

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/007/2009 -010/CT

REFERENCE IN RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT

RESPONDENT: Councillor T J Adams-Lewis

RELEVANT AUTHORITY(IES): Ceredigion County Council

1. INTRODUCTION

- 1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.
- 1.2 A hearing was held by the Case Tribunal at the Castell Malgwyn Hotel, Llechryd, and Nr Cardigan. The hearing commenced on Tuesday 26 October and continued on Wednesday 27 October 2010, before being adjourned and resuming on Thursday 13 January 2011. The hearing was open to the public and proceedings were conducted in Welsh.
- 1.3 Cllr Adams-Lewis attended and was represented by Mr Iwan Richards, Cymrawd. The Ombudsman was represented by Mr Gwydion Hughes, Counsel.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

- 2.1.1 In a letter dated 28 January 2010, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against Cllr Adams-Lewis. The allegations were that Cllr Adams-Lewis had breached Ceredigion County Council’s Code of Conduct by failing to act objectively and in the public interest in the consideration of a planning application relating to the Bath House Farm site at a meeting of the Council’s Development Control Committee on 20 August and 10 September 2008, and by failing to declare a personal interest and to withdraw at those meetings.

2.2 The Respondent’s Written Response to the Reference

- 2.2.1 Mr Iwan Richards made written submissions on behalf of Cllr Adams-Lewis to the Case Tribunal prior to the hearing.

2.2.2 Matters commented on by Mr Richards, referred to by paragraph numbers of the Ombudsman's report:

- a) **Paragraph 9** – the Ombudsman had concluded that he would not be pursuing the possible breach of Paragraph 8 (a) of the Code of Conduct and accordingly the Tribunal should not pursue this any further.
- b) **Paragraph 4** - it is not fair that the Ombudsman should be investigating possible breaches of Paragraphs 11 (1) and/or 14 (1) of the Code of Conduct when these breaches were not alleged in the complaint.
- c) **Paragraph 13** – the second planning application was not similar to the original and accordingly the Ombudsman could not conclude that it was a “similar scheme” albeit with a different access to the development; further the election leaflet could not have referred to the second application.
- d) **Paragraph 15** – the election leaflet could only have been referring to the earlier application. Cllr Adams-Lewis was an elected member between 1996 and 2004 and not between 2000 and 2004 as stated in the report.
- e) **Paragraph 18** – by declaring an interest at a meeting of Cardigan Town Council on 19 August 2008, this permitted Cllr Adams-Lewis to attend, speak and vote at a meeting the following day of Ceredigion's development control meeting.
- f) **Paragraph 22** – the journalist, Mr Shipton, had misinterpreted what Cllr Adams-Lewis had said and had not quoted his words in the correct context. Further, that the article in the Western Mail on 27 August 2008 was an incomplete report of their conversation due to pressures on the journalist's word count.
- g) **Paragraph 25** – the Clerk's notes are not legible.
- h) **Paragraph 26** – the report is not correct when it refers to the complaint and an “unsuccessful bid” – it is suggested that the investigator has misinterpreted the evidence.
- i) **Paragraph 30** – the Ombudsman's report fails to acknowledge that the article in the Western Mail was selective and incomplete.
- j) **Paragraph 35** – the quotation attributed to Cllr Adams-Lewis does not clarify his interest.
- k) **Paragraph 44** – as has already been explained, the election leaflet referred to the original planning application.
- l) **Paragraph 45** – Cllr Adams-Lewis declares an interest in all planning applications that come before the Town Council; this enables him to speak and vote on them when they come before the Development Control Committee of the County Council.

m) Paragraph 50 – Cllr Adams-Lewis would not be fulfilling his duties and responsibilities as a County Councillor if he could not participate in the discussion and vote on the second Bath House planning application, which was of significance to the locality.

n) Paragraph 64 – the report of the meeting between the Monitoring Officer, Claire Jones, and the Councillor on 20 August was misleading and she had misled not only the Councillor but also the Ombudsman.

2.3 The Ombudsman’s Written Representations

2.3.1 The Ombudsman responded to Mr Richards’ submissions as follows:

a) Paragraph 9 – the report does not conclude that Cllr Adams-Lewis did not breach Paragraph 8 (a) of the Code of Conduct – rather, this alleged breach was not pursued.

b) Paragraph 4 – Paragraph 69 (1)(b) of the Local Government Act 2000 enables the Ombudsman to investigate the possible breaches even though such breaches were not alleged in the complaint.

c) Paragraph 13 – the report does not describe the second planning application as “similar” to the earlier scheme – this is derived from the Planning Officer’s report. It is accepted in the report that the statement in the election leaflet regarding the “current application” is unlikely to have been a specific reference to the second planning application.

d) Paragraph 15 – the interpretation of the statement in the election leaflet has to be assessed from the stand point of “what an informed observer might reasonably think”. The Ombudsman’s view is that the leaflet is capable of giving rise to a commitment to constituents that Cllr Adams-Lewis would, if elected, oppose the development, if such an opportunity presented itself.

