stated that he had decided to place greater weight on the account of Councillor Skipper in relation to the conversation on 25 September 2008 as it had been largely confirmed by Councillor Ballard and there had only been limited third party evidence to the contrary from Councillor Ballard.

The Chairman invited members of the Sub-Committee to ask Councillor Joslin and Councillor Ballard questions about their submissions regarding the findings of fact.

In response to a question Councillor Joslin explained by reference to document 20 (map) where footpath 59 had been obstructed on his neighbour's property. In response to further questions Councillor Joslin confirmed that Essex County Council were happy with the pedestrian gate which he had installed provided that it remained unlocked. He pointed out that between that gate and the obstruction on his neighbour's land there were a number of field gates which were required to keep animals secure. He stated that he was unsure whether the pedestrian gate had been locked at the time of the conversation with Councillor Skipper. Councillor Joslin was asked to estimate on a scale of 1-5 where he would place his conduct between acceptable and unreasonable in relation to the incident with Councillor Mrs Skipper. He said between 2 and 3 and pointed out that he was used to raising his voice when speaking in courts. In response to further questions he confirmed that his dogs roamed freely at his property during the night and that during the day there was currently nothing to stop the dogs from getting to the footpath. He said, however that at present his Rottweilers and German Shepherds were kept in during the day and were only allowed to roam the property at night. Councillor Joslin was asked to confirm that he had not declared personal and prejudicial interests at the meeting on 25 September 2008 when footpath 59 had been discussed. Councillor Joslin repeated that initially he had not associated the discussion about footpath 59 as being the one which was passed through his property. He accepted that when he had realised it was

the one he should have declared a prejudicial interest but by that time the discussion had finished.

The Chairman advised that the Sub-Committee would consider in private session the findings of fact. The Sub-Committee left the meeting together with Miss O'Boyle and Mr Lunnun.

Sub-Committee's Conclusions

The Sub-Committee returned to the meeting. The Chairman reported that the Sub-Committee had accepted all of the findings of fact which were not disputed. The Sub-Committee had also accepted Councillor Cullen's description of Councillor Joslin being very aggressive with his voice raised during the conversation with Councillor Skipper after the Parish Council meeting. In relation to Councillor Joslin's dogs the Sub-Committee accepted that they roamed free within his property during the night but not during the day. The Sub-Committee also accepted that the ability to access the route of footpath 59 through Councillor Joslin's property was currently controlled by him.

(c) Whether or not the Member had Breached the Code of Conduct

Investigating officer's Submissions

The Chairman announced the Sub-Committee would now consider whether in the light of the facts, there had been a breach of the Parish Council's Code of Conduct. In response to an invitation from the Chairman, Mr Willett summarised the issues as set out in his report.

Mr Willett stated that the General Provisions section of the Code of Conduct explained that a member had to comply with the Code whenever they conducted the business of their authority, acted, claimed to act or gave the impression of acting as a representative of their authority. In relation to the discussion which had taken place between Councillor Joslin and Councillor Skipper on 25 September 2008 he had concluded that Councillor Joslin had been acting in an official capacity even though the Parish Council meeting had been closed.

Mr Willett indicated that he would address the five possible breaches of the Code of Conduct in turn. He reminded the Sub-Committee that these were:

- (a) bullying;
- (b) disrepute;
- (c) improper influence for personal advantage;
- (d) disclosure of personal and prejudicial interests; and
- (e) disrespect

Mr Willett outlined the approach he had taken in investigating the allegation of bullying. He drew attention to the evidence which had been presented by Councillor Skipper in which she had attempted to present Councillor Joslin as a person prone to intemperate comments. He also referred the Sub-Committee to the Oxford English Dictionary definition of "to bully" and of advice issued by Standards for England in relation to complaints of bullying. Mr Willett stated that he had thought carefully about the effect of the conversation on 25 September 2008 on Councillor Skipper. He said he had taken account of the fact that both Councillors Joslin and Skipper were members of the Parish Council and that as such there was no evidence of seniority of one over the other. In that sense there was no evidence of a superior speaking to a subordinate and thereby using cohesive authority. He also stated that Councillor Skipper had not presented herself to him as someone who had been oppressed by her encounter with Councillor Joslin. She

