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Mr. A. Dixon
4 Barons Close
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CHICHESTER
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11th February 2010

Your Ref:

Our Ref: EH/PU/sa

Please ask for:
Paul Unsworth
Environmental Health
Direct Line: (01903)737705

Dear Mr. Dixon,

**Complaint re: Maladministration Relating to the Arun District Council LDF
Formal Complaint Reference 024/09 - Ford Enterprise Hub**

Further to my letter of the 13th January, I have now concluded my investigation into your complaint. I have arranged my investigation and findings in a similar format to that letter and so reference to it might prove helpful in considering my responses. My findings are as follows:-

1. Was the Council's alignment with the Ford Eco Town campaign legal?

I conclude that the Council's action in assisting this campaign was legal. The Council may research and collect information under Section 141 of the Local Government Act 1972 and provide information relating to matters affecting local government under Section 142. The Council may also use its wellbeing powers under Section 2 of the Local Government Act 2000 with regard to the promotion or improvement of the economic, social and environmental wellbeing of its area. I am satisfied that the collection and dissemination of information with regard to the proposed eco towns would fall under both these descriptions.

As you are aware the Council was a consultee with regard to the eco town and our role as a local planning authority was to investigate and weigh up the possible options. Arguments for and against possible options to meet government criteria were considered and clearly taken from a wide variety of sources. Amongst these was the Eco Town Campaign.

2. The Council's promotion of and support for the Ford Eco Town campaign contributes to a perception of predetermination

Predetermination can only apply to an individual councillor. The Council has a whole reaches decisions democratically based on the range of its individual members views. This process leads to separate and distinct decisions on separate and distinct issues. It is wrong, I believe, to mix up the range of separate Council/Cabinet decisions, as you have, and conclude that these come together in some form of conspiracy against your preferred option. I do not believe these separate reports or decisions create the linkage you suggest.

On the issue of an “invited” audience for the Cabinet meeting on the 14th April, I can confirm that the following were specifically invited to attend:-

All Members of the Council
Local MPs
West Sussex Primary Care Trust
West Sussex County Council
Town & Parish Councils affected i.e. Arundel, Barnham, Clymping, Felpham, Ford, Middleton-on-Sea, Walberton and Yapton

In addition, all of these were invited to speak specifically at the meeting.

Part of the written report to Cabinet does mention the Ford Enterprise Hub Scheme and the Ford Airfield Vision Group so clearly these options have been put before Members.

I have been unable to find the press release you refer to which you believe stated that the Council was to “kick start” a campaign. Press information I have obtained purely indicates factual reporting about the establishment of a campaign and later the findings of the Select Committee. In fact the press releases I have seen confirms the Council’s view that the LDF framework should be the one to lead development rather than a separately devised and imposed eco town framework.

I do not agree that the amendment to the Cabinet minutes was unconstitutional. The error in wording, i.e. changing “principle” to “process” was corrected at Council and all Cabinet needed to do was to note this. Instead they resolved to amend their own minutes which was unnecessary. I do not believe anything underhand or inappropriate has occurred. Constitutionally the Council has made a decision and that is the one that counts.

Your concern about blind copying has been addressed in Councillor Mrs. Gillian Brown’s letter to you of the 10th December. I do not think I can add to this. From a personal perspective I do not like blind copying and discourage it but that does not make it wrong. I do not believe the blind copies that were made were done so with the purpose of hiding information or preventing access to it by groups such as yours.

It seems that meetings were arranged for the Eco Town Campaign by the Committee Section. 10 dates were arranged for the use of Council buildings. I believe no payment was made for the rooms used as might normally be expected. After this the campaign group made their own arrangements. It is not unusual for the Council to allow use of its building free for community groups and there doesn’t seem to be a distinct policy either way about payment or not. The only other assistance offered was the provision of a minute taker for their first meeting only. I believe this “contribution” in kind to the campaign is not sufficient to imply predetermination.

