

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/010/2005/CT

**REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE
CODE OF CONDUCT**

RESPONDENT: Councillor John S Allen-Mirehouse

RELEVANT AUTHORITY(IES): Pembrokeshire Coast National Park Authority

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 commencing at 1.00pm on Tuesday 10 July and continuing on Wednesday 11 July 2007 at the Lamphey Court Hotel, Lamphey, Pembrokeshire. The hearing was open to the public.

1.3 Councillor Allen-Mirehouse attended and was represented by Mr Robin Tolson QC. The Public Services Ombudsman for Wales was represented by Mr Gwydion Hughes of Counsel.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 20 December 2005, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against Councillor Allen-Mirehouse. The allegations were that Councillor Allen-Mirehouse had breached the Pembrokeshire Coast National Park Authority’s Code of Conduct by failing to withdraw from consideration of matters relating to the Joint Unitary Development Plan at meetings of the Authority on 23 January and 17 April 2002.

2.2 The Councillor’s Written Response to the Reference

2.2.1 Councillor Allen-Mirehouse’s written response to the reference to the Case Tribunal was dated 4 October 2006.

- a. He denied the allegations and in particular that on the occasions in question he had acted in breach of paragraphs 7(a), 10, 11, 13(f) and 16(2) of the Authority's Code of Conduct. He suggested that the Ombudsman's findings were unfounded and misconceived, on the grounds that in his capacity as a director of Angle Development Company Ltd he could not and did not have an interest in any of the proposals contained in the Joint Unitary Development Plan for Pembrokeshire relating to the allocation of land for housing development, since the company itself had never been involved in land development.
- b. Prior to the meeting on 23 January 2002, he had considered the papers and upon reflection concluded that he had no interest to declare.
- c. Prior to the meeting on 17 April 2002, he did take advice from the Monitoring Officer of Pembrokeshire County Council (not the Monitoring Office of the National Park) who advised him that he did not have an interest to declare.

2.3 The Ombudsman's Written Representations

2.3.1 In a letter dated 24 November 2006, the Ombudsman responded to Councillor Allen-Mirehouse's preliminary response and stated that the advice given to Councillor Allen-Mirehouse was inappropriate.

2.4 Pre-Hearing Review

2.4.1 A pre-hearing review took place on 7 March 2007 at the Halliwell Conference Centre, Trinity College, Carmarthen. Present were Councillor Allen-Mirehouse and his representative Mr Robin Havard, Solicitor. Mr Gwydion Hughes of Counsel and Mrs Elizabeth Thomas, solicitor, also attended on behalf of the Ombudsman. The purpose of the pre-hearing review was to try and narrow down the issues upon which the Case Tribunal would have to take evidence and make findings of fact.

2.4.2 Following the pre-hearing review and the receipt of additional information, the Case Tribunal issued a listing direction on 30 May 2007 in which it identified the key relevant disputed facts upon which it would need to find, namely:

- a. Did Councillor Allen-Mirehouse own any land that was capable of being developed when he participated in the relevant meetings of Pembrokeshire Coast National Park Authority?
- b. What was the likely impact of the introduction of Policy 47 on land values in the Pembrokeshire Coast National Park?

3. ORAL SUBMISSIONS

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

Public Services Ombudsman for Wales

3.2.1 Mr Gwydion Hughes presented the Ombudsman's report. He outlined the facts and findings. Following representations on behalf of Councillor Allen-Mirehouse concerning the Case Tribunal Regulations and in particular Regulation 9 of the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, the Case Tribunal ruled that the Ombudsman (through his representative) could not participate in the proceedings.

3.2.2 Upon receiving further representations from Councillor Allen-Mirehouse's legal representative, who had identified a number of issues upon which he required further clarification from the Ombudsman, the Case Tribunal requested that the Ombudsman present further evidence to the tribunal.

3.2.3 The Ombudsman, through his legal representative, indicated that the Investigating Officer, Mrs Margaret Bassett, and Mrs Elizabeth Thomas, the Senior Investigating Officer, who were present, could deal with Councillor Allen-Mirehouse's concerns.

3.2.4 The Case Tribunal ruled that it was not necessary for its purposes for Mrs Bassett and Mrs Thomas to deal with all of the additional points raised by Councillor Allen-Mirehouse's legal representative.

