



## Standards Decision Notice

Case: 2021/C09

Subject Member:	Cllr Jess Bailey
Authority:	East Devon District Council
Complainant:	Robert Compton
Brief statement of allegation:	<p>The allegation is that on the morning of Saturday 16th January 2021, Cllr Bailey tried to prevent trees being felled on the land owned by the complainant, who had employed a tree surgeon to cut down specific trees on his land that were diseased. Cllr Bailey introduced herself as East Devon District Councillor for West Hill and Aylesbere and in that official capacity demanded that the tree surgeons stopped work and did not cut any further trees down. Cllr Bailey then proceeded to remain on site and took photos/ videos of the complainant during this time and when asked to stop by Mr Compton refused. Cllr Bailey also arranged for her husband to drive their second car to site and deliberately park it under an Oak tree that was to be felled and left it there in situ over the weekend in an attempt to prevent any further tree felling works to the tree.</p> <p>It is alleged that Cllr Bailey incited a public protest during lockdown, when public gatherings were prohibited, and when approached by the police refused to leave until she and others, also protesting, were warned that if they did not leave they would be issued with a fine. Cllr Bailey returned to her car on Monday morning, which was still parked under the Oak tree, and sat in it for several hours in a further attempt to prevent any tree felling works from continuing. It is also alleged that Cllr Bailey used her official position within the council to arrange for an emergency tree preservation order to be placed on the Oak tree to prevent any further works being carried out.</p>
Relevant paragraphs of the Code of Conduct:	<p>5. You MUST NOT-</p> <p>a) attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage</p>

	<p>c) bully any person (bullying may be characterised as any single act or pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; an abuse or misuse of power or authority which attempts to undermine or coerce or has the effect of undermining or coercing an individual or group of individuals by gradually eroding their confidence or capability which may cause them to suffer stress or fear);</p> <p>h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.</p>
Reasoning:	<p>On Saturday 16<sup>th</sup> January 2021, the complainant, through his tree contractors, commenced works to trees on Ashill Road (sometimes called Oak Road) off Higher Broad Oak Road, Higher Metcombe, West Hill.</p> <p>There are various reasons given for the need for the works. Cllr Bailey questions the basis for these works and considers that the works were preparatory works preceding development.</p> <p>Cllr Bailey comments that the <i>'avenue of trees at Ash Hill is of very high amenity value. It is cherished by residents who have included it as a valued view in the adopted Ottery St Mary and West Hill neighbourhood plan.'</i></p> <p>The description of the avenue trees in the neighbourhood plan is as follows:  <i>"The avenue of beech trees give a cathedral-like feeling, a green and enclosed feel that is a cherished feature of West Hill/Higher Metcombe. It forms a gateway to West Hill travelling from Tipton Cross. This view is particularly tranquil and contributes to the special character of the parish"</i></p> <p>The justification for the works is not relevant to my consideration of the complaint. What is clear though is that Cllr Bailey is passionate about protecting trees / the wooded character of West Hill. This is evident from the response to the complaint, her website and recent motion to the Council on the matter of trees. The incident happened at a time when the Country was in a national lockdown due to COVID.</p> <p>Following reports (there are different references to this being from a parish councillor or concerned residents) to Cllr Bailey, she attended the site where the tree works were being carried out.</p> <p>It is common ground that the complainant was not present when Cllr Bailey arrived. Cllr Bailey accepted that she introduced herself as the <i>'EDDC Councillor for West Hill'</i>. The Code of Conduct was therefore engaged and the subsequent actions of Cllr Bailey subject to its requirements.</p>

In terms of the interaction with the tree surgeons, Cllr Bailey says *'They asked me if I would like them to stop and I said; "yes please". At no point did I demand that they stop. That is completely untrue.'* I accept this and do not therefore consider that a breach of the code of conduct arises.

Cllr Bailey accepts that she took videos and photos at the incident, as indeed the complainant did. I accept that Cllr Bailey had her reasons for doing so (evidence and her personal protection) and that she stopped recording when requested to do so. Taking videos / photos is not a breach of the code of conduct and I do not consider that the behaviour here was generally unacceptable.