e) Paragraph 18 – the reasoning for declaring an interest at the Town Council are noted at paragraphs 34 and 38 of the report; further, the Ombudsman’s reasons that the Councillor should have declared an interest at a meeting of the Development Control Committee are explained in the report.

f) Paragraph 22 – the Ombudsman’s reasons for attaching weight to the article in the Western Mail are explained at paragraph 59 of the report.

g) Paragraph 25 – the notes were included for completeness as they may well assist Cllr Adams-Lewis’ case.

h) Paragraph 26 – the report accurately reflects the words used by the complainant, namely that Cllr Adams-Lewis “(unsuccessfully) moved rejection of the officer’s recommendation...”

i) Paragraph 30 – the Ombudsman’s report contains all the evidence about the Western Mail article, to include Cllr Adams-Lewis’ comments that he was not accurately quoted.

j) Paragraph 35 – the words used is a direct quote from Cllr Adams-Lewis’ reply to written question number 9. It was open to the Councillor to have produced further clarification at the draft report stage.

k) Paragraph 44 – the reply is noted and it is accepted that the statement in the election leaflet may not have been a specific reference to the second application; further, it is also accepted that Cllr Adams-Lewis may not have been aware of the second application at the time the leaflet was printed; however, as already explained, the issue is whether an informed observer would have concluded that he was putting his constituency interests before the wider public interest.

l) Paragraph 45 – the fact that Cllr Adams-Lewis declares an interest in every application before the Town Council was not mentioned – even if he had said that, it does not have a bearing on the conclusion of the Ombudsman’s report.

m) Paragraph 50 – the Monitoring Officer’s version of what Cllr Adams-Lewis said is recorded in a clear contemporaneous note – it will be for the Tribunal to determine the weight to be attached to her evidence.

n) Paragraph 64 – the Ombudsman not only relies on the Monitoring Officer’s evidence, but also on the article in the Western Mail and the election leaflet.

3. ORAL SUBMISSIONS

3.1. The Case Tribunal heard oral evidence and submissions as follows.

Public Services Ombudsman for Wales

3.2 The Ombudsman’s representative Mr Gwydion Hughes presented the Ombudsman’s report. He summarised the issues. Counsel for the Ombudsman also submitted a skeleton argument in support of the Ombudsman’s contentions. A copy of that skeleton argument is annexed to this decision at Annex A.

Mr John Evans, Senior Planning Officer, Ceredigion County Council.

3.3.1 Mr Evans gave evidence on oath. He confirmed that he was not the Case Officer concerned with either of the Bath House planning applications. He indicated that his former colleague, Aled Richards, had dealt with both applications. Mr Evans indicated that Mr Richards had left the Authority’s employment in 2008.

3.3.2 On being questioned by Counsel for the Ombudsman, Mr Evans indicated that the two planning applications were substantially the same, save for the

different access. He referred the Tribunal to passages from the report prepared by Mr Richards, which highlighted the similarities and differences in the two schemes. He also confirmed that the Council had commissioned a traffic impact assessment, which had been carried out by Hyder Consulting. He indicated that the recommendation by the Council's officers was to grant the second application.

- 3.3.3 On cross examination by Mr Richards on behalf of Cllr Adams-Lewis, Mr Evans indicated that he did not know whether the second application involved the demolition of four semi-detached houses and a health centre, or that the second application involved the construction of a hotel and public house.
- 3.3.4 He also conceded that at the time that the officers' recommendation to support the application had been prepared, the Authority's highways department had not responded to the request for advice on the second application.

Miss Claire Jones, Head of Legal services and Monitoring Officer,
Ceredigion County Council.

- 3.4.1. Miss Jones gave evidence on oath. She confirmed the contents of her statement and the appendices that had been submitted to the Ombudsman in response to his request for evidence.
- 3.4.2. In particular, she confirmed that upon being told of the article published by the Tivyside Advertiser on 6 June 2008, she had been prompted to speak to Cllr Adams-Lewis prior to the meeting of the Development Control Committee on 20 August 2008. As a result of that discussion and the information provided to her by Cllr Adams-Lewis, she had prepared (immediately after the conversation had come to an end) a note which her secretary typed immediately. She confirmed that she took the note to Cllr Adams-Lewis and showed it to him prior to the meeting. She asked Cllr Adams-Lewis to confirm that it was an accurate record of their conversation, which he did.
- 3.4.3. Miss Jones confirmed that Cllr Adams-Lewis was well aware that she was concerned about his intention to participate in the debate that afternoon about the second Bath House planning application. She stated that she had told him that his proposed course of action may well have costly and legal implications for the Council if he participated and voted on the proposal – if the developer subsequently took action against the Council, the decision may be overturned. She also explained that she was concerned about Code of Conduct issues that may arise from his decision to participate.
- 3.4.4. She went on to say that she was aware that some fellow Councillors had applied for, and had been given, dispensation to take part in the debate but that Cllr Adams-Lewis had not and that it was then too late for that to be achieved. She confirmed she had explained to Councillors as part of their training that they could apply for dispensation in certain circumstances and that Cllr Adams-Lewis would have been well aware of this. She indicated

that he would have been aware prior to the meeting that the second Bath House planning application was on the agenda for consideration.