clearly took her duties in footpath liaison terms extremely seriously and had continued to work on this role with undiminished energy. Mr Willett stated that Councillor Skipper had produced no evidence that there had been any other encounter with Councillor Joslin regarding the footpath which had caused her any personal problems or upsets or that she had been prevented from carrying out her responsibilities on behalf of the Parish Council. Mr Willett stated that for these reasons, he had not found that there had been a breach of paragraph 3(2)(b) of the Code of Conduct by Councillor Joslin arising from the events of 25 September 2008. He had concluded that the incident had been a display of anger possibly born by embarrassment and/or frustration.

Mr Willett stated that paragraph 5 of the Code of Conduct placed an obligation on Councillors not to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute. Councillor Skipper's contention was that by closing footpath 59 and failing to respond to her attempts and those of Essex County Council to re-open it, Councillor Joslin had brought Nazeing Parish Council and the office of Councillor into disrepute. Mr Willett drew attention to the Standards for England advice on this issue. He also stated that he had taken advice from the District Council's legal staff in relation to the obstruction of the footpath. Mr Willett stated that on the question of bringing his authority into disrepute, it was not clear how Councillor Joslin could have brought disrepute on Nazeing Parish Council through his actions as a landowner. If there was disrepute in respect of the closure of the footpath his view was that this would reflect on Councillor Joslin as a private individual. Councillor Joslin was not a member of Essex County Council and he could not see how Councillor Joslin's actions as a private individual could be said to have brought Nazeing Parish Council into disrepute. On the question of disrepute in respect of the office of Councillor it could be argued that the closure of footpath 59 directly as a result of actions of Councillor Joslin could adversely affect the public perception of all Councillors. Mr Willett submitted, however, that he was not convinced that Councillor Joslin had been acting in an official capacity in relation to footpath 59. Whatever criticism might be directed to Councillor Joslin about his actions on the footpath, these had been directed to him as a private individual by the County Council. It was on that basis that Councillor Joslin would be answering to Essex County Council as the enforcement authority. Mr Willett stated that he did not feel that this reflected any disrepute to the role of Councillor per se particularly as Councillor Joslin was actively involved in discussions with Essex County Council to resolve the difficulty. Mr Willett stated that he had also taken note of the fact the footpath had not been accessible at another location and that it had been closed for some time without apparent controversy. Accordingly he found no breach of the Code of Conduct by Councillor Joslin in respect of disrepute.

Mr Willett stated that paragraph 6(a) of the Code stated that Councillors must not use or attempt to use their position as a member improperly to confer on or secure for themselves an advantage or disadvantage. He pointed out that the conduct of Councillors which might breach this duty was limited to occasions when they were acting in an official capacity unless the conduct was in the nature of a criminal offence of which the member had been convicted. He drew attention to Standards for England advice regarding this issue. Mr Willett stated that his approach had been to consider two questions:

- (a) had Councillor Joslin acted as a Councillor; and
- (b) had Councillor Joslin sought to exert improper influence in respect of footpath 59 when he had initiated the discussion with Councillor Skipper.

Mr Willett stated that footpath 59 appeared to have been closed for many years. It had been closed because it had been inaccessible from Councillor Joslin's property and also because it had been obstructed elsewhere along its route. The public interest was clearly for public rights of way to be open and available for use, and this was the nature of the