3. The Council has failed to consider the Ford Enterprise Hub proposals despite a request by the Downland Joint Area Committee for it to do so

You are correct in this and I have been unable to establish evidence of specific consideration of your proposals at Council. However, I believe their content has been referred to at Cabinet, see above, and been used by officers in approaching the development of the LDF which is in keeping with the recommendations from the Downland Joint Area Committee meeting in April 2005. Their minutes were also presented to the Cabinet and Full Council so Members were aware of the proposals your group put forward.

4. Various further concerns about predetermination against Option 2

With regard to potential bias within the Select Committee and on the part of its individual members I do not see actual evidence in process or decision making that bias existed or was used to corrupt the logical process of evidence gathering and decision making. From what I can understand of the process it was largely administered by the Council's independent consultant who recorded and summarised the evidence heard and questioned by Members. I can see nothing to suggest bias in the process which appears to me to have been thorough, transparent and come to proportional judgements overseen by an independent consultant.

With regard to your concerns about specific councillors I think these need far more detail to establish exactly whether any decision resulting should be made invalid. You may need to consider a judicial review if you are concerned at the decision making of groups of councillors rather than individuals. Whilst I can understand your concerns as described to me, what I cannot see is real evidence of this alleged bias being carried through in a way which has overcome the correct process of the Select Committee.

To progress to consideration by the Standards Board you will need to compile precise evidence of actual wrongdoing by individuals. To me it seems your case is based more on your assumption and supposition. Without further actual evidence your case will not progress.

As respects the alleged lack of widespread consultation your concerns do have resonance with me. The Council could, probably, have done more to advertise the LDF process. That said it did do quite a lot and I don't believe any thinking person could have missed the fact that major change was in the offing. Whilst more can always be done I do not think the consultation was inadequate although it could have been improved.

With regard to individual Members participating in and "supporting" Mrs. Neno's election campaign I am unconvinced that as such, participation in this demonstrates predetermination. It is likely that when a candidate of a political party is running for office, one or more councillors of that party will assist the candidate with his or her campaign. Such assistance does not mean that those assisting would support the manifesto on which the candidate is hoping to be elected. It would not, on its own, denote a personal or prejudicial interest or bias or predetermination by the assisting councillor if a relevant matter came before a meeting of Full Council or Committee on which that councillor is a decision maker. There would have to be some other further action or representation by the assisting councillor which might indicate such a personal or prejudicial interest or bias or determination with regard to the subject matter before Full Council or Committee. I cannot identify which councillors took part in the pre-election campaign as it was not in the control of the Council.

5. Statements with regard to the South East Plan illustrate predetermination

The Council's resolution in August 2008 responding to the South East Plan is just that and no more than that. Whilst expressing its preference in this context and at that time the Council is not stating it will reject the finding of LDF evidence to come before it thereafter. Indeed it clearly could not state that nor can it ignore the evidence that is now coming through. The Council's determination of this evidence will be tested at public enquiry so the transparency, proportionality and accuracy of its interpretation of LDF evidence will have to be demonstrated.

As already stated, with regard to your comments about individual Member bias or predetermination I can find no clear evidence of this in actual decision making which has been taken by groups of councillors. It appears to me that all councillors have had equal opportunity and right to put across their views based on evidence presented. If you wish to pursue this further you need to demonstrate their decisions are invalid. As already stated, only complaints against individual Councillors can go to the Standards Board. Challenges of Council/Committee decision-making need to occur by way of judicial review through the High Court. You may therefore wish to consider your actual evidence and determine if either course is appropriate. I believe Mr. Roberts supplied you with information regarding "pre-disposition, predetermination, bias and the Code" which may help you in this.

6. As regards your challenge that the Council has encouraged development outside the LDF, for example as illustrated by apparent association with Greencore

The Council is encouraged to engage with potential developers to achieve sustainable urban extension by the Regional Spatial Strategy (Policy SCT1). I therefore see nothing wrong in principle with Greencore engagement, especially within the context of a greater master plan for Littlehampton. Just because the Council does engage and make such linkages does not mean planning consent is going to be given. Clearly all proposals have positives and negatives and individual Councillors will have different attitudes to these. What is important is that in the democratic decision making process any development should be subject to processes which allow the open expression of views and accountability.