- 3.4.5. She also indicated that based upon her reading of the article in the Tivy-Side Advertiser, she had concluded that there was a risk that Cllr Adams-Lewis had pre-determined the issue that was for consideration and that he was likely to be acting in breach of the Code of Conduct. Whereas she had a duty to advise him of his obligations, she could not prevent him from taking the steps that he proposed.
- 3.4.6. She also indicated that she had a further meeting with Cllr Adams-Lewis prior to the meeting on 18 September 2008 at which she again raised her concerns.
- 3.4.7. On cross examination by Mr Richards, Miss Jones indicated that knowledge of the case law on the subject matter would be useful. She indicated that she had played an integral role in the formulation of the current Code of Conduct. She conceded that the guidance that is now available from the Ombudsman's office had not been issued until April 2010 – some 20 months after the events complained of had occurred. She also indicated that she was aware of advice given by the Standards Board for England to Councillors in England and indeed had used a DVD that had been prepared by the Standards Board for England when training Councillors on issues concerning the Code of Conduct following the election in May 2008.
- 3.4.8. She confirmed that her conversation with Cllr Adams-Lewis on 20 August 2008 was in Welsh, as indeed all her conversations with him had been. Miss Jones produced a letter from the Chief Executive of Ceredigion County Council to all Councillors dated 12 June 2008 concerning their ability to properly represent their constituents' interests which was read out. A reply from the Leader of the Plaid Cymru group, endorsing the course of action, was also produced and read out.
- 3.4.9. She indicated that she did not tell Cllr Adams-Lewis not to take part in the debate but that she had made it plain to him that she was deeply concerned about the potential consequences if he went ahead with his plan of action. She had in mind the impact of the court's decision in the Persimmon Homes case that had been determined earlier that summer and in particular its scope on perceived bias.
- 3.4.10 Miss Jones confirmed that prior to the meeting on 20 August 2008 she had not been made aware of the contents of Cllr Adams-Lewis' election leaflet.
- 3.4.11 Miss Jones confirmed that in early September 2008, she had received a letter from solicitors acting for the developers in which they raised concerns about the conduct of Cllr Adams-Lewis. She had replied to the letter on the day before the next Council meeting on 10 September 2008 when the decision to ratify the decision taken on 20 August 2008 was confirmed. In her letter, she accepted that she had not (for obvious reasons) conceded to the developers' solicitors that she was concerned about Cllr Adams-Lewis' actions and that she had not issued a Section 5 "illegality" report.

3.4.12 Following an adjournment, Mr Richards indicated that Cllr Adams-Lewis was withdrawing the allegation that he had raised in his written response to the Tribunal, where it had been contended that Miss Jones has “misled not only Cllr Adams-Lewis but also the Ombudsman’s investigations”. Further, Cllr Adams-Lewis apologised unreservedly to Miss Jones for any smear caused by that statement which was clearly wrong.

Cllr John Adams Lewis

- 3.5.1 Mr Richards had also submitted a skeleton argument to the Tribunal in support of Cllr Adams-Lewis’ contentions – a copy of that skeleton is annexed to this Decision as Annex B.
- 3.5.2 Cllr Adams-Lewis gave evidence on oath. He confirmed that he continued to serve as a Town Councillor in Cardigan and as a County Councillor on the Ceredigion Council.
- 3.5.3 He confirmed that he always declared an interest in any planning matter that came before the Town Council so that he could participate in the debate before the planning committee of the County Council.
- 3.5.4 He confirmed that he attended the Council’s Development Control meeting on 20 August 2008 with an open mind about the planning application concerning the proposed Bath House development in Cardigan.
- 3.5.5 He had listened to the views expressed at the meeting on 20 August 2008. In particular, he was concerned about the traffic implications if the Bath House application was given the go ahead. He had listened to the presentation on traffic flows, which he compared to the movement of mice travelling in every direction.
- 3.5.6 He indicated that he had been influenced by the views expressed by one of the Council’s officers, Mr Adrian Thomas, who spoke at the meeting against the proposed development. He was concerned that at the meeting, no report had been received from the Highways Department regarding their views of the application. He said that he knew that Mr Adrian Thomas was a local man and he respected his views very much.
- 3.5.7 Cllr Adams-Lewis went on to explain that he had a background in motoring and traffic control – he held a PSV licence and indeed was a qualified pilot.
- 3.5.8 He confirmed that he had not (despite contrary views) decided prior to the meeting which way he was proposing to vote regarding the Bath House application. He said that he was not the only Councillor that had been influenced by the concerns raised at the meeting regarding traffic issues – he referred to the Vice-Chairman, Mr James, who had also voted against the development as a result of traffic concerns.
- 3.5.9 He indicated that the election leaflet had been prepared at the end of March 2008. On being questioned by the Tribunal, he could not explain why the

word “current” appeared in his election leaflet when he had referred to his opposition to the Bath House application.

