



**26 January 2024**

**MEDIA RELEASE**

## **NORTH AYRSHIRE COUNCILLOR FOUND NOT TO BE IN BREACH OF CODE OF CONDUCT**

North Ayrshire Councillor, Tom Marshall, was found not to have breached the Councillors' Code at a Hearing held in Irvine on 26 January 2024. The allegation concerned Cllr Marshall's actions in participating in the consideration of a planning application at a meeting of the Council's Local Review Body on 15 December 2021, without disclosing that he had visited the site two days earlier and had discussed the application with the applicant's former neighbours.

Helen Donaldson, Standards Commission Member and Chair of the Hearing Panel, said: "The Panel did not find that Cllr Marshall failed to ensure he was acting fairly, or that he had failed to avoid any suspicion of pre-judging, bias or a lack of fairness in relation to the planning application. As such, there would have been no requirement for him to have declared an interest and withdrawn from the meeting. The Panel concluded, therefore, that Cllr Marshall had not breached the Code."

The Panel noted that there was no dispute that Cllr Marshall did not declare an interest and participated in the consideration of the planning application at the meeting on 15 December 2021.

The Panel noted it had been alleged that Cllr Marshall advised the applicant's neighbours, during his visit, that he thought the proposed extension would look out of place. Given the passage of time and the (entirely understandable) discrepancies in recollections in witness accounts provided at the Hearing, the Panel was unable to determine conclusively what exactly had been said. It was nevertheless satisfied, on the balance of probabilities, that Cllr Marshall raised the possibility of whether the proposed extension could look out of place.

The Panel noted that councillors are entitled to carry out site visits and discuss applications with any interested parties before meetings. The Panel noted that doing so would not, in itself, necessarily create a declarable interest. The Panel acknowledged that even if Cllr Marshall had questioned the suitability of the extension at the site visit, he would only have been required to declare an interest at the Local Review Body meeting where the application was being considered, if the objective test was met. The objective test was where a member of the public, with knowledge of the relevant facts (being the application to be discussed and the comments allegedly made by Cllr Marshall during the site visit), would reasonably regard his connection to the particular matter before the Local Review Body as being so significant that it would be considered as being likely to influence his discussion or decision-making at the meeting.

In this case the Panel was not satisfied that any suggestion made by Cllr Marshall to the neighbours that the proposed extension *might* look out of place would be considered sufficiently significant as to be likely to have an impact on his discussion or decision-making. This was because there would have been nothing to prevent him from making such a suggestion at the Local Review Body meeting itself. The Panel further considered that the making of such a suggestion would not indicate that Cllr Marshall had pre-judged the application in advance of the Local Review Body meeting. The Panel did not consider that it would demonstrate that Cllr Marshall had completely closed his mind or was not prepared to consider the merits of the application at the meeting. The Panel concluded, therefore, that there would have been no requirement for him to have declared an interest and withdrawn from the meeting.

Ms Donaldson noted: “The Panel nevertheless wished to emphasise that the requirement for councillors to act fairly and without bias, and to be seen to be acting fairly and without bias when determining planning applications, is a fundamental requirement of the Code. A failure to comply with this provision can erode public confidence in elected members, damage the reputation of the Council itself, and potentially leave it open to legal challenge.”

A full written decision of the Hearing will be issued and published on the Standards Commission’s website within 7 days.

ENDS

#### **NOTES FOR EDITORS**

1. Complaints about councillors are made to the Ethical Standards Commissioner (ESC). The Standards Commission and ESC are separate and independent, each with distinct functions. The ESC is responsible for investigating complaints. Following investigation, the ESC will refer its report to the Standards Commission for Scotland for adjudication. Email: [info@ethicalstandards.org.uk](mailto:info@ethicalstandards.org.uk), <https://www.ethicalstandards.org.uk/> Tel: 0300 011 0550
2. The [Standards Commission for Scotland](#) is an independent public body, responsible for encouraging high standards of behaviour by councillors and those appointed to boards of devolved public bodies including in education, environment, health, culture, transport, and justice. The role of the Standards Commission is to encourage high ethical standards in public life; promote and enforce the Codes of Conduct; issue guidance to councils and devolved public bodies and adjudicate on alleged breaches of the Codes of Conduct, applying sanctions where a breach is found.
3. The [Codes of Conduct](#) outline the standards of conduct expected of councillors and members of devolved public bodies. In local authorities, there is one Code of Conduct, approved by Scottish Parliament, which applies to all 1227 councillors elected to Scotland’s 32 Local Authorities.