
THANET DISTRICT COUNCIL REVIEW OF POLICIES AND PROCEDURES - PROBITY AND REPUTATION

To: **Cabinet - 25 April 2013**

Main Portfolio Area: **Commercial Services and Business, Corporate & Regulatory Services**

By: **Corporate & Regulatory Services Manager**

Classification: **Unrestricted**

Ward: **All**

Summary: **To inform Cabinet of the review of policies and procedures underway in response to the conviction of former Councillor Sandy Ezekiel of misconduct in public office.**

For Decision

1.0 Introduction and Background

- 1.1 Former Councillor Sandy Ezekiel was convicted at Maidstone Crown Court on 1 March 2013 of four counts of misconduct in public office relating, firstly, to the purchase in March 2010 of a Council owned residential property, 12b King Street Margate through a nominee purchaser and secondly, the subsequent acquisition of the adjoining commercial premises, 12a King Street Margate. Councillor Ezekiel was sentenced to 18 months imprisonment and his nominee purchaser, Philip Emanuel, was convicted of aiding and abetting and sentenced to 12 months imprisonment suspended for two years.
- 1.2 In summary the case for the Crown in respect of 12b King Street was that Councillor Ezekiel has misused his office by using price sensitive information to assist him in the purchase of the property and that in order to conceal his identity as the real purchaser, Philip Emanuel has agreed act as his nominee. So far as 12a King Street was concerned, the case for the Crown was that Councillor Ezekiel had misused his office by requesting an officer to take enforcement action against the owner of 12a King Street in order to encourage him to sell the property and by representing himself as acting as the agent for a prospective purchaser without disclosing his interest in 12b King Street.
- 1.3 There is no doubt that Councillor Ezekiel's conviction as well as the publicity surrounding his trial has damaged the corporate reputation of the Council as well as the reputation of councillors and officers. Consequently, it is appropriate that in the light of that conviction the Council conducts a probity focussed review of its policies and procedures extending beyond those relating purely to the disposal of assets. In doing so it is also necessary to review the propriety of the actions taken by the officers although it is important to state at the outset that not only were no charges brought against any officer, it is unlikely that Councillor Ezekiel would have been brought to account if officers had not made statements and given evidence for the prosecution.

2.0 Review of Officer Actions

Role of the Monitoring Officer

- 2.1 When in January 2011 the Monitoring Officer received information that Councillor Ezekiel had acquired 12b King Street, he immediately consulted the Chief Executive and Section 151 Officer, reviewed the legal and estates files and obtained relevant transfer details from the Land Registry. On learning that the Council's apparent buyer, Philip Emanuel, had gifted 12b King Street to Councillor Ezekiel and his spouse, he was concerned that Councillor Ezekiel may have been the original purchaser in which case Councillor Ezekiel should have declared his interest in 12b Kings Street in the Register of Members Interest within 28 days of exchange of contracts on 11 February 2010, i.e. by 10 March 2010.
- 2.2 Although this would constituted a potential breach of the Members Code of Conduct which could have been dealt with by way of a complaint to the Standards Committee, the Monitoring Officer was concerned that Councillor Ezekiel's apparent concealment of his involvement as well as his access to, and possible use of, price sensitive information, constituted potential criminal conduct. He therefore sought external legal advice and acting on that advice reported his concerns to the Serious Crime Directorate of Kent Police. As Councillor Ezekiel had by then declared his interest in 12a King Street in the Register of Members Interests and as the Monitoring Officer was aware from his review of the files of the officer involvement in 12a King Street, he also referred these concerns to the police.