- 3.5.10 Cllr Adams-Lewis indicated that he had supported an earlier application in 2005 to develop the Bath House site, which involved building a small number of houses – about 19.
- 3.5.11 He confirmed that he had no knowledge or information about the second Bath House application when he prepared his election leaflet in the latter part of March 2008.
- 3.5.12 He went on to say that the second application was not the same as the first application since the second application involved the demolition of four semi-detached houses and a health centre. These aspects, together with concerns about the traffic issues, had influenced his decision to vote against the application.
- 3.5.13 Cllr Adams-Lewis confirmed that he had spoken to the Monitoring Officer, Claire Jones, prior to the meeting and that he had told her that he was proposing to take part and vote on the proposal. He confirmed that Miss Jones’ note of their conversation was correct. He said that she had not advised him not to take part in the discussion or debate.
- 3.5.14 He confirmed that he had spoken to Mr Shipton, a reporter on the Western Mail but that the report of their conversation was incomplete due to the fact that the journalist did not have sufficient space in the edition to explain Cllr Adams-Lewis’ views in full.
- 3.5.15 On being cross examined by Mr Hughes, on behalf of the Ombudsman, Cllr Adams-Lewis repeated his earlier indication that he had attended the meeting on 20 August 2008 with an open mind. He said that when he spoke to the Monitoring Officer prior to the meeting, he did not tell her which way he was proposing to vote on the application.
- 3.5.16 He stated that he did not accept that the second application was similar to the first application – there were clear differences. In particular, the second application involved the building of a far bigger supermarket, which raised several concerns in his mind about traffic flows in the town.
- 3.5.17 On re-examination by Mr Richards, Cllr Adams-Lewis again confirmed that he was not aware of the second Bath House application when he prepared his election leaflet. He confirmed that he is a regular Chapel goer and that he was telling the truth. He feared that the second application (if granted) would change the character of Cardigan – the roads in the town were too narrow and traffic travelling to and from the supermarket would create even more congestion.
- 3.5.18 Cllr Adams-Lewis repeated his earlier statement that Mr Adrian Thomas’ evidence to the meeting had been influential in his decision to vote against the development. He asserted that the public were not aware prior to the meeting of how he intended to vote.

3.5.19 Finally, Cllr Adams-Lewis indicated that he had not received clear advice from the Monitoring Officer during their meeting (prior to the planning meeting on 20 August 2008) that he should not under any circumstances participate in the debate.

Miss Claire Jones

3.6 On being recalled, Miss Claire Jones confirmed that there was no written record of which officers had spoken at the meeting on 20 August 2010, save for the handwritten note of the Committee Clerk. She added that she had spoken overnight to one of her colleagues, Mr Dyson, a solicitor employed by the Council. He had told her that based upon his memory, Mr Adrian Thomas, had spoken at the meeting on 20 August 2008 but he could not recall him contradicting the advice that had been given by his fellow officers to support the second Bath House planning application.

Submissions

3.7. Mr Gwydion Hughes on behalf of the Ombudsman made the following oral submissions on the facts that were in dispute.

3.7.1 Cllr Adams-Lewis had clearly indicated in his election leaflet that he would oppose the Bath House development. This is what the Welsh version of his leaflet says. If he was now changing his mind about that, he would in effect be letting down his electors who had supported him based upon his stated intention.

3.7.2 In development terms, the two applications were the same, save that the traffic consequences were different. From Cllr Adams-Lewis' and his electors' perspective, the two applications were one and the same i.e. they did not want a large supermarket built in the Bath House development which would cause traffic congestion.

3.7.3 It was clear that the Monitoring Officer had (prior to the meeting on 20 August 2008) given a clear warning to Cllr Adams-Lewis that he would be putting the Council at risk if he pursued his stated intention of participating and voting on the proposal. The article in the Teifi Side Advertiser on 6 June 2008 was fairly clear in reporting the Councillor's stated intentions. Moreover, Cllr Adams-Lewis' attempt to explain the article does not reflect his perceived bias against the development which was one of the most questionable aspects of his evidence.

3.7.4 In light of Cllr Adams-Lewis' withdrawal of the allegation that Miss Claire Jones had misled him and the Ombudsman, it was no longer necessary for the Tribunal to make a finding on this fact.

3.7.5 It was accepted that the article did not present all the views and comments that Cllr Adams-Lewis had expressed to Mr Shipton during their conversation.