dispute between Essex County Council and Councillor Joslin as the landowner. Mr Willett submitted that accepting the principle that an elected Councillor should uphold the rights of the public, it would be necessary to demonstrate that Councillor Joslin has specifically as a Councillor, sought to deny or subvert those rights in his official capacity. He emphasised that there had been no prosecution in this case and no conviction. He pointed out that the questions about re-opening, diverting or extinguishing the footpath had been matters between Councillor Joslin as landowner and Essex County Council as enforcing authority. The argument could continue that the deliberate closure of the footpath which denied public rights of access would have been done as a private individual in pursuit of Councillor Joslin's interest as a property owner. Mr Willett stated that he had found no evidence that as a Nazeing Parish Councillor, Councillor Joslin had involved himself in the Footpath Sub-Committee of the Parish Council. Mr Willett submitted that the difficulty with this approach was that the one occasion when Councillor Joslin's role as elected member and as private citizen had intercepted was in his conversation with Councillor Skipper on 25 September 2008 when he had been acting in an official capacity. Mr Willett stated that the most difficult part of his investigation had been to determine whether Councillor Joslin's approach to Councillor Skipper had been an attempt to prevent her from fulfilling her duties as a footpath representative or just due to anger or some other emotional response. Mr Willett drew attention to a discussion between Councillor Joslin and a former Parish Councillor in the same vein as that with Councillor Skipper. Mr Willett said that he had concluded that the discussion after the Parish Council meeting had not been an entirely impulsive act and that in approaching Councillor Skipper after the meeting Councillor Joslin had sought to address a personal matter which, had he succeeded in deterring Councillor Skipper from her role could have been to the public detriment in that she would have ceased in her efforts to progress the opening of the footpath. Mr Willett stated that on balance he considered that Councillor Joslin had breached the Code by seeking to use improper influence on Councillor Skipper in a vain attempt to curb her role as a member of the Footpath Sub-Committee of the Parish Council.

Mr Willett stated that paragraph 3(1) of the Code placed on every Councillor a duty to treat others with respect. This duty existed irrespective of whether the Councillor was acting in an official or unofficial capacity. Mr Willett stated that as advised earlier in the meeting he had concluded that Councillor Joslin had approached Councillor Skipper after the Parish Council meeting in a manner which had been aggressive and intimidating. The evidence regarding the language used and his demeanour had led him to conclude that Councillor Joslin had not shown due respect to Councillor Skipper either on a personal basis or in her capacity as a member of the Footpath Sub-Committee. His finding, therefore, was that Councillor Joslin had breached paragraph 3(1) of the Code of Conduct in that he had failed to show Councillor Skipper respect.

Mr Willett advised that Councillor Joslin had confirmed that he was the joint owner of Bumbles Green Farm, Nazeing and that he had failed to declare a personal interest in the Parish Council agenda item on footpath 59 when it had been raised by Councillor Skipper at the meeting on 25 September 2008. Mr Willett stated that Nazeing Parish Council routinely included on its agenda an early item to enable all members of the Parish Council to declare any interests which were relevant to that meeting. He continued that paragraph 9(4) of the Code stated that interests under paragraph 8(ix) of the Code should be declared when the member was aware or reasonably became aware that the personal interest existed. At the meeting on 25 September 2008 Councillor Joslin had queried whether footpath 59 related to his property and having been told that it did he had not declared any interest and had remained in the meeting. Mr Willett submitted that it would be reasonable to expect that Councillor Joslin should be aware of footpath 59 in relation to this property and that a declaration of personal interest should have followed. Mr Willett submitted that in his view Councillor Joslin should then have applied the test set out in paragraph 10(1) of the Code, namely to ask himself whether a member of the

public with knowledge of the relevant facts would reasonably regard the interest as so significant that it would prejudice his judgement of the public interest. Mr Willett further submitted that a reasonable member of the public would take this view and that Councillor Joslin should have declared a prejudicial interest in that item. Accordingly, he found a breach of the Code (paragraph 9-12) by Councillor Joslin in that he had not declared a prejudicial interest or withdrawn from the Parish Council meeting on 25 September 2008 in respect of the item concerning footpath 59.

Finally in this section Mr Willett advised that all Nazeing Parish Councillors including Councillor Joslin were being encouraged to participate wholeheartedly in a programme of measures directed by Standards for England. He asked the Sub-Committee to view any breaches of the Code of Conduct by Councillor Joslin in the context of this Direction from Standards for England.

Questions put to the Investigating Officer

The Chairman invited Councillor Joslin to question Mr Willett about his conclusions as to whether or not there had been a breach of the Code of Conduct in respect of the complaints.

Councillor Joslin stated that he had no questions to ask.

