



Neutral Citation Number: [2022] EWHC 2817 (Admin)

Case No: CO/1794/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING AT BRISTOL CIVIL JUSTICE CENTRE

Bristol Civil Justice Centre
2 Redcliffe Street
Bristol BS1 6GR

Date: 08/11/2022

Before:

MR JUSTICE CHAMBERLAIN

Between:

THE KING
on the application of
CPRE (SOMERSET)

Claimant

- and -

SOUTH SOMERSET DISTRICT COUNCIL

Defendant

-and-

(1) ILMINSTER TOWN COUNCIL
(2) THE DILLINGTON ESTATE

Interested
Parties

Richard Moules (instructed by Khift Ltd) for the Claimant
Annabel Graham Paul (instructed by Bevan Brittan LLP) for the Defendant

Hearing dates: 12 October 2022

Approved Judgment

MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

Introduction

- 1 Carnivals have played an important part in the cultural life of Somerset since the seventeenth century. They involve, among other things, processions of floats, which are constructed and elaborately decorated by local carnival clubs.
- 2 On 8 April 2022, South Somerset District Council (**the District Council**) granted an application by Ilminster Town Council (**the Town Council**) for planning permission for the erection of five self-contained buildings to store and facilitate construction of carnival floats on what is at present agricultural land owned by the Dillington Estate (**Dillington**) at Longforward Lane, Ilminster (**the Site**). This followed a 6-5 vote by the Area West Planning Committee (**the Planning Committee**) at a meeting on 19 January 2022. Under the District Council's scheme of delegation, the Planning Committee is responsible for considering planning applications relating to the area which includes Ilminster.
- 3 CPRE Somerset (**CPRES**) is the Somerset branch of CPRE, the Countryside Charity, formerly the Council for the Preservation of Rural England. It contends that the decision of the Planning Committee was tainted by apparent bias on the part of its Chair and Vice-Chair and therefore unlawful. It has brought this claim to quash the planning permission.
- 4 The basis for CPRES's claim is as follows:
 - (a) Councillor Brian Hamilton (**Cllr Hamilton**), the Vice-Chair of the Planning Committee, was Deputy Major of Ilminster and a member of the Town Council which had made the planning application. As such, he was automatically disqualified from participating in the process to determine it, or was otherwise tainted by apparent bias.
 - (b) Councillor Jason Baker (**Cllr Baker**), the Chair of the Planning Committee, was a member of the Chard Carnival Committee (**the CC Committee**), in which capacity he public supported the planning application. He was also a close affiliate of the South Somerset Carnival Park Committee (**the SSCP Committee**), which acted as agent for the applicant Town Council. As such he was tainted by apparent bias.
 - (c) Because of these interests, Cllr Hamilton and/or Cllr Baker approached the planning application with closed minds so that the decision to grant planning permission was predetermined.
- 5 Permission to apply for judicial review was granted by David Elvin QC sitting as a Deputy High Court Judge on 8 July 2022.
- 6 The substantive hearing was listed for 12 October 2022. There was an unopposed application to adjourn it because CPRES's counsel was engaged in a public inquiry elsewhere. I refused the application because this claim affects third parties and there is a public interest in its expeditious determination. The hearing proceeded as listed. In the event, CPRES's counsel, Mr Richard Moules, was able to attend. The District Council was represented by Mrs Annabel Graham Paul. I am grateful to both counsel for their excellent written and oral submissions.