- 3.7.6 Cllr Adams-Lewis' evidence is clear in that he declared an interest at the meeting of the Town Council on 19 August 2008 so that he could participate in the County Council meeting on the following day, 20 August 2008.
- 3.8 Mr Richards on behalf of Cllr Adams-Lewis made the following oral submissions on the disputed facts:
- 3.8.1 It is clear that the election leaflet could only refer to the first Bath House planning application.
- 3.8.2 The evidence was clear. The two applications were very different – in particular, the access arrangements to the development on the second application have clearly been changed and on no account could the two applications therefore be described as “similar”. The second application would have caused a significant and detrimental effect on the character, safety and vitality of the town. The second application did not involve the building of a public house or a hotel but did involve demolition of some houses and a health centre.
- 3.8.3 Cllr Adams-Lewis does not accept that he was advised prior to the meeting not to take part. Whereas he accepts that the contents of the note prepared by the Monitoring Officer of their conversation prior to the planning meeting, she did not warn him or tell him not to take part.
- 3.8.4 It was no longer necessary to make a finding regarding the misleading advice as the allegation had been withdrawn.
- 3.8.5 The article was selective of Cllr Adams-Lewis' views and therefore he was misrepresented.
- 3.8.6 Cllr Adams-Lewis clearly did declare an interest at the beginning of the Town Council meeting so that he could take part in the County Council meeting the following day.

4. FINDINGS OF FACT

- 4.1 The Case Tribunal found the following **undisputed** material facts:
- 4.1.1 At the material time, Cllr Adams-Lewis was (and continues to be) a member of Ceredigion County Council.
- 4.1.2 Cllr Adams-Lewis gave a written undertaking to observe the Council's Code of Conduct on 9 May 2008.
- 4.1.3 Cllr Adams-Lewis was previously a member of the Council in the period 1996 -2004.
- 4.1.4 At the material time, Cllr Adams-Lewis was (and continues to be) a member of Cardigan Town Council.

- 4.1.5 Cllr Adams-Lewis undertook training on the Code of Conduct and related planning issues on 9, 19, 21 and 22 May 2008.
- 4.1.6 In September 2007, the Council granted outline planning permission for the development of land at Bath House Farm (ref: A051091) and, shortly before the local authority elections in 2008, received a further application for a scheme on the land (ref: A080414).
- 4.1.7 The proposed Bath House Farm development lies within Cllr Adams-Lewis' ward area.
- 4.1.8 In June 2008, the Tivy-side Advertiser included an article that referred to Cllr Adams-Lewis having to declare an interest and being unable to speak in the forthcoming "Bath-house debate".
- 4.1.9 Cllr Adams-Lewis attended a meeting of Cardigan Town Council on 19 August 2008, when a planning application (ref: A080414) relating to the proposed development at Bath House Farm was discussed. He declared an interest and did not speak on the issue.
- 4.1.10 Cllr Adams- Lewis was a member of the Ceredigion County Council's Development Control Committee on 20 August and 10 September 2008.
- 4.1.11 Cllr Adams-Lewis attended the Development Control Committee on 20 August 2008, when it considered the planning application (ref: A080414). He took part in the discussion about the development and was recorded as voting against granting planning permission.
- 4.1.12 Cllr Adams-Lewis attended the Development Control Committee meeting on 10 September 2008, when it was resolved formally to refuse permission for the development. He did not declare an interest at the meeting.
- 4.1.13 Cllr Adams-Lewis had not requested a dispensation from Ceredigion County Council's Standards Committee for permission to speak and /or vote at the meeting on 20 August 2008.
- 4.1.14 Cllr Adams-Lewis was quoted in articles in the Tivy-side Advertiser regarding the Bath House Farm development on 6 June and again on 2 September 2008.
- 4.1.15 Cllr Adams-Lewis was quoted in articles in the Western Mail which were published on 27 August and again on 10 September 2008, in which he defended his decision to vote against the proposed development.
- 4.1.16 Cllr Adams-Lewis took part in a telephone interview with Mr Martin Shipton of the Western Mail on 26 August 2008, during which he referred to his concerns about the proposed Bath House Farm development.
- 4.1.17 Claire Jones, the Councils' Monitoring Officer spoke to Cllr Adams-Lewis prior to the meeting on 20 August 2008. During the course of that

conversation, Cllr Adams-Lewis confirmed that he intended to speak at the meeting.

- 4.1.18 Cllr Adams-Lewis had a further meeting with the Monitoring Officer on 18 September 2008 to discuss the implications of the Development Control Committee's decision to refuse the application for the proposed development and the role that he played in that decision.
- 4.1.19 Cllr Adams-Lewis' election manifesto produced prior to the May 2008 local elections made reference to the fact that he would "work tirelessly on issues of concern" and to "oppose the current Bath House Farm development"
- 4.2 The Case Tribunal were required to make findings on the following **disputed** material facts:
- 4.2.1 Were Cllr Adams-Lewis' comments in his election manifesto referring to the Bath House Farm application considered by the Development Control Committee on 20 August 2008 (ref: AO80414), or the earlier application approved in outline on the 6 September 2007 (ref A051091), or both?
- 4.2.2 Was the initial application for the proposed Bath House Farm development of 6 September 2007 similar to the second application discussed by the Development Control Committee on 20 August 2008?
- 4.2.3 Was Cllr Adams-Lewis advised by the Monitoring Officer at their meeting prior to the Development Control Committee on 20 August 2008?
- 4.2.4 Did the Monitoring Officer mislead Cllr Adams-Lewis at this meeting?
- 4.2.5 Were Cllr Adams-Lewis's views misrepresented in the article printed by the Western Mail on 27 August 2008?
- 4.2.6 Did Cllr Adams-Lewis declare an interest at the Cardigan Town Council meeting on 19 August 2008 in order that he could take part in the discussion on the Bath House Farm development at the Development Control Committee the following day?