I believe the Council should be engaging with developers to get the best for the District. If the Ford Enterprise Hub proposal were to develop towards a planning application I feel sure the Council would engage similarly.

7. The availability of documents such as the SQW report

I have established this was posted on the Web on 18th February 2009.

8. Response from Doctor Walsh

Doctor Walsh's comments are set out as follows:-

"Whenever I spoke at West Sussex County Council or at Arun District Council prior to the Select Committee on Ford Eco-town, I invariably prefaced my remarks with words such as "based on current information" or "on the information that I have at present, it is my opinion that".....

At no time did I indicate that my mind was made up, or that I had a predetermined opinion. Indeed, I was extremely anxious to expose all the pros and cons of the Eco-town proposals to a searching and public inquiry, so that all could be better informed and make judgements accordingly, and played a leading part in the process of fact-finding at the subsequent Select Committee.

The context of my remarks about "Eco-fraud" was that I observed that it was basically a renewal of the old planning attempt for Ford, opportunistically dressed up in a "green wrap" to give it "Eco-town" credentials, to fit in with the then new government initiative. I did not think that it was more environmentally sustainable than the earlier plans. I would still contend that it was fair comment, especially given the evidence received by the Select Committee on waste-to-energy generation, the lack of railway or bus infrastructure support, and the poor highway linkages.

My comment about the funding by the proposed 5,000 homes was merely repeating views expressed by many members of the public, evidence by the words "There is disbelief that this can be funded" "and perhaps it may be a kite flying proposal"...."

All in all I have to say I have great difficulty in substantiating your complaints or evidencing your assertion that the Council has demonstrated predetermination and bias in its decision making prejudicing proper consideration of proposals such as that presented by the Ford Enterprise Hub.

As far as I can see the Council has tried to separate issues such as the eco town, South Eastern Strategy, LDF and deal with them as is required by statute or as seems most appropriate within the context at the time. These have been largely dealt with in silos albeit with occasional overlap in evidence and particularly the evidence that is now building as part of the LDF process.

The Council has through force of circumstance had to come to decisions and judgements which through lack of synchronisation may appear to cloud its motives but I remain firm in my view that each element has been dealt with reasonably and that any decision, recommendation or judgement has been fairly and democratically arrived at.

There has been no decision yet on the LDF. Whilst some of the evidence and decisions may point away from your preferred option the ultimate test of your complaint still remains the impending public enquiry into the LDF. This will evaluate the Council's gathering and assessment of evidence to support any final conclusion it reaches. I can therefore see no point in pursuing your demand for an additional separate independent enquiry.

Karl Roberts' statements to you around evidence which is accumulating against Option 2 is just a statement of reality. I see nothing wrong with stating actual positions as we, the Council, understand them - this is good transparent practice.

I therefore conclude that I am unable to substantiate your complaint and whilst I understand the emotion behind it and your sincerity in promoting the Ford Enterprise Hub proposal I do not see the Council's actions conspiring against that. Rather I see a series of separate decisions around separate issues being taken out of context. The fairness of the LDF process within Arun is yet to be tested and no-one can draw conclusions about its propriety. I can, however, state that having looked at the Council's involvement with it so far I believe it is honest, open and fair.

As you are aware, you now have a variety of options available to you, the first being a further and final review stage which you can request in writing. This is for a final review to be carried out by either the Services Director (or another of the Council's Directors if that is inappropriate) or the Chairman of the Council's Performance Scrutiny Committee.

You also have other options in terms of a complaint under the Code of Conduct. As explained above this needs to be in detail and specific to a particular Councillor.

You also have the opportunity to challenge a decision of the Council or one of its committees by way of judicial review to the High Court and finally having exhausted the Council's complaints system you may determine that it is appropriate to complain to the Local Government Ombudsman in respect of maladministration.

In concluding this complaint can I thank for your courtesy and patience in assisting my investigation.

Yours sincerely,



Paul Unsworth
Head of Environmental Health