Background

- 7 Carnivals take place in many towns in Somerset. In each town, the organisation of the carnival is undertaken by a local carnival committee. The committees in Wellington, Chard, Ilminster and Taunton came together to form the South Somerset Federation of Carnivals (**the Federation**). In each town there are also carnival clubs, which construct and decorate the floats and enter them in carnivals across the county.
- 8 In 2015, a proposal was advanced for a “carnival park” for use by clubs in the Federation towns. This was to include five self-contained sheds or buildings where carnival clubs could construct and decorate their floats. The SSCP Committee was set up. It entered into an in-principle agreement with a local landowner, Dillington, for a 25-year lease of the Site. The fee payable by applicants for planning permission is reduced where the applicant is a town or parish council, so it proposed that the application should be made by the Town Council, which agreed. The question whether it was lawful for the Town Council to agree to be an applicant for that reason does not arise for decision in this case.
- 9 An application for planning permission, with the Town Council named as applicant, was made in 2018. There was a meeting of Town Council on 15 September 2020, attended by Cllr Hamilton, at which a speaker asked about the Town council’s support for the application. Cllr Burton, the then Mayor of Ilminster, reiterated the Town Council’s support for it.
- 10 Cllr Hamilton was also present at meetings of the Town Council’s Planning, Highways and Transport Committee on 6 July 2021 and 3 August 2021. At the first of these meetings, members were informed that the District Council’s planning department had raised concerns about the validity of the application, because of the absence of any record of a resolution of the Town Council authorising it. At the second, the committee resolved unanimously to refer the matter to the full Town Council.
- 11 On 17 August 2021, the full Town Council met. One of the items on the agenda was the application. Cllr Hamilton declared an interest as Vice-Chair of the District Council’s Planning Committee (which would have to consider the application) and left the room while this item was being discussed. In his absence, the Town Council resolved to allow itself to be named as applicant in a resubmitted application and to issue a letter supporting the ethos and reasons behind the need for a park to be built.
- 12 The application was resubmitted on 6 September 2021 in materially the same form as the 2018 application. The officers’ report noted that the Site was in the open countryside, where development was not normally supported. The main consideration which could justify the grant of planning permission was described as follows:

“The proposal is not for an industrial/commercial use and is unique in it being for carnival clubs.

Carnivals in Somerset are part of the culture and have been around for hundreds of years. The clubs are non-profit making and help to raise money for charities and also provide work skills for youngsters who get involved with the build process etc. The purpose of this application is to secure permanent facilities so that clubs can grow and be maintained. Currently the

clubs operate from different sites and the aim is to bring at least five clubs to one site which will help share the costs to run it.”

- 13 The report went on to note that the rent had been set at a level “akin to agricultural values” and then said this:

“Local landowners Dillington Estates have agreed to grant South Somerset Carnival Park Committee a lease of the field (see below for more information). We have considered and assessed in-town commercial units (existing and proposed) and the level of rent commanded simply makes this type of building unviable. Furthermore the Carnival Park Committee has no covenant strength or income therefore is not an attractive tenant for a commercial business owner.

The rent will be proportionately split between the clubs and committees occupying the buildings to include Ilminster based Harlequin, Gemini, 1 + 1 and Extreme Carnival Clubs, Chard based Eclipse and the four South Somerset federation towns. At present each carnival club pays an annual rent for their existing premises and the proposed rent level of the carnival park is below these current rent levels and is therefore financially viable.

South Somerset Carnival Park Committee (SSCPC) will be the tenant and will sub-let to the carnival clubs and committees. SSCPC will be the management company and will put in place controls within each sub-lease to control the management of the site.”

- 14 On balance, officers concluded that the material economic and social benefits were sufficient to outweigh the possible environmental effects of the scheme, in part due to the fact that environmental impacts could be partly offset by mitigation secured by planning conditions.
- 15 On 14 January 2022, CPRES wrote to the District Council’s Monitoring Officer saying that six members of the Planning Committee had personal interests in the application arising from their membership of the Town Council (Cllrs Hamilton and Keitch) or the CC Committee (Cllrs Baker, Kenton, Bulmer and Wale) and asking for consideration of the application to be deferred until these concerns were addressed.
- 16 The Planning Committee met on 19 January 2022. Cllrs Hamilton and Baker both declared a “personal interest” under the District Council’s Member Code of Conduct (**the Code**) but, on the advice of the Monitoring Officer, took the view that they did not have a “prejudicial interest” on a proper interpretation of the Code. They participated in the meeting and decision and both voted in favour of the grant of planning permission. Cllrs Keitch, Bulmer and Kenton declared personal interests under the Code and did not participate in the meeting or decision-making process. Cllr Wale declared a “personal interest” but, again on the advice of the Monitoring Officer, did not consider that he was precluded from participating and did participate, voting against the grant of planning permission. The Committee voted 6-5 to grant planning permission.