Role of Officers in the Sale of 12b King Street

- 2.3 The decision to dispose of 12b Kings Street was taken by Cabinet on 27 July 2006 when the property was added to the List of Sites Identified as Surplus to the Council's Requirements in accordance with the then prevailing Asset Management Strategy. However, the property was not actively marketed until October 2008 when the Asset Manager sought quotes and valuations from competent Estate Agents and appointed Daniel Cooke and Co. of 147 Northdown Road, Cliftonville, as sole selling agent. Disposal by private treaty was selected because this was the mode of sale likely to realise the best price for the taxpayer of a recently refurbished residential property. Thereon, the procedure adopted was that the Agent would introduce prospective purchasers in the usual way and refer all 'subject to contract' offers to the Asset Manager for consideration and approval having regard to the valuation advice received.
- 2.4 The highest offer of £125,001 was made by Philip Emanuel in November 2009, the Asset Manager in the meantime having refused a series of lower offers from another prospective purchaser. An attempt by Emanuel in December to reduce the offer to £120,000 based on a survey and valuation commissioned from a surveyor in Canterbury was immediately rejected by the Asset Manager who also informed Emanuel's solicitor that the property would be returned to the market unless the original offer was restored. It was and contracts were duly exchanged with Emanuel on 11 February 2010 with completion taking place on 9 March 2010. Officers are aware from the evidence presented in the Crown Court that Emanuel had entered into a Deed of Trust with Councillor Ezekiel acknowledging that the purchase price was paid by Councillor Ezekiel,
- 2.5 It is therefore the case that the Asset Manager obtained market value for the property, that to say that following active marketing for nearly a year the property was sold to the highest bidder meaning there was no identifiable loss to the public purse.
- 2.6 Following the review of the Estates and Legal files for 12b King Street by the Monitoring Officer, the only matter of concern in relation to the actions taken by the officers was the disclosure by the Asset Manager to Councillor Ezekiel of the value of one of the rejected offers from the other prospective purchaser. This occurred as a result of a communication received by Councillor Ezekiel in his capacity as Leader of the Council from the other prospective purchaser complaining about the rejection of her offers. In her e-mail she

disclosed information about her rejected offers. Consequently, when the Asset Manager rejected another higher offer from her, anticipating a further complaint to the Leader he e-mailed Councillor Ezekiel to explain his decision. In the course of that explanation the Asset Manager disclosed the value of the rejected bid (£123,500) and gave the opinion that that the property was worth a little bit more than this amount. Two days later Philip Emanuel offered £125,001 for the property and in finding Councillor Ezekiel guilty of misconduct in public office the jury accepted that he had used this price sensitive information to assist in the acquisition 12b Kings Street through Emanuel.

Role of Officers in relation to 12a Kings Street

- 2.7 It is important to stress that the physical condition of 12a King Street as a near derelict building in Margate Old Town warranted the involvement of Council enforcement officers, a fact recognised and commented upon by the judge at the trial. In addition, it is entirely appropriate that officers who work in complaint based services respond positively to complaints from elected members so long as they do so in good faith and in accordance with established procedures. In this case, it is clear that the officers involved in 12a King Street were unaware of Councillor Ezekiel's property interest in 12b King Street and were equally unaware of his improper motivations in complaining to them. As the involvement of officers in this case was justified and proportionate and there were no departures from established procedures, there is no reason to question the propriety of the actions taken by the officers in relation to 12A Kings Street.

3.0 Conclusions on Officer Involvement

- 3.1 There is no evidence of misconduct on the part of any officer of the Council in relation to this matter. However, the review of officer involvement has identified the need to review the Council's Asset Disposal procedures to ensure that price sensitive information is not disclosed to members or other officers and that the requirements imposed on members in relation to the registration and declaration of interests are also reviewed to ensure compliance. These are considered further below.

4.0 Review of Relevant Policies and Procedures

- 4.1. It is also necessary to review a number of the Councils Policies and Procedures to ensure that in the light of the conviction of Councillor Ezekiel they remain fit for purpose as an effective deterrent to fraud and corruption by members, officers or third parties as well aiding in the detection of those who engage such activities. To this end the Chief Executive has committed the Council to an immediate review of a number of relevant Polices and Procedures:-
- 4.1.1 Asset Disposal Policies and Procedures - To ensure that the processes and procedures for disposal of real assets are fit for purpose by referring to the various methods of disposal and the justification for adopting each method and that key controls are reviewed and improved to prevent officers or members taking advantage of price sensitive information by, for example, prohibiting officers from disclosing bidding information during a disposal process or in commercial negotiations. Internal Audit will be requested to contribute to this review and to provide assurance of the adequacy of key controls. The outcome of this review will be reported to the next meeting of the Cabinet.
- 4.1.2 Register of Members Interests – The failure by Councillor Ezekiel to register a beneficial interest in 12b King Street for ten months was a clear breach of the requirements of the then applicable Members Code of Conduct. The review will consider the potential of extending on a voluntary basis the current limited system of disclosures required by the Disclosable Pecuniary Interest Regulations. This will be reported to full Council as part of the wider review of the Members Code of Conduct due to take place over the summer. In the meantime a letter has been sent out to all members reminding them of the need to keep the Register of Members Interest up to date by notifying the Monitoring Officer of any changes in their interests.