Ms Elizabeth Thomas, Director of Investigations, Public Services Ombudsman for Wales

3.3.1 Mrs Thomas confirmed her role and status within the Ombudsman's office.

3.3.2 She confirmed that upon receipt of the initial complaint from Mr Stoddart, the Ombudsman had decided to refer the matter to Dyfed Powys Police for investigation in May 2002. In July 2004, the Police advised the Ombudsman that there was insufficient evidence to pursue any criminal proceedings against Councillor Allen-Mirehouse. In October 2004, following the receipt of further information from Councillor Stoddart, the Ombudsman decided to carry out his own investigation into the complaint. Mrs Thomas confirmed that all relevant documents obtained by the Ombudsman had been disclosed to Councillor Allen-Mirehouse.

Miss Margaret Bassett, Investigating Officer, Public Services Ombudsman for Wales

3.4.1 Miss Bassett confirmed that she had been concerned with the investigation from the outset.

3.4.2 She told the Case Tribunal that she had not made any investigations into land values in Pembrokeshire during the relevant periods.

3.4.3 She confirmed that she had not, during the course of the investigation, undertaken any investigations into the report commissioned by the Authority on the 'Socio-economic impacts of local and essential needs housing in the National Park' from the Bartlett School of Planning, London.

Mr Ifor Jones, Head of Conservation, Pembrokeshire Coast National Park Authority

3.5.1 Mr Jones confirmed that he had prepared the written submissions submitted to the Case Tribunal in response to the letter from the tribunal of 23 March 2007. He confirmed that its content was true to the best of his knowledge and belief.

Councillor John Allen-Mirehouse

3.6.1 Councillor Allen-Mirehouse confirmed that he stood by his preliminary submissions to the Case Tribunal dated 4 October 2006, and that the contents were true to the best of his knowledge and belief.

3.6.2 Councillor Allen-Mirehouse also relied upon the skeleton arguments that had been prepared and submitted by his Counsel, Mr Robin Tolson QC.

3.6.3 Councillor Allen-Mirehouse confirmed that whereas he had an interest both as a member of the National Park Authority and a director of Angle Development Corporation Ltd, the company did not engage in development within the Pembrokeshire National Park. Accordingly, whereas he had considered and indeed obtained advice from the Monitoring Officer of the County Council, he had concluded that it was not necessary for him to declare an interest before participating in the debates and voting on resolutions at meetings that took place on 23 January and 12 April 2002.

4. FINDINGS OF FACT

4.1 The Case Tribunal found the following **undisputed** material facts:

4.1.1 At the material time, Councillor Allen-Mirehouse was a member of the Pembrokeshire Coast National Park Authority and Pembrokeshire County Council.

4.1.2 Pembrokeshire Coast National Park Authority adopted a code of conduct on 29 October 2001.

4.1.3 Councillor Allen-Mirehouse gave a written undertaking to observe the code of conduct on 10 November 2001.

4.1.4 At the material time, Councillor Allen-Mirehouse was a Director of Angle Development Company Ltd.

4.1.5 Angle Development Company Ltd was incorporated on 19 June 1961.

4.1.6 Angle Development Company Ltd is shown within the company's "Report and Financial Statements" for the years ending 31 December 1999 to 31 December 2004 as having a principal activity of "furnished property, caravan site and caravan letting."

4.1.7 At the material time, Councillor Allen-Mirehouse had an interest in the Angle Estate, consisting of some 2,500 acres on the Angle Peninsula including 20 cottages and farmhouses and Angle Farm.

4.1.8 The Joint Unitary Development Plan for Pembrokeshire represented a joint plan for the whole County shared by both Pembrokeshire County Council and the Pembrokeshire Coast National Park Authority. It would have been applicable to Pembrokeshire County Council as well as the Pembrokeshire Coast National Park Authority.

4.1.9 In or about 1994, albeit outside the building line shown on the plan of the Angle area before the Case Tribunal, the National Park Authority had earmarked areas marked "C" and "E" as being worthy of protection from planning and they were described as "green wedges" or were of archaeological importance.

4.1.10 On 11 December 2000, through land agents Owen & Owen, the architects Acanthus Holden were retained to consider the "swap" of planning permission from area "B" to areas "C" and "D".

4.1.11 On 12 June 2001, the architects Acanthus Holden wrote to Mr J Griffiths of the Planning Department of the Pembrokeshire Coast National Park Authority inviting the Authority to consider exchanging the existing planning consent for dwellings at area "B" for consent for 10 similar dwellings in area "C" (Whitehall) and "D" (behind the school).

4.1.12 On 19 November 2001, Acanthus Holden advised Owen & Owen that only one of the proposed swap sites (Whitehall) was shown on the draft Joint Unitary Development Plan based on the officers' recommendation that they would need to put forward the second site "D" at consultation stage. They confirmed that the planning consent he already held for area "B" should be kept "current".

4.1.13 Owen & Owen wrote to Acanthus Holden on 27 November 2001 confirming the client was interested in carrying on with the effort to agree with the National Park Authority a substitution of the current planning consent for a consent for the two sites.