The Code

- 17 The Code provides under the heading “Introduction and Interpretation” as follows:

“As a member and representative of this Council it is your responsibility to comply with this Code when you undertake or claim to be undertaking Council business or give the impression that you are undertaking Council business.

As a representative of this Council your actions impact on how the Council as a whole is viewed by the public. It is important, therefore, that you do not do anything when undertaking Council business which you could not justify to the public. It is not enough to avoid actual impropriety, you should at all times avoid any occasion for suspicion or appearance of improper conduct.”

18 The material operative parts of the Code are as follows:

“Personal Interests

2.8 (1) You have a personal interest in any business of the Council where:

- a) it relates to or is likely to affect—
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council;
 - (ii) any body—
 - (a) exercising functions of a public nature;
 - (b) established for charitable purposes; or
 - (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
 - b) a decision in relation to any business of the Council might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a significant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division, as the case may be, affected by the decision;
- (2) Subject to sub-paragraphs (3) to (5) below, where you are aware of a personal interest described in paragraph (1) above in any business of the Council, and you attend a meeting of the Council at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the start of the consideration of that business, or when the interest becomes apparent to you.

...

Prejudicial Interests

- 2.9 (1) Where you have a personal interest in any business of your Council you also have a prejudicial interest in that business where 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 of the public interest and where that business—
- (a) affects your financial position or the financial position of a significant person; or
 - (b) relates to determining any approval, consent, licence, permission or registration in relation to you or any significant person.

For the avoidance of doubt and by way of explanation where you are also a member of Somerset County Council and/or a Town or Parish Council within South Somerset you must declare a prejudicial interest in any business of South Somerset District Council where there is a financial benefit or gain or advantage to Somerset County Council and/or a Town or Parish Council which would be at the cost or to the financial disadvantage of South Somerset District Council.

- (2) Subject to paragraph (3) and (4), where you have a prejudicial interest in any business of your Council—
- (a) You may not participate in any discussion of the matter at a meeting.
 - (b) You may not participate in any vote taken on the matter at a meeting.
 - (c) You must disclose the existence and nature of the interest to the meeting and leave the room where the meeting is held while any discussion or voting takes place on the matter. The exception to the requirement to disclose the detail of the interest is if the matter is a sensitive interest under paragraph 2.11. In these circumstances you need only state that you have a prejudicial interest and that the details are withheld because of the sensitive information involved.
- (3) Where you have a prejudicial interest in any business of your Council, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business and you leave the meeting room immediately after making representations, answering questions or giving evidence.

- (4) Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a prejudicial interest that relates to the functions of your Council in respect of—
- (i) housing, where you are a tenant of your Council provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.
- (5) Where, as a Executive member, you may take an individual decision, and you become aware of a prejudicial interest in the matter which is the subject of the proposed decision you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek to influence a decision about the matter.”

19 “Significant person” is defined in Schedule 2 to the Code as follows:

“‘significant person’ in relation to personal and personal and prejudicial interests means a member of your family or any person with whom you have a close association; or any body-

- (1) of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council;
- (2) exercising functions of a public nature;
- (3) established for charitable purposes; or
- (4) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management.”

