

**Tribunal Reference Number: APW/002/2006-07/A**

Appeal against Standards Committee Determination in relation to a possible failure to follow the Code of Conduct

**APPELLANT: Councillor Brian Thomas**

**RELEVANT AUTHORITY(IES): Blaenau Gwent County Borough Council**

**1. INTRODUCTION**

1.1. An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Councillor Brian Thomas against the decision of Blaenau Gwent County Borough Council Standards Committee that he had breached the authority's code of conduct and should be suspended.

1.2. A hearing was held by the Appeal Tribunal at 10.00am on Thursday 25 January 2007 at the Hilton Hotel, Langstone, Newport. The hearing was open to the public.

**2. PRELIMINARY DOCUMENTS**

2.1. Appeal Against Decision of Standards Committee

2.1.1. The Adjudication Panel for Wales received a written appeal from Councillor Thomas on 31 May 2006 against the determination of Blaenau Gwent County Borough Council Standards Committee that he had breached the authority's code of conduct and should be suspended for 3 months.

2.1.2 The Standards Committee's determination followed its consideration of a report by the Public Services Ombudsman for Wales ("the Ombudsman") under the terms of sections 69(4)(c) and 71(2) of the Local Government Act 2000.

2.1.3 The allegations were that Councillor Thomas had breached the authority's Code of Conduct by failing to show respect for Mr Steve Smith, a Planning Officer, at a meeting of the Planning Sub-Committee on 28 June 2006.

2.2. The Councillor's Written Response

2.2.1. Councillor Thomas challenged that the words he used at the site meeting amounted to a breach of the code. He asserted that he had apologised to Mr Smith and told him that his complaint was against highways and not planning officers.

**3. ORAL SUBMISSIONS**

3.1.1 The Appeal Tribunal heard oral evidence and submissions as follows.

Mr Steve Smith, Head of Planning Control

3.2.1 Mr Smith told the Tribunal that he had attended at the site meeting on 28 June 2005, together with his colleague Mark Hopkins. As Head of Planning Control, he

informed the members present of the issues for discussion. He and the Highways Department were recommending officer approval of the planning application. The original planning application had been modified a number of times to the extent that it now satisfied all planning and highway development control requirements.

3.2.2 At the meeting, Mr Smith gave advice to the councillors present only to be told by Councillor Thomas that if this exact same application had been made in Abertillery it would have been refused.

3.2.3 Mr Smith was upset by this statement because Councillor Thomas appeared to question his professional integrity, and especially as the remarks were made in front of other councillors and in public.

3.2.4 The following day, Councillor Thomas telephoned Mr Smith and apologised for his remarks. He said that he would have the minutes of the Sub-Committee amended, but said that he was addressing his remarks against the Highways Department. Mr Smith did not accept this qualification since he still felt his own professional integrity, and by implication that of other officers, was being challenged.

3.2.5 Asked whether his complaint was influenced by political considerations, Mr Smith replied that this was absolutely untrue.

3.2.6 Mr Smith said that he had made the complaint because the public had to have faith in the democratic process. He could not let this go unchallenged.

Mr Mark Hopkins, Highways Engineer

3.3.1 Mr Hopkins confirmed Mr Smith's version of events at the site meeting. He was surprised by the comment. However, he personally did not feel offended by the comments because he felt they were directed towards Mr Smith. Mr Hopkins confirmed that he observed a brief discussion between Mr Smith and Councillor Thomas after the site meeting, but he did not hear the actual conversation.  
Mrs Louise Cavender, Resident

3.4.1 Mrs Cavender was present at the site meeting with other residents, who wished to object to the planning application. While she did not fully comprehend all of the nuances, she generally understood the comments being made but didn't regard them as offensive.

3.4.2 Mrs Cavender felt that Mr Smith was being hostile and aggressive and dismissive of Councillor Thomas and the residents.

Mr Gareth Richards, Resident

3.5.1 Mr Richards explained that the public were not allowed to become fully involved in the site visit. He was upset that his written submissions to the authority were not given proper consideration. It appeared to him that Councillor Thomas was isolated and that other councillors had preconceived views and did not want to listen to the residents.

Councillor David White, Chair of Planning Sub-Committee

3.6.1 Councillor White confirmed that he had been an elected member for approximately one year prior to the meeting of the Planning Sub-Committee on 28 June 2005, which he chaired on that occasion. He said that he thought the comment made by Councillor Thomas implied that Mr Smith was biased and unprofessional. He saw the effect it had upon Mr Smith. He told Councillor Thomas that his remarks were out of order, but did not demand an immediate apology from him. Other councillors present advised him to report the matter to the Leader of the Council. Subsequently, he reported it to the Leader and Deputy Leader.

Councillor Keith Hayden, Member of Planning Sub-Committee

3.7.1 Councillor Hayden confirmed the evidence the foregoing witnesses. He was uncertain as to the exact words used, but stated that Mr Smith was obviously annoyed by his look and tone of voice.

Councillor Brian Thomas

3.8.1 Councillor Thomas said that he had been a ward member for 34 years. He confirmed that he had asked for the site meeting prompted by residents.

3.8.2 Councillor Thomas didn't fully understand that a planning officer had to be present at the meeting because it was, in his opinion, a highways matter. He understood that the original planning application had been amended a number of times. He accepted that he did not prepare fully for the site meeting if he was going to challenge the two officers who were present. He did not have a planning history of the site, nor did he have available the planning history of similar sites where planning applications had been refused.