4.1.14 On 13 December 2001, Mr Griffiths of the National Park Authority wrote to Acanthus Holden confirming that he understood that the client was looking at a substitution of planning consents.

4.1.15 Councillor Allen-Mirehouse attended meetings of the Pembrokeshire Coast National Park Authority on 23 January 2002 and 17 April 2002, at which "Policy 47 - Housing in the Pembrokeshire Coast National Park" was on the agenda.

4.1.16 Councillor Allen-Mirehouse obtained advice from Mr Huw James, Monitoring Officer of Pembrokeshire County Council, as to whether he had a declarable interest in respect of the above interests, prior to meetings of the Council in February 2002.

4.1.17 Councillor Allen-Mirehouse did not obtain advice from the Monitoring Officer of Pembrokeshire Coast National Park Authority, prior to its meetings on 23 January 2002 and 17 April 2002.

4.1.18 Councillor Allen-Mirehouse did not declare an interest at either meeting of the Pembrokeshire Coast National Park Authority.

4.1.19 At the meeting of 23 January 2002, Councillor Allen-Mirehouse participated in the discussion in relation to Policy 47 and voted against the motion.

4.1.20 At the meeting of 17 April 2002, officers of the National Park Authority sought approval to adopt a proposal whereby, in the period before Policy 47 was placed before and approved by the Joint Unitary Development Plan Inspector, all planning applications should be considered with the terms of Policy 47 in mind.

4.1.21 At the meeting on 17 April 2002, Councillor Allen-Mirehouse participated in the discussion in relation to Policy 47 and voted against the motion.

4.2 The Case Tribunal found the following **disputed** material facts:

4.2.1 Did Councillor Allen-Mirehouse own any land that was capable of being developed when he participated in the meetings of the Pembrokeshire Coast National Park Authority?

4.2.2 What was the likely impact of the introduction of Policy 47 on land values in the Pembrokeshire Coast National Park?

4.2.3 Did Councillor Allen-Mirehouse consider, prior to the meeting of the National Park Authority on 23 January 2002, whether he had a personal interest the nature of which he should disclose.

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

4.3.1 Councillor Allen-Mirehouse did own land that was capable of being developed when he participated in meetings of the Authority.

4.3.2 The likely impact of the introduction of policy 47 upon land values was:

- a. that the value of existing homes would rise; but,
- b. the value of new build homes would remain the same.

4.3.3 Councillor Allen-Mirehouse did consider whether he had a personal interest to disclose prior to the meeting on 23 January 2002, and concluded that there was no interest to disclose.

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 Tolson, on behalf of Councillor Allen-Mirehouse addressed the Case Tribunal by reference to the arguments set out in the respondent's written submissions and skeleton argument dated 27 June 2007.

5.1.2 Mr Tolson said that it had never been disputed that Councillor Allen-Mirehouse owned land that was capable of being developed when he participated in the relevant meetings of the National Park Authority. Councillor Allen-Mirehouse accepted the evidence of Mr Ifor Jones, as to the impact of policy 47 on land values. Mr Tolson contended that Councillor Allen-Mirehouse had no interest that it was necessary for him to disclose and, on the basis of all the facts of the case, there had not been a failure to comply with the code of conduct.

5.2 The Ombudsman's Report/Submissions

5.2.1 No further representations were made.

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 not a failure to comply with the Pembrokeshire Coast National Park Authority's code of conduct.

5.3.2 The Case Tribunal found:

- a. Councillor Allen-Mirehouse did consider whether he had a personal interest in the matter of the Authority's consideration of Policy 47 on local and essential needs housing.
- b. There was no such interest to disclose.

6. APPLICATION FOR COSTS

6.1 An application for costs was made by Mr Tolson on behalf of Councillor Allen-Mirehouse, namely that Councillor Allen-Mirehouse's costs should be paid by the Public Services Ombudsman for Wales on the basis that his conduct and in particular his investigation had been "wholly unreasonable" in that he had failed to conduct a proper investigation against him.

6.2 Following representations by Mr Tolson QC on behalf of Councillor Allen-Mirehouse and Mr Gwydion Hughes on behalf of the Ombudsman, the Case Tribunal concluded that the Ombudsman had not acted frivolously or vexatiously or that his conduct had been "wholly unreasonable" within the meaning of regulation

20(1) of the Adjudication by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 so as to justify an award of costs against the Ombudsman. The application was therefore rejected.

Signed.....

Date..20 September 2007..

J Peter Davies
Chairperson of the Case Tribunal

Colin Evans
Panel Member

Ms Juliet Morris
Panel Member