The law on bias and predetermination

- 20 It is common ground that the test for deciding whether the decision of a planning committee was vitiated by bias was stated by Lord Hope in *Porter v Magill* [2001] UKHL 68, [2002] 2 AC 357, at [103]: whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the committee was biased. The fair-minded observer has full knowledge of the facts and is “neither complacent nor unduly suspicious”: *Belize Bank Ltd v Attorney General of Belize* [2011] UKPC 36, [36] (Lord Kerr).
- 21 There is an earlier line of authorities which identifies situations in which a judge or other decision-maker whose activities are governed by public law is automatically disqualified on the ground of apparent bias. This is so where the decision-maker is himself a party to the proceeding, the paradigm instance of a breach of the *nemo iudex in causa sua* principle. Similarly, the decision-maker will be automatically disqualified where he has a personal or pecuniary interest in the outcome, however small: *Dimes v Proprietors of Grand Junction Canal* (1852) 3 HL Cas 759.
- 22 In *R v Bow Street Metropolitan Stipendiary Magistrate ex p. Pinochet Ugarte (No. 2)* [2000] 1 AC 119, automatic disqualification was extended to cover the case where a judge was director of a charitable company controlled by an intervenor in the proceedings. There was, it was said, “no room for fine distinctions” if the principle was to be observed that justice should not only be done but seen to be done: 135E-F (Lord Browne-Wilkinson).
- 23 In *Meerabux v Attorney General of Belize* [2005] UKPC 12, [2005] 2 AC 513, the Privy Council had to consider whether a member of a disciplinary committee hearing a complaint brought by the Bar Association was tainted by apparent bias because, as a barrister, he was a member of the Bar Association. Lord Hope, giving the judgment of the Board, noted that it was unlikely that the House of Lords in *Pinochet (No. 2)* would have had to reach for the concept of automatic disqualification if the *Porter v Magill* test had been available and that the latter test should in future be applied to all cases where the decision-maker had no personal or pecuniary interest: [22] and [25].
- 24 At [24], Lord Hope said that the decision-maker had taken no part in the decisions which led to the complaint being made and had no power to influence the decision whether they should be brought. That being so, his membership of the Bar Association was “in reality of no consequence”. He continued as follows:
- “As Professor David Feldman has observed, the normal approach to automatic disqualification is that mere membership of an association by which proceedings are brought does not disqualify, but active involvement in the institution of the particular proceedings does: Feldman, *English Public Law* (2004), para 15.76, citing *Leeson v General Council of Medical Education and Registration* (1889) 43 Ch D 366 where mere membership of the Medical Defence Union was held not to be sufficient to disqualify and *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750 where mere ex officio membership of the committee of the Medical Defence Union too was held to be insufficient. The same contrast between active involvement in the affairs of an association and mere membership is drawn by Shetreet, *Judges on Trial* (1976), p 310. Their Lordships are of the

opinion that the principle of automatic disqualification does not apply in this case.”

- 25 Predetermination is a different, though related concept. A decision may be vitiated by predetermination where there is a “real risk that minds were closed”, but in assessing that question in the planning context, the courts must recognise that “councillors are not in a judicial or quasi-judicial position but are elected to provide and pursue policies” and “would be entitled, and indeed expected, to have and to have expressed views on planning issues”: *R (Lewis) v Redcar and Cleveland Borough Council* [2008] 2 P&CR 21, [68]-[69] (Pill LJ).

Submissions for CPRES

- 26 For CPRES, Mr Moules submitted that Cllr Hamilton was automatically disqualified from considering whether to grant planning permission. Although he had no personal pecuniary interest in the outcome, he was a member of the application body. Whilst the statutory scheme authorises a local planning authority to determine planning applications in which it is itself the applicant (subject to appropriate internal separation of functions between council officers), there is no statutory authorisation for an individual councillor to participate in determining a planning application made by a third-party applicant of which he is also a member.
- 27 Cllr Hamilton attended three meetings where the 2018 Application was discussed, from which a consensus supportive of the proposed development emerged. In those circumstances, the legal prohibition on his participation was not overcome by his decision to recuse himself from the meeting on 17 August 2021.
- 28 The facts of the present case are not analogous to those in *Meerabux*. First, because Cllr Hamilton took part in meetings discussing what in substance was the same proposed development, he is not in a comparable position to the decision-maker in *Meerabux*, whose “detachment from the cause that the Bar Association was seeking to promote was complete” (see at [24]). Second, in *Meerabux*, the decision-maker’s connection to the Bar Association was more remote than Cllr Hamilton’s to the Town Council here. The Chairman was required to be a member of the Bar Association simply because he was an attorney-at-law, but he was not a member of the Bar Committee of the Bar Association on whose initiative the complaints had been made (see at [23]). By contrast, Cllr Hamilton is one of 15 members of the Town Council and he attended meetings of the Town Council’s Planning, Highways and Transport Committee.
- 29 Mr Moules submitted that the Code was relevant, though not determinative. He did not initially submit that this was a situation giving rise to a prejudicial interest under the Code, but adopted that submission when I suggested it in argument. If the Code was breached, that was relevant, though not determinative of the question whether Cllr Hamilton had a disqualifying interest at common law.
- 30 Even if Cllr Hamilton’s interest did not fall to disqualify him automatically, Mr Moules submits that the circumstances nonetheless satisfy the *Porter v Magill* test for apparent bias; and the same is true for Cllr Baker. He relies on a number of factors:
- (a) The officers’ report advised that “the main crux of consideration” was whether the economic and social benefits of carnival outweighed the identified environmental