While members of the public attended the site, Cllr Bailey states she was not responsible for posting anything on Facebook that might have encouraged members of the public to attend. I have seen no evidence to suggest that any members of the public attending were there as a consequence of Cllr Bailey's actions. I do not consider there to be a breach of the code of conduct in relation to this aspect.

Turning to the issue of using her position to ensure a TPO was issued. I accept that Cllr Bailey requested the EDDC Tree Officer to issue an emergency TPO, which he duly did. However, I consider that this is a legitimate action for a ward councillor to take and beyond the belief of the complainant that Cllr Bailey unduly influenced the officer, there is nothing to suggest that the officer was in fact unduly influenced or pressured or that he didn't properly consider the matter before issuing the TPO as a result of the request being made by a councillor. I do not consider that requesting a TPO is a breach of the code of conduct.

It is stated that Cllr Bailey stood under one of the trees to prevent it being felled, organised for a car to be parked under the tree for the same purpose and this car remained in situ until the Monday morning. This is accepted by Cllr Bailey and indeed is specifically stated on her website / blog as steps she took. Photos show where Cllr Bailey stood / the car was parked. The land in question is public highway and had the complainant wished to prevent anyone from exercising their lawful right to 'use' the highway when the works were to be undertaken (noting the concerns he expresses about public safety) then there are mechanisms to secure a temporary suspension of those rights which would have precluded anyone from being able to stop the works in the way that happened. While unpalatable to some and of course to the complainant, I do not consider that this behaviour, from an objective standard, is sufficient to amount to causing disrepute to the role of councillor or to the Council.

It is also stated that Cllr Bailey refused to leave when requested to do so by the Police. Given the comments made

	<p>by Cllr Bailey – namely that she was unhappy with the approach of the Police and that she ‘<i>did eventually leave the site</i>’ – I accept the complainant’s version that Cllr Bailey did not leave when requested to do so.</p> <p>While Cllr Bailey notes that she has not been the subject of any action by the Police and that they were acting unlawfully in asking her to leave, I nonetheless do not consider that this is acceptable behaviour of a public servant. As is noted above, I accept that Cllr Bailey is passionate about trees and that she wishes to protect them for unnecessary destruction, however that cannot be at any cost. This incident occurred at a particularly sensitive time – namely during the COVID pandemic and when lockdown restrictions were in place – and so concerns over COVID and ‘unlawful’ public gatherings and associated risks were forefront in people’s minds. As a councillor I consider that not leaving when requested to do so by the Police, who were concerned from a COVID and unauthorised gatherings perspective, particularly given the sensitivities and concerns around COVID, does not set a good example to others in terms of respecting authority and would reduce public confidence in the role of councillor. I consider that this conduct and behaviour is such that it would give a reasonable person the impression that Cllr Bailey has brought her office into disrepute and as such is a breach of the code of conduct under paragraph 5h.</p> <p>In conclusion, in light of the foregoing I do not consider that there is a breach of paragraphs 5(a) or 5(c) as the behaviours complained of cannot, in my view, be seen as either bullying or Cllr Bailey improperly using her position to confer or secure a disadvantage on the complainant. However I do find that there is a breach of paragraph 5(h) in relation to failing to adhere to the Police’s request to leave but not in relation to the other actions taken to seek to prevent the trees being worked on.</p>
<p>Independent Person’s view:</p>	<p><i>As we discussed I am in agreement with your findings.</i></p> <p><i>Cllr Bailey’s actions and behaviour needed to reflect her role both as a local Councillor and her wider role in respect of the Council and Covid-19.</i></p> <p><i>Her interaction with the Police does appear to undermine her role as a person of authority, and as such can be seen as bring her role into disrepute.</i></p>
<p>Outcome / Sanction applied:</p>	<p>Breach of paragraph 5(h). A form of public apology in relation to not following Police requests. The form to be agreed between Cllr Bailey and the Monitoring Officer.</p>

Issued by Monitoring Officer on: 17<sup>th</sup> September 2021