Mr Willett was asked questions by Members of the Sub-Committee. His attention was drawn to the evidence about a conversation between Councillor Joslin and a former Parish Councillor and how that had resembled the conversation between Councillors Joslin and Skipper on 25 September 2008. Bearing in mind the similarities of the conversations, Mr Willett was asked if he could explain why the former Parish Councillor and Councillor Skipper had reacted in such a different way. Mr Willett stated that the former Parish Councillor had taken Councillor Joslin's remarks as a joke whereas Councillor Skipper had reacted completely differently. He said this was simply a question of two individuals reacting in different ways. Mr Willett was asked to explain further his views on Councillor Joslin's non-declaration of interests at the Parish Council meeting on 25 September 2008. Mr Willett stated that he would have expected Councillor Joslin to have declared a personal and prejudicial interest at the point he had realised the discussion was about footpath 59 even if that discussion had been drawing to a close. Mr Willett was asked whether this complaint would have been dealt differently had the Standards for England Direction been in place at the time of receipt of the complaint. Mr Willett said it was possible that the Standards for England would have suggested a different approach in association with its Direction. He advised that the training which was being held as part of the Direction was aimed at resolving the issues which existed between different Parish Councillors and that it was clear continued member on member complaint was not the way forward. Mr Willett stated that this complaint had been the last in a long line of complaints between Nazeing Parish Councillors and he again encouraged all of the Nazeing Parish Councillors to take advantage of the training being offered.

Councillor Joslin's Submissions

The Chairman invited Councillor Joslin to make submissions about whether there had been a breach of Code of Conduct.

Councillor Joslin stated that whilst the Hearings Sub-Committee was a formal meeting of the Council it was not a Court of Law. He pointed out that evidence had not been heard on oath and that factual evidence would be determined on the balance of probabilities. He submitted that a balance of probabilities standard meant that a tribunal was satisfied an event had occurred if the tribunal considered that on the evidence the occurrence of the event was more likely than not. When assessing the probabilities the tribunal must

have in mind as a factor, to whatever extent was appropriate in the particular case, that the more serious the allegation the less likely it was that the event occurred and hence, the stronger should be the evidence before the tribunal concludes that the allegation was established on the evidence of probability. Councillor Joslin continued that the evidence in support of the allegations made against him had contained contradictions, had not been tested by cross-examination and in his submission was unreliable. He submitted that if having considered all of the evidence the Sub-Committee could not decide on whether there had been breaches of the Code of Conduct they ought to come down on his side.

The Monitoring Officer pointed out that the procedures adopted by the Sub-Committee followed the Standards for England recommended procedure. Cross-examination did not apply and the need to determine on the balance of probabilities was similar to the standard in Civil Courts. She stated that in her view the same balance applied irrespective of the seriousness of the allegation.

Councillor Joslin continued that he accepted Mr Willett's conclusions in relation to bullying and disrepute. In relation to improper influence for personal advantage he submitted that he had not attempted to affect Councillor Skipper's judgement in what she should or should not do in relation to opening up footpath 59. He submitted that it would have been futile for him to attempt to do so since the matter was being pursued by Essex County Council and that whatever he had said would have been of no effect as he could not influence the matter. He submitted that the case had been one of a momentary volatile action on his part.

In relation to disrespect he submitted that this was a matter of opinion. The mere fact of speaking loudly did not in his submission constitute a lack of respect and he did not accept that he breached paragraph 3(1) of the Code.

Councillor Joslin stated that in relation to the declarations of interest, Mr Willett had suggested that had he declared interests and left the meeting the discussion with Councillor Skipper might not have occurred and the complaints would not have been forthcoming. Councillor Joslin said that he could not agree with this view because if he had left the meeting for the item concerning footpath 59 he would have returned for the remainder of the business and been present in the same room as Councillor Skipper when the meeting had finished. Councillor Joslin said he accepted he had not declared interests at the meeting. He recognised that he should have done so but submitted that when he had been aware that the discussion concerned footpath 59 the matter had been dealt with and if he had left the meeting he would have had to return straightaway.

Questions put to Councillor Joslin

In response to an invitation from the Chairman, Mr Willett stated that he had no questions to ask of Councillor Joslin in relation to whether or not the member had breached the Code of Conduct.

In respect to questions of the Sub-Committee, Councillor Joslin said he disagreed with the suggestion that Councillor Skipper could have concluded following the conversation in question that her role as a member of the Footpath Sub-Committee would be more difficult. Councillor Joslin stated that in his view Councillor Skipper had left the conversation adamant that she would pursue the matter.