harm, so that development in the open countryside (which would normally not be permitted) was acceptable.

- (b) Both the application and officers' report presented the proposed development as being needed to secure the "continued viability, in the current format, of the remaining clubs and the South Somerset Federation itself, in the medium term".
- (c) The SSCP Committee, which was the agent for the Application, was formed specifically to identify a site and obtain planning permission for a carnival park. The application contained a photograph of Cllr Baker amongst SSCP members/supporters, actively "raising awareness".
- (d) The application stated that the SSCP Committee's endeavours had "support from all key local clubs and carnival committees alike" – which includes Eclipse and the CC Committee both of which Cllr Baker is or has been involved with as an officer or member.
- (e) Insofar as the District Council relies on a distinction between CC Committee (which arranges the annual carnival in Chard) and the individual carnival clubs (local organisations which create floats to enter into different carnivals), Cllr Baker has in any event been a member of the Chard-based carnival club Eclipse, which was identified in the application as having raised money for it.
- (f) The officers' report quoted from information provided in support of the 2018 application, which stated that "Chard based Eclipse" was one of the clubs/committees that would occupy the development and contribute towards the rent.
- (g) As to the relationship between CC Committee and the SSCP Committee (which was the agent for the Application): (i) Cllr Baker actively campaigned with the SSCP Committee; and (ii) the application stated that the other carnival committees in the Federation (which includes the CC Committee) "are also supportive of the application".
- (h) Cllr Baker has a long-standing history of involvement with carnival clubs and committees.
- (i) On 11 October 2021, Cllr Baker made a statement as Chair of CC Committee in respect of the Chard Carnival 2021 which concluded "we need to support the clubs that took part and keep this amazing tradition alive for years to come".

31 In the Statement of Facts and Grounds and in his skeleton argument, Mr Moules submitted that, even if Cllrs Hamilton and Baker were not tainted by apparent bias, they had nonetheless approached the planning application with closed minds so that their decision was vitiated by predetermination. That submission was not developed orally. For reasons which will become clear, I need not consider it further.

Submissions for the District Council

32 For the District Council, Mrs Graham Paul submitted that, in the planning context at least, questions of apparent bias should always be approached by applying the *Porter v Magill*

test. There was no place for the concept of automatic disqualification. In any event, *Meerabux* shows that mere membership of an organisation which is a party to the proceeding does not automatically disqualify; some kind of active involvement is required.

- 33 Cllr Hamilton's membership of the Town Council was not disqualifying, because he had no active involvement in the making of the application. In particular:
- (a) He was not a member of the Town Council at the time when the 2018 (invalid) application was submitted.
 - (b) On 15 September 2020, shortly after he became a Town Councillor, there was a short discussion at a meeting noting the Town Council's historic support for the 2018 application. There is no record of him playing an active role in this discussion.
 - (c) Cllr Hamilton attended two sub-committee meetings of the Town Council's Planning, Highways and Transport Working Group (6 July and 3 August 2021) where the procedural inadequacies with the 2018 application were discussed. It was noted that the power to decide to submit the application lay with the full Town Council and not with the Working Group. For that reason, it was resolved to accept that the 2018 application was invalid and to refer the new application to the full Council. This was nothing more than an internal procedural discussion for the Town Council. There was no discussion of the merits of the application and no resolution to support it.
 - (d) Conscious that he may be called upon to decide the planning application as a member of the District Council's Planning Committee, Cllr Hamilton properly recused himself from the full Town Council meeting on 17 August 2021 where it was decided to re-submit the planning application and to approve a letter supporting the ethos and reasons behind the need for it.
 - (e) Cllr Hamilton properly declared a personal interest in the application as a Town Councillor. Furthermore, he did not breach the Code. Even if he did, it does not automatically follow that the decision-making process is unlawful: *R (Taylor) v Maidstone Borough Council* [2004] EWHC 257 (Admin).
- 34 In these circumstances, a fair-minded and informed observer would not conclude that there was a real possibility that Cllr Hamilton was biased.
- 35 As to Cllr Baker:
- (a) He is not a member or involved in any way with the developer of the scheme, SSCP Committee, and has no personal financial interest in the outcome. CC Committee, of which he is Chair, simply organizes the annual carnival event in Chard. It has nothing to do with constructing and displaying carnival floats and is not an intended beneficiary of the development. It did not provide any financial support to the SSCP Committee.
 - (b) Neither a past involvement with one of the carnival clubs nor a general interest in South Somerset carnivals generally gave rise to a real possibility of bias.