Findings on the Disputed Facts

- 4.3 The Case Tribunal found the following in respect of the disputed facts:
- 4.3.1 In the English version of his election manifesto, Cllr Adams-Lewis states that he "opposes the current Bath House development". The Tribunal accepts that in that version, Cllr Adams-Lewis was referring to the original planning application. However in the Welsh part of the same manifesto, Cllr Adams-Lewis refers to "Gwrthwynebiad datblygiad y Bath House", which when translated means objection to the Bath House development. It is therefore possible that someone reading the Welsh part of the manifesto could conclude that Cllr Adams-Lewis was opposed to the Bath House development per se, and not just the original planning application.

- 4.3.2 The Tribunal has considered the differences between the two planning applications, namely the original application A051091 and the second application A080414. There are a number of similarities between the two applications – for example, they both include a supermarket. However, there are a number of important differences, to include the different access and traffic arrangements. The Tribunal therefore concluded that the two applications were not “similar”.
- 4.3.3 It is clear to the Tribunal that Claire Jones did speak with Cllr Adams-Lewis prior to the Development Control meeting on 20 August 2008. The Tribunal concludes that the purpose of their meeting was to enable the Monitoring Officer, Claire Jones, to express her concerns to Cllr Adams-Lewis about the fact that she had been advised of his intention prior to the meeting to take part in the meeting, and in particular to participate in the debate on the application for planning permission concerning the Bath House development, namely application A080414. The Tribunal also concludes that Claire Jones prepared a note of that conversation immediately afterwards which Cllr Adams-Lewis agreed was an accurate note of their conversation. It is clear from that note that Cllr Adams-Lewis did receive advice from the Monitoring Officer concerning the risks that Cllr Adams-Lewis was incurring for the Council if he participated in the discussion and voted on the proposal.
- 4.3.4 In light of the withdrawal of the serious allegation made, it was no longer necessary for the Tribunal to make a finding on this fact.
- 4.3.5 The Tribunal accepts that the article in the Western Mail on 27 August 2008 does not reflect all that was said by Cllr Adams-Lewis during his telephone conversation with Mr Shipton. However, the Tribunal does not accept that the article misrepresents part of the conversation.
- 4.3.6 The parties are agreed, and the Tribunal concludes, that Cllr Adams-Lewis did declare an interest at the beginning of the meeting of Cardigan Town Council on 19 August 2008 concerning the proposed Bath House application number A080414, in order that he could take part in the discussion at the Development Control Committee of the County Council on the following day.

Additional Evidence

- 4.4.1 Prior to receiving submissions from Mr Richards and Mr Hughes on whether (based upon the Tribunal’s findings on the disputed facts), the body of evidence demonstrated that Cllr Adams-Lewis had acted contrary to the relevant paragraphs of the Code of Conduct, namely paragraphs 8(a), 11(1) and 14(1)(a), the Tribunal recalled the Monitoring Officer to assist the Tribunal on whether there may have been breaches of the Code of Conduct.
- 4.4.2 Miss Jones agreed and continued to give evidence on oath. She indicated that there was clearly a distinction between a situation when a Councillor was predisposed to a certain view and when a Councillor had pre-determined his position on a particular matter.

4.4.3 Miss Jones reminded the Tribunal that despite the arguments advanced on behalf of Cllr Adams-Lewis, and which are referred to in the case papers – in particular the views expressed by Phillip Sales QC, and the guidelines issued by the Standards Board for England, there was no English equivalent of paragraph 10(2)(b) of the Welsh Code, namely –

“You must regard yourself as having a personal interest in any business of your authority if –

(b) a member of the public might reasonably perceive a conflict between your role in taking a decision, upon that business, on behalf of your authority as a whole and your role in representing the interests of constituents in your ward or electoral division.”

4.4.4 Miss Jones went on to say that in view of this, and the fact that no previous decision had been issued by the Adjudication Panel for Wales for this particular paragraph, Monitoring Officers throughout Wales were awaiting the outcome of this case.

4.4.5 Mr Hughes and Mr Richards were given an opportunity of asking further questions to Miss Jones on her additional evidence. Mr Hughes indicated that he did not have any further questions of Miss Jones.

4.4.6 Mr Richards indicated that he did have further questions for Miss Jones. It became apparent that Mr Richards’ further questions did not arise out of the additional evidence given by Miss Jones to the Tribunal but he attempted to go back and ask further questions on issues that she had already been questioned on. Despite arguing that he was being curtailed in asking proper questions to Miss Jones, the Tribunal ruled that Mr Richards’ further questions did not arise out of Miss Jones’ additional evidence – he was seeking to further cross examine Miss Jones on evidence that she had already given regarding the disputed facts and which the Tribunal had already now ruled upon. Accordingly, the Tribunal ruled that Mr Richards was not permitted to submit Miss Jones to further questioning on such issues.