The Chairman advised that the Sub-Committee would consider in private session, whether in the light of facts, there had been a breach of the Parish Council's Code of Conduct. The Sub-Committee left the meeting together with Miss O'Boyle and Mr Lunnun.

Sub-Committee's Conclusions

The Sub-Committee returned to the meeting. The Chairman reported that account had been taken of the submissions of both parties. He advised that the Sub-Committee had determined that Councillor Joslin had not failed to comply with paragraphs 3(2)(b) (Bullying), 5 (Disrepute), and 6(a) (Improper Influence for Personal Advantage) of the Code. He continued that the Sub-Committee had determined that Councillor Joslin had failed to comply with paragraphs 8-12 (Disclosure of Personal and Prejudicial Interests) and 3(1) (Disrespect).

(d) Sanctions

The Chairman invited Mr Willett to express views on possible sanctions to be imposed in relation to the breaches of the Code of Conduct. Mr Willett referred to the work being undertaken with Nazeing Parish Council as a result of the Standards for England Direction. He submitted that Councillor Joslin needed to involve himself fully with the training which was being arranged as a result of that Direction and he left it to the Sub-Committee to decide whether there should be any additional sanctions.

The Chairman invited Councillor Joslin to express views on possible sanctions to be imposed in relation to the breaches of the Code of Conduct. Councillor Joslin stated that he would be happy to write a letter of apology to Councillor Skipper or if she preferred to make a formal apology at the next meeting of the Parish Council. In relation to the training being arranged he stated that it was his intention to attend as many of the sessions as he could, subject to work commitments.

The Chairman advised that the Sub-Committee would consider in private session, whether any sanctions should be imposed. The Sub-Committee left the meeting together with Miss O'Boyle and Mr Lunnun.

The Sub-Committee returned to the meeting. The Chairman announced that the Sub-Committee had determined that Councillor Joslin (a) should participate in the training being arranged for the Parish Council later in the year on the Code of Conduct and other issues; and (b) should send a letter of apology to Councillor Skipper after receiving the agreement of the Monitoring Officer to the wording of the letter. The Chairman pointed out that Councillor Joslin had a right of appeal against the decision of the Sub-Committee.

(e) Personal Note

By leave of the Chairman of the Sub-Committee, Mr Willett drew attention to an allegation made by Councillor Skipper that he and Councillor Joslin were friends and that he should have been disqualified from understanding the investigation. Mr Willett stated that until he had interviewed Councillor Joslin for the purpose of this investigation he had never met Councillor Joslin. He stated that comments made by Councillor Joslin may have been misinterpreted by Councillor Skipper which had led to her making this allegation.

Finally Mr Willett apologised to the Sub-Committee for the time it had taken him to complete his investigation and to both Councillors Joslin and Skipper if the delay had caused them concerns.

RESOLVED:

- (1) That Councillor Joslin:
 - (a) did not bully Councillor Skipper;

- (b) did not bring his office of Councillor or the Parish Council into disrepute;
 - (c) did not use his position as a Councillor improperly to confer on or secure for himself an advantage or disadvantage;
 - (d) did fail to declare personal and prejudicial interests at the meeting of the Parish Council on 25 September 2008 in relation to the item concerning the public footpath passing through his property; and
 - (e) did not show due respect to Councillor Skipper when confronting her after the Parish Council meeting;
- (2) That the following sanctions be imposed on Councillor Joslin:
- (a) participation in the training being arranged for the Parish Council later in the year on the Code of Conduct and other issues; and
 - (b) a letter of apology to be sent to Councillor Skipper after receiving the agreement of the Monitoring Officer to the wording of the letter;
- (3) That the Monitoring Officer, in consultation with the Chairman of the Sub-Committee produce a full decision of the Sub-Committee and send copies of that decision to Councillor Joslin, Councillor Skipper, the Parish Council Clerk and Standards for England; and
- (4) That the Monitoring Officer arrange for notice of the Sub-Committee's decision to be published in a local newspaper and on the Council's website.

CHAIRMAN