- (c) The fact that the organisation which he chairs supports the development as a whole does not mean that he himself is personally supportive. This is demonstrated by the fact that Cllr Wale, who is also involved with the CC Committee, voted against the application. As Cllr Baker himself said at the meeting, it is no different from being a member of the National Farmers' Union and sitting on a farming application. By way of analogy, in *R (Port Regis School Ltd) v North Dorset District Council* [2006] EWHC 742 (Admin), there was no real possibility of bias where a freemason councillor participated in a planning development benefitting a masonic lodge. General support for a type of development or applicant is not to be equated to apparent bias for any individual application.
- (d) The photograph of Cllr Baker holding a leaflet at the SSCP Committee stand at an event "among the South Somerset carnival supporters" shows no more than that he visited the SSCP Committee's stand and associated with its members. The press article contains no statement from him expressing any views on the scheme. He is not even described as a "supporter". He is described as being "among the South Somerset carnival supporters". In any event, even if the photograph could be seen to be an expression of Cllr Baker's support for the scheme, Councillors are entitled, and indeed are expected, to express views on the merits of a planning applications: see *Lewis v Redcar Borough Council*. There is no evidence of any inappropriate "closeness" between Cllr Baker and the developers of the scheme, as was the case in *R (Ghadami) v Harlow District Council* [2004] EWHC 1883 (Admin).

Discussion

- 36 I have considered the positions of Cllrs Hamilton and Baker separately.
- 37 As to Cllr Hamilton, neither counsel placed much emphasis on the Code. Both said that the key question was whether his situation gave rise to apparent bias at common law.
- 38 Mrs Graham Paul relied on *R (Taylor) v Maidstone Borough Council* to show that a breach of the Code would not necessarily render the resulting decision unlawful. In my judgment, it does not establish that proposition. In *Taylor*, there had been a breach of a different code, adopted under the Local Government Act 2000, containing procedural requirements for dealing with planning applications. The requirement in question concerned the right of interested parties to address the planning committee: see [5]. Planning permission was refused. The claimant had appealed to the Secretary of State. In that context, it was said that judicial review was not the appropriate remedy, because the real issue was whether the local authority had been right to grant planning permission and that would be determined on appeal: see [25]. *Taylor* is therefore a case about alternative remedies, which does not provide any assistance as to the legal effect of local authority codes of conduct. In the present case, planning permission was granted and there is no alternative remedy.
- 39 The legal effect of the Code therefore has to be considered from first principles. Mr Moules did not submit that breach of the Code provides a freestanding ground for challenging the resulting decision – for example because the Code is an outward-facing published policy, which must be complied with absent good reason to depart from it. Such a submission would have been inconsistent with the Localism Act 2011, which requires local authorities to adopt and maintain codes of conduct. Section 28(4) of that Act provides as follows:

“A failure to comply with a relevant authority’s code of conduct is not to be dealt with otherwise than in accordance with arrangements made under subsection (6); in particular, a decision is not invalidated just because something that occurred in the process of making the decision involved a failure to comply with the code.”

The arrangements in subsection (6) concern investigating and adjudicating on allegations of breach of the code.