4.4.7 Mr Richards then argued that he should be allowed to question the Ombudsman and/or his representative who was present.

4.4.8 Mr Hughes responded and said that the Tribunal’s rules did not permit a respondent or his representative to question the Ombudsman. Moreover, the Ombudsman’s representative who was present at the hearing, namely Elizabeth Thomas, had not been involved in the investigation and could not assist the Tribunal in their inquisitorial role.

4.4.9 Following further submissions by Mr Richards and an indication of the type of questions he would like to ask the Ombudsman’s representative, the Tribunal ruled that such questioning would not assist the Tribunal in its deliberations on whether, based upon the decided facts in the case, Cllr

Adams-Lewis had breached parts of Ceredigion County Council's Code of Conduct.

4.4.10 Following a short adjournment, the Tribunal invited Mr Hughes and Mr Richards to make their submissions on whether, on the facts established, Cllr Adams-Lewis' conduct could amount to a breach or breaches of the Code of Conduct. Mr Richards indicated that despite his earlier indication to the contrary, Cllr Adams-Lewis had changed his position and had now instructed him to proceed and put forward submissions on breach.`

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

5.1 The Respondent's Submissions

5.1.1 Mr Iwan Richards on behalf of Cllr Adams-Lewis indicated that:

- a. Potentially, all members of the Development Control Committee could be debarred from taking part in the debate on the grounds that a member of the public could reasonably conclude or perceive that they had pre-determined the issue.
- b. Unless the panel arrived at the correct decision, it would make a mockery of the planning and democratic process.
- c. In his manifesto, Cllr Adams-Lewis was referring to the first application for the Bath House site.
- d. The articles in the Tivy - Side Advertiser and the Western Mail did not accurately portray the views of Cllr Adams-Lewis.
- e. There was no need for Cllr Adams-Lewis to withdraw from the Chamber when the Bath House application was discussed because he was not acting improperly.
- f. The Localism Bill would end the current nonsense and permit Cllr Adams-Lewis to participate in a debate such as this and accordingly he should not be regarded as acting contrary to the Code at the material time.
- g. The Ombudsman had failed, prior to the events complained of, to issue any guidance on the subject matter in question. Accordingly, Councillors such as Cllr Adams-Lewis were effectively working in a vacuum.

5.2 The Ombudsman's Submissions

5.2.1 It was contended that:

- a. The Tribunal could conclude on the evidence that Cllr Adams-Lewis had pre-determined the issue and thus was in breach of paragraph 8(a) of the Code.
- b. Even if Cllr Adams-Lewis had not pre-determined the issue, a member of the public could nevertheless conclude that he did have a personal interest based upon the views he had expressed in his manifesto and the views that were attributed to him in the articles that appeared in the Tivy-Side Advertiser and the Western Mail and thus he had acted in breach of paragraphs 11(1) and 14(1)(a) of the Code of Conduct.

5.3 Case Tribunal's Decision

- 5.3.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with Ceredigion County Council's Code of Conduct.
- 5.3.2 Paragraph 8(a) of the Code of Conduct states that *"You must when participating in meetings or reaching decisions regarding the business of your authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by your authority's officers"*.
- 5.3.3 The Case Tribunal found that Cllr Adams-Lewis did not whilst attending a meeting of the Development Control Committee on 20 August 2008 breach paragraph 8(a) of the Code of Conduct. The Tribunal accepted that Cllr Adams-Lewis had not actually pre-determined the question of whether he would vote against the proposal to develop the Bath House site.
- 5.3.4 Paragraph 10(2)(b) of the Code of Conduct states that *"You must regard yourself as having a personal interest in any business of your authority if – (b) a member of the public might reasonably perceive a conflict between your role in taking a decision, upon that business, on behalf of your authority as a whole and your role in representing the interests of constituents in your ward or electoral division."*
- 5.3.5 The Case Tribunal found that Cllr Adams-Lewis did act in a way, such that a member of the public might reasonably perceive a conflict between his role as a local Councillor and his role in taking a decision on behalf of the Authority. In particular, the Tribunal concluded that based upon:
 - a. The views expressed by Cllr Adams-Lewis in the Welsh version of his manifesto.
 - b. The views attributed to Cllr Adams-Lewis in the article that appeared in the Tivy-Side Advertiser on or about 6 June 2008, and
 - c. The views attributed to Cllr Adams-Lewis in the article that appeared in the Western Mail on or about 27 August 2008,

a member of the public could reasonably conclude or reasonably perceive that when he took the decision at the meeting on 20 August 2008 to vote against the proposal he was more influenced by issues in his ward than by the interests of the Authority as a whole.