- 4.1.3 Whistleblowing Policy - The annual review of the Policy was completed recently and signed off by the Governance & Audit Committee. Staff have been informed of the changes via the Council's intranet and by a poster campaign. In fact the information that enabled officers to refer the sale of 12b King Street to the Police derived from a whistleblower and the fact also that a thorough police investigation was able to be completed with officer assistance and without more widespread knowledge indicated both a high level of officer integrity and the effective operation of the Policy.
- 4.1.4 Contract Standing Orders - This is a key policy designed to ensure probity, best value and non discrimination in the procurement of works, supplies and services. Contract Standing Orders are also subject to annual review and the recommendations of any review are reported to the Governance & Audit Committee, the Constitutional Review Working Party and the Standards Committee prior to formal adoption by the Council. The Council already has tight controls over tender opening and recent reforms include a requirement on all those subsequently involved in the pre-qualification selection, evaluation, or award of contracts, to declare all conflicts of interest and if any exist to withdraw from any further involvement in the procurement process. Contracts are also subject to routine audit by internal audit to assess compliance with Contract Standing Orders.

Other Measures

- 4.2 A number of other measures are proposed to provide further assurance:-
- 4.2.1 Officers to be made aware of risk areas in disposal and contract award decisions and will be reminded of the need for thorough and accurate records of all decisions as well as for the need to log member contact in relation to sales and contract negotiations.
- 4.2.2 To strengthen the detection controls for asset sales, all sales will be reported in the quarterly budget monitoring reports, where the sale values will form part of the capital receipts figures within the capital programme. The report will state which assets have been disposed of, by which sale method, for what price and give details of the purchaser.
- 4.2.3 Members are to be reassured that it is appropriate to continue to approach officers with concerns relating to their ward and for Cabinet Members to contact officers in relation to their portfolio responsibilities but that officers will make a record of all such contacts.
- 4.2.4 Members and Officers to continue to receive regular reminders about whistleblowing and the Whistleblowing Policy.
- 4.2.5 To strengthen transparency and accountability reports to Council, Cabinet or Committee that recommend the exclusion of the press and public from any part of a meeting to which the press and public would normally have access will in future describe the grounds of exclusion and set out why such a recommendations is in the public interest by reference to the factors that favour inclusion and those that favour exclusion. Members will be advised that where a decision whether or not to exclude the press and public is finely balanced; doubts should be resolved in favour of not excluding the press and public.

5.0 Corporate Implications

5.1 Financial and VAT

- 5.1.1 None apparent.

5.2 Legal

5.2.1 As set out in the report.

5.3 Corporate

5.3.1 A review of officer involvement and of relevant Council Policies and Procedures is necessary to assure the public that TDC is an ethical Council with high standards of probity and propriety

5.4 Equity and Equalities

5.4.1 There are no equity or equalities issues arising out of the report.

6.0 Recommendations

6.1 That the report be received and noted;

6.2 That the outcome of the review of the Council's Asset Disposal Policies and Procedures be reported to the next meeting of the Cabinet;

6.3 That the Whistleblowing Policy and Contract Standing Order continue to be reviewed annually;

6.4 That the measures proposed in paragraphs 4.2.1 to 4.2.5 of the officers report be approved and implemented with immediate effect.

7.0 Decision Making Process

7.1 The recommendations in this report are non key executive decisions to be taken by the Cabinet.

Contact Officer:	Harvey Patterson, Corporate & Regulatory Services Manager, ext 7005
Reporting to:	Dr Sue McGonigal, Chief Executive, ext. 7001

Annex List

None	N/A
------	-----

Background Papers

Title	Details of where to access copy
None	N/A

Corporate Consultation Undertaken

Finance	Sarah Martin, Financial Service Manager
Legal	N/A
Communications	Justine Wingate, Corporate Information Manager