- 40 But to say that a decision is not invalidated “just because” the process of making it involved a failure to comply with the code is not to say that such a failure must be ignored when considering the validity of the decision.
- 41 Local authorities could draft their codes of conduct to say, simply, that a prejudicial interest will arise whenever a person has an interest which a fair-minded and informed observer would regard as giving rise to a real possibility of bias (or words to that effect). But that would be unhelpful to councillors and to members of the public alike, because it is not always easy to predict how the common law test will be applied by others. So, local authorities generally go further and specify particular kinds of interests and connections which will, and will not, be disqualifying.
- 42 The process of drafting a code of conduct requires the local authority to take a considered view, in advance, about situations which its members are likely to face and decide whether they should, or need not, disqualify themselves in those situations. The draft will be tailored to the circumstances of the local authority in question and can then be the subject of local consultation and debate. This process not only delivers greater certainty, but also promotes good administration by holding elected representatives to reasonably precise standards, adopted in advance with a democratic imprimatur.
- 43 Against this background, it would be surprising if compliance with the code of conduct were categorically irrelevant to the question whether the apparent bias test was met. I accept that it cannot be determinative, but it is surely a matter which the fair-minded observer would take into account in deciding whether there was a real possibility of bias. Providing that the definition of “prejudicial interest” is a reasonable one, and other things being equal, a fair-minded observer would consider that a member who had no prejudicial interest was less likely to be biased; and that, other things being equal, a member who had a prejudicial interest was more likely to be biased.
- 44 This means that the construction of the Code is of some relevance. It is, therefore, unfortunate that its para. 2.9 is a textbook case of syntactic ambiguity. It is structured to specify that a personal interest will be prejudicial “where X and where Y or Z”. (X denotes the case where 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 the councillor’s judgement of the public interest; Y is the case where the business affects the councillor’s financial position or the financial position of a significant person; and Z is the case where the business relates to determining any approval, consent, licence, permission or registration in relation to the councillor or any significant person.)

- 45 Saying that an interest will be prejudicial “where X and where Y or Z” could mean:
- (a) an interest will be prejudicial in any of cases X, Y or Z; or
 - (b) an interest will be prejudicial only where X and Y or X and Z.
- 46 The Monitoring Officer read para. 2.9 in the second sense. If correct, this would suggest that:
- (a) only some cases where the councillor himself has a financial interest in the outcome of the application give rise to a prejudicial interest (whereas *Dimes* says that all such cases give rise to automatic disqualification); and
 - (b) a councillor can never have a prejudicial interest if the business does not affect his financial position or that of a significant person and does not relate to determining any approval, consent, licence, permission or registration in relation to him or a significant person (even if a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the councillor’s judgement of the public interest). On this reading a councillor who was chairman of an advocacy organisation objecting to the planning permission (such as CPRE) would not have a prejudicial interest, even if he had been personally responsible for formulating and advancing the objection (and so would plainly satisfy the test for apparent bias at common law).
- 47 In my judgment, it is more plausible to read para. 2.9 in the first sense set out at para. 43 above. Read in that way, a councillor will always have a prejudicial interest if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the councillor’s judgement of the public interest. He will also have a prejudicial interest where the business affects his financial position or that of a significant person, or relates to determining any approval, consent, licence, permission or registration in relation to him or a significant person. These latter cases are specific instances where a prejudicial interest will automatically arise.
- 48 The paragraph beginning “For the avoidance of doubt” does not help much in determining which of the two interpretations is correct. On either view, it is badly drafted. On the Monitoring Officer’s interpretation, the case specified in that paragraph is not aptly introduced by the words “For the avoidance of doubt”; and it is unclear why a prejudicial interest should automatically arise in that case, but not where the party benefitting at the expense of the District Council is the councillor himself (see para. 45(a) above). On the interpretation I prefer, the concluding words (“which would be at the cost or to the financial disadvantage of South Somerset District Council”) are otiose, since the main provision makes clear that any business which affects the financial position of the councillor himself or Somerset County Council or a town or parish council will automatically give rise to a prejudicial interest. But on this view para. 2.9, read as a whole, is – at least – coherent.
- 49 It follows from this discussion that, in my judgment, the Monitoring Officer’s advice was wrong. Because the business being discussed on 17 August 2021 involved determining a permission relating to the Town Council (a “significant person”), Cllr Hamilton automatically had a prejudicial interest. None of the exceptions in para. 2.9(4) applied, so he was disqualified from voting.