- 5.3.6 Paragraph 11(1) of the Code of Conduct states that *“Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest...”*
- 5.3.7 The Case Tribunal found that Cllr Adams-Lewis did not prior to the meeting of the Development Control Committee on 20 August 2008 disclose the existence and nature of his personal interest and accordingly he acted in breach of paragraph 11(1) of the Code of Conduct.
- 5.3.8 Paragraph 12(1) of the Code of Conduct states that *“...where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement or the public interest.”*
- 5.3.9 The Case Tribunal found that Cllr Adams-Lewis did have a prejudicial interest in that a member of the public (based upon the reasoning set out at paragraph 5.3.5 above) could reasonably perceive that Cllr Adams-Lewis' ward interests were so significant that they were likely to have prejudiced his judgement of the public interest.
- 5.3.10 Paragraph 14(1)(a) of the Code of Conduct states that *“...where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee – (a) withdraw from the room, chamber or place where a meeting considering the business is being held”.*
- 5.3.11 The Case Tribunal found that Cllr Adams-Lewis did not obtain dispensation from the Authority to speak at the meeting, did not withdraw from the room when the debate took place and voted against the proposal and accordingly acted in breach of paragraph 14(1)(a) of the Code.

6. SUBMISSIONS ON ACTION TO BE TAKEN

The Tribunal was advised by its clerk and it was confirmed by the Monitoring Officer, that there were no previous issues involving breaches of the Code by the Respondent.

6.1 The Respondent's Submissions

- 6.1.1 Mr Iwan Richards on behalf of Cllr Adams-Lewis contended that it was necessary for the Tribunal to be consistent in its approach and dealings with breaches of the Code. He reminded the Tribunal of a previous decision of

the Panel in the case of Cllr Lyndon Lloyd which arose out of similar facts. The Tribunal in that reference had concluded on 14 July 2010 that the appropriate sanction should be a partial suspension of 6 weeks from membership of the Development Control Committee. In the circumstances, it would be unfair and unjust for Cllr Adams-Lewis to be treated differently.

- 6.1.2 Mr Richards also contended that this should not have been a test case and that Cllr Adams-Lewis could and should have been dealt with by the Standards Committee and he should not have had to incur the costs of a hearing before the Adjudication Panel. In the circumstances, the sanction to be imposed (if any) should not be greater than that which a Standards Committee was capable of imposing.
- 6.1.3 That Cllr Adams-Lewis had acted in good faith throughout and that he should not be penalised for expressing a view.

6.2 The Ombudsman's Submissions

- 6.2.1 Mr Hughes on behalf of the Ombudsman contended that the case displayed a number of aggravating features similar to those referred to in the Tribunal's list of relevant factors to take into account, to include:
- a. Repeated breaches of the Code on 20 August and 10 September 2008.
 - b. A failure to take heed of advice given by the Monitoring Officer.
 - c. Contesting all issues in the case to the very end and thus exposing the public purse to substantial and unnecessary costs.
 - d. Blaming others for his failures instead of accepting personal responsibility.

6.3 Case Tribunal's Decision

- 6.3.1 The Case Tribunal considered all the facts of the case and in particular the argument put forward by Cllr Adams-Lewis that he should not be treated differently from Cllr Lloyd. The Tribunal reminded itself that in the Lloyd case, the Councillor had, prior to being informed by the Panel of its decision, indicated that he would be tendering his resignation as a member of the relevant Standards committee.
- 6.3.2 The Tribunal was advised by the Monitoring Officer that Cllr Adams-Lewis was not only a member of the Development Control Committee but was also Vice Chairman of Ceredigion Council.
- 6.3.3 The Tribunal indicated that in holding the office of Vice Chairman of Ceredigion Council, he was being held out as a representative of the Council and in those circumstances should be seen as setting an example to other Councillors.

- 6.3.4 The Tribunal indicated that the aggravating features identified by Mr Hughes did arise in the case and that they would be taking those into account. However, each case was fact sensitive and the personal interests arising in the Lloyd case could and should be distinguished when compared with the present case.
- 6.3.5 The Tribunal indicated that Cllr Adams-Lewis had contested an election in May 2008 on a platform of being opposed to the Bath House development and accordingly there was a direct link between that, his participation in the debate and his voting against the development which took place on 20 August 2008.
- 6.3.6 The Tribunal also concluded that Cllr Adams-Lewis' conduct during the proceedings, and in particular the allegation (albeit withdrawn at the beginning of the hearing) that the Monitoring Officer had misled the Council and the Ombudsman, and the aggressive questioning of witnesses called by the Panel, had reflected badly on him.
- 6.3.7 The Case Tribunal concluded by unanimous decision that Cllr Adams-Lewis should be suspended from being a member of the Development Control Committee and as Vice Chairman of Ceredigion Council for a period of 3 months.
- 6.3.8 The authority and its Standards Committee are notified accordingly.
- 6.3.9 The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

*Prepared by Mr J Peter Davies and signed in
his absence by the Registrar to the Adjudication Panel*

Signed.....
J Peter Davies
Chairperson of the Case Tribunal

Date...18 March 2011.....

Colin Evans
Panel Member

Juliet Morris
Panel Member