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Why procedure matters, even in little old Epsom and Ewell

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Nobody seriously disputes that developing Hook Road Arena as a centre for community sport, supported where necessary by housing, deserves proper investigation.

The proposal enjoyed overwhelming support. Had almost any councillor moved it at the meeting of Epsom and Ewell Borough Council on 21st July, it would have passed comfortably and probably without drama.

Yet the debate produced an adjournment, angry exchanges and the walkout of 11 councillors—including, it appears, at least one member of the ruling Residents' Association group.

Why?

The answer cannot lie in opposition to the proposal itself. Most, if not all, of those who walked out supported giving Hook Road Arena strategic priority. Their protest concerned the process by which the decision was being made and, more particularly, the identity of the councillor who was permitted to present himself as its principal champion.

That distinction matters.

Procedure is not an inconvenience

There is a temptation, particularly where the desired outcome appears uncontroversial, to dismiss procedural objections as political gamesmanship.

Why worry about who proposed the motion if it was going to pass anyway? Why interrupt an important debate about desperately needed sports facilities with arguments about interests, declarations and who should occupy the chair?

The answer is that procedural rules are not decorative. They exist to preserve confidence in the decisions reached under them.

Substantive rules determine what a council may decide. Procedural rules determine how it must decide it, who may participate and whether the process can command public confidence.

A good outcome reached through a questionable process does not retrospectively cure that process. Nor can councillors embrace constitutional rules when those rules assist them, only to minimise or reinterpret them when their application becomes personally inconvenient.

Rules which operate only when the powerful find them useful are not rules at all. They become instruments of discretion—and discretion exercised in one's own cause is precisely what rules governing conflicts of interest are intended to restrain.

The interest question

Cllr Neil Dallen is a director of Epsom Fireworks Display Ltd, which contracts with EEBC to hire Hook Road Arena for its annual display. He is also a trustee of the associated charitable trust.

Development could eventually end the fireworks at the Arena. The company's precise financial arrangements remain unclear, as do any payments or expenses received by its directors.

This does not establish that Cllr Dallen possessed a disclosable pecuniary interest within the strict definition of the Localism Act. That depends upon facts which the company's abbreviated accounts do not reveal. Though there is undoubtedly a related current contract with the Coucil and his company – which in itself – regardless of personal gain – is disclosable and prevents the councillor participating, absent a clear dispensation, on pain of a criminal penalty.

It is also true that Cllr Dallen was supporting a proposal which may ultimately operate against the continued use of the Arena by the fireworks company. That apparent paradox may weigh significantly against any suggestion of corrupt motivation at the meeting itself.

But the law on interests is preventive. If an interest falls within the statutory definition, a councillor cannot participate merely because he believes he is acting impartially, because his preferred outcome is publicly beneficial or because he is voting against the immediate interests of the connected organisation.

The test is not whether the councillor "feels" conflicted. It is whether the relevant facts satisfy the applicable rules.

The Mayor's position

There was a second and arguably more obvious procedural issue which received surprisingly little attention.

The Mayor, Cllr Lucie McIntyre, is Cllr Dallen's daughter. This is an undisputed and widely known fact, almost certainly familiar to every councillor in the chamber.

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Yet the relationship was not formally disclosed at the meeting.

Being Cllr Dallen's daughter did not automatically give the Mayor a disclosable pecuniary interest. However, she was being asked to rule on whether her father could remain in the chamber, speak, move the recommendation and participate in the vote.

Her father plainly had, at the very least, a reputational interest in that ruling. His conduct, consistency and integrity were being challenged publicly.

The question was therefore not whether the Mayor was capable of chairing impartially. It was whether public confidence would have been better protected by disclosing the relationship and allowing the Deputy Mayor to rule upon that discrete controversy.

Justice must not only be done but be seen to be done. That principle applies to modest local proceedings as surely as it applies to a courtroom.

The opposition focused its objections almost entirely on Cllr Dallen. It did not press the equally apparent question of whether his daughter should continue to chair the dispute about him.

Why?

Perhaps the relationship was so universally known that