- 50 In my judgment, this affects what the fair-minded observer would think about Cllr Hamilton's participation in the Planning Committee meeting. Although he had not himself promoted the application, or voted to make it, he was nonetheless a member of a relatively small public body whose application he was being asked to consider. The passage quoted above from [24] of Lord Hope's judgment in *Meerabux* shows that mere membership of an organisation party to a proceeding does not automatically disqualify and that active involvement in the institution of the particular proceedings does automatically disqualify. This does not mean that, without such active involvement, there will never be apparent bias. As Lord Hope made clear at [25], that will depend on an application of the *Porter v Magill* test, which is fact-specific.
- 51 In this case, the relevant facts are these. Cllr Hamilton was one of 15 members of the Town Council and was Deputy Mayor. He was present at meetings where support for the application was expressed. Although he did not participate, the Town Council voted to become the applicant and to indicate its support by letter. On a proper construction of the Code, he had a prejudicial interest, which disqualified him from participating in the decision-making process. When taking all these facts into account, a fair-minded member of the public would conclude that there was a real possibility that he would be biased in favour of the Town Council's application.
- 52 The Code does not assist in answering the question whether Cllr Baker was tainted by apparent bias. The applicability of the Code in his case depended solely on whether a member of the public with knowledge of the relevant facts would reasonably regard his interest as so significant that it was likely to prejudice his judgement of the public interest. But this is a paraphrase of the *Porter v Magill* test.
- 53 In my judgment, however, the *Porter v Magill* test was clearly satisfied. Cllr Baker had a longstanding association with both the CC Committee and the Eclipse carnival club. The application was presented as needed to secure the continued viability in the medium term of both the Federation (of which the CC Committee was a constituent part) and the remaining carnival clubs (of which Eclipse was one). Both the Federation's constituent committees (including the CC Committee) and the clubs (including Eclipse) were said to be supportive of the application. Eclipse appears to have had a financial interest in the outcome, because, as the application made clear, the rent it and the other clubs would pay under the agreement with Dillington was lower than for its existing premises. Cllr Baker was personally pictured in the application documents among a group of individuals appearing to support the SSCP Committee (which was agent for the application). Nice distinctions of the kind relied upon by Mrs Graham Paul ("among the South Somerset carnival supporters" rather than "a supporter") have no place in an analysis of this kind: the fair-minded observer would place more weight on the impression created by the article and picture than by a minute linguistic analysis of the caption. Such an observer would clearly conclude that there was a real possibility of bias.
- 54 This conclusion is not undermined by the fact that Cllr Wale, who is also involved with the CC Committee voted against the application. I have not heard enough about Cllr Wale's circumstances to know whether his interest in the outcome of the application was similar to that of Cllr Baker. But even if it was, the fact that one member with a particular interest voted against an application does not show that another with the same interest was not tainted by apparent bias.

55 Having found that both Cllrs Hamilton and Baker were tainted by apparent bias, it follows that the decision to grant planning permission was unlawful. Although there are some cases where bias or predetermination on the part of a single member of a large committee has been held not to vitiate the committee's decision, the vote in this case was 6-5 in favour of grant and Cllrs Hamilton and Baker were Vice-Chair and Chair of the Committee. It is simply not possible to say what the outcome would have been if they had recused themselves, as the law required.

Conclusion

56 For these reasons, the planning permission is vitiated by apparent bias on the part of Cllrs Hamilton and Baker and will be quashed. The District Council will now have to make arrangements to determine the application according to law.

57 This outcome does not reflect adversely on the integrity or professionalism of either councillor. Both councillors declared their interests openly. Neither attempted to hide their associations. Both followed the advice of the Monitoring Officer. That advice flowed from her honest analysis and application of the Code. The Monitoring Officer went wrong in law, as many public decision-makers and most judges do at some point, but was not otherwise at fault.