3.8.3 Relying upon his extensive experience of previous site visits, he believed that this site should not have planning permission, because it did not meet the necessary highways safety criteria.

3.8.4 Prior to attending the meeting he hadn't furnished the Highways Department or Planning Department with evidence to support his contention that this site should not be given planning permission.

3.8.5 He attended the site visit with a number of constituents, who were not in favour of the application being granted. Ultimately, he agreed that he had said the words attributed to him by Mr Smith and that with hindsight he should have been better prepared. He confirmed that the record of his interview with the Ombudsman's investigating officers was true.

#### **4. FINDINGS OF FACT**

4.1. The Appeal Tribunal found the following relevant undisputed material facts:

4.1.1. Blaenau Gwent County Borough Council adopted a code of conduct in 2001.

4.1.2 Councillor Thomas gave a written undertaking to observe the Council's code of conduct on 14 June 2004.

4.1.3 Councillor Thomas has been an elected member for over 33 years.

4.1.4 Councillor Thomas has been a member of the Council's Planning Committee for many years.

4.1.5 On 2 June 2005, Councillor Thomas attended a meeting of the Planning Committee at which officers recommended approval, subject to conditions, of a planning application for a new dwelling to be built on the site of a former scout hall at Scrwfa Road, Tredegar.

4.1.6 At the meeting on 2 June 2005, Councillor Thomas requested that the application be deferred for an on-site sub-committee meeting.

4.1.7 Councillor Thomas was present at the on-site Planning Sub-Committee meeting on 28 June 2005.

4.1.8 During the on-site meeting, Councillor Thomas made statement to the effect that the application would not have been recommended for approval by officers if it had been located in the Abertillery area.

4.1.9 On 29 June 2006, Councillor Thomas spoke by telephone to Steve Smith, the Council's Head of Planning Control.

4.2. The Appeal Tribunal found the following relevant disputed material facts:

4.2.1 Whether the statement made by Councillor Thomas at the on-site meeting of the Planning Sub-Committee was a failure to show respect to a council officer.

4.2.2 Whether, by his telephone call the following day to Steve Smith, Councillor Thomas implicitly admitted that he failed to show respect.

4.3. The Appeal Tribunal found the following in respect of the disputed facts:

4.3.1. That Councillor Thomas attended a Planning Sub-Committee meeting on 28 June 2005. The meeting involved a number of councillors, officers of the council and members of the public. The meeting was to consider a planning application, which had been recommended for approval by the Highways Department and the Planning Department. Councillor Thomas stated to Mr Smith that it would not have been approved if it were in Abertillery. This was a statement that questioned the professional integrity of Mr Smith.

4.3.2 The Tribunal found that Councillor Thomas did make a telephone call to Mr Smith on the day after the site meeting. He did not fully apologise for his disrespectful remarks made the previous day.

4.3.3. The Tribunal found that Councillor Thomas' words at the site meeting were careless and/or reckless (but not malicious) and failed to show respect to the

professional integrity of Mr Smith.

## **5. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

### **5.1. The Appellant's Submissions**

5.1.1. Councillor Thomas submitted that his statement to Mr Smith was not intended to be disrespectful. He submitted that he was entitled to free speech. The appellant's representative, Mr Caleb, submitted a comprehensive written document to the tribunal. He referred the Tribunal to the outcome of the Livingstone case ('Ken Livingstone v the Adjudication Panel for England').

### **5.2. Appeal Tribunal's Decision**

5.2.1. On the basis of the findings of fact, the Appeal Tribunal found by a unanimous decision that there was a failure to comply with Blaenau Gwent County Borough Council's code of conduct as follows:

a) Paragraph 4(a) of the Code of Conduct states that '[Members of the authority] must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people.....and show respect and consideration for others.'

5.2.2 The Appeal Tribunal found that in his careless and/or reckless statement made at the Planning Sub-Committee meeting on the 28 June 2005, Councillor Thomas failed to show respect for the professional integrity of Mr Steve Smith, a Planning Officer with the council.

## **6. SUBMISSIONS ON ACTION TO BE TAKEN**

### **6.1. The Appellant's Submissions**

6.1.1 Following the announcement of the Appeal Tribunal's determination that the code had been breached, the appellant and his representative did not wish to make any submissions as to an alternative sanction to that imposed by the Standards Committee of Blaenau Gwent County Borough Council.

### **6.2. Appeal Tribunal's Decision**

6.2.1. The Appeal Tribunal considered all the facts of the case and in particular the nature of the breach. It noted that Councillor Thomas had previously been censured on 5 November 2004 and suspended for 12 months on 13 July 2006. The Tribunal took account of the support of Mrs Lavender's and Mr Richards' evidence. They confirmed that Councillor Thomas worked hard in the community as a councillor and was a decent man. In doing so, the Tribunal recognised that a person did not remain a councillor for some 34 years without having the support of their constituents.

6.2.2. The Appeal Tribunal accordingly decided by unanimous decision to uphold the determination of Blaenau Gwent County Borough Council Standards Committee that

Councillor Thomas had breached the authority's code of conduct. The Appeal Tribunal further determined to endorse the decision of the Standards Committee that Councillor Thomas should be suspended for 3 months.

6.2.3. Blaenau Gwent County Borough Council and its Standards Committee are notified accordingly.

Signed..... Date.....5 February 2007....

Mr Stewert Sandbrook-Hughes  
**Chairperson of the Appeal Tribunal**

Mr Ian Blair  
**Panel Member**

Mrs Christine Jones  
**Panel Member**