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MEDIA RELEASE

TWO MIDLOTHIAN COUNCILLORS SANCTIONED FOR BREACHES OF THE COUNCILLORS' CODE OF CONDUCT

The conduct of two Midlothian councillors was scrutinised by Scotland's ethics watchdog at a public hearing held in Dalkeith on 9 May 2019.

The Hearing Panel heard that a planning application by Dalkeith Lawn Tennis Club for the erection of screen netting was being considered by Midlothian Council's Planning Committee at a meeting on 3 April 2018. The Panel noted that while objections to the proposal had been submitted by the proprietors of a property adjacent to the tennis club, who were concerned about potential light depletion, the planners' recommendation was that planning consent should nevertheless be granted.

The Panel heard that it was not in dispute that Councillor Margot Russell called-in the application, on the grounds that the views of the objectors should be considered by the Planning Committee. The Panel further heard that it was not in dispute that, before the meeting on 3 April 2018, Councillor Russell undertook an unaccompanied site visit to the objectors' property and discussed the potential impact of the netting with one of them. The Panel noted that Councillor Russell admitted that she had not made any corresponding visit to the applicants' premises, nor had she discussed the planning proposal with them.

The Panel heard that, at the meeting on 3 April 2018, Councillor Russell advised the Committee of her visit and proceeded to comment on the proposal and the potentially adverse impact on the objectors' property.

The Panel noted that the Councillors' Code provides that councillors have a duty to ensure that any formal decisions are properly taken and that any parties involved in the process are dealt with fairly. Councillors are not just required to act fairly, but are also obliged to be seen as acting fairly.

The Panel was satisfied that there was no question of Councillor Russell having tried to conceal the visit, or her discussion with one of the objectors, and noted that she had openly declared the fact that she had made a site visit at the Committee meeting. The Panel considered, nevertheless, that in calling-in the application and in making comments on it at the meeting, having only visited and spoken to one of the parties, Councillor Russell gave an appearance of unfairness and bias towards one of the parties. The Panel determined, therefore, that she had breached the Code.

The Panel heard that it was not in dispute that, having received an email one of the objectors sent to elected members, making them aware of the objections and inviting them

to undertake a site visit, Councillor John Hackett also visited the objectors' property before the Planning Committee meeting to view for himself the potential impact of the netting. The Panel heard that Councillor Hackett was unaccompanied on the visit and that he engaged with the objectors about their concerns in respect of the proposal during it.

The Panel noted that Councillor Hackett admitted that he had not discussed the planning proposal with the applicants, albeit that his position was that there was no need to do so as the applicants' position was clearly set out in the planning application and the report that was to be considered by the Committee. The Panel noted that Councillor Hackett's contention was that as the tennis club was adjacent to the objectors' property, he had been able to look over shared fencing and consider the site from both perspectives.

The Panel heard that Councillor Hackett advised the Planning Committee at the meeting on 3 April 2018, that he had made a site visit. The Panel heard that Councillor Hackett then made comments on the proposal, which concerned whether a solution could be found to mitigate any potentially adverse impact the erection of the netting might have on the objectors' property.

The Panel was satisfied that there was no question of Councillor Hackett having tried to conceal the visit, or his discussion with one of the objectors, and noted that he had openly declared the fact that he had made a site visit at the Committee meeting. The Panel considered, nevertheless, that in making comments on it at the meeting, having only visited and spoken to one of the parties, Councillor Hackett failed to avoid any appearance of being unfair and biased towards one of the parties. The Panel determined, therefore, that he had also breached the Code.

The Standards Commission for Scotland (SCS) decided to suspend Councillor Russell and Councillor Hackett from Midlothian Council's Planning Committee for a period of one month, with effect from 1 June 2019.

Prof Kevin Dunion, Chair of the Hearing Panel, said: "It is the personal responsibility of councillors to be aware of, and comply with, the provisions in the Code.

"The duty on councillors not only to act fairly but to ensure they are seen to be acting fairly, when taking quasi-judicial and regulatory decisions is a fundamental requirement of the Councillors' Code of Conduct. The public must have confidence that councillors are considering any quasi-judicial or regulatory application objectively, on its individual merits, and that there is no question of any unfairness or bias towards any party.

"The Panel was disappointed that, in this case, the Councillors Russell and Hackett failed to consider how their actions could reasonably be perceived by members of the public".

The full written decisions in respect of the Hearing is on the Standards Commission's website.

The Code of Conduct is based around nine key principles, including, integrity, honesty and respect.

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.

The public bodies include colleges, National Health Service boards and regional bodies, such as the Highlands and Islands Enterprise.

It also covers national organisations like the Scottish Qualification Authority, Sport Scotland and Scottish Water, among many others.

Further information on the role of the Standards Commission for Scotland can be found at <http://www.standardscommissionscotland.org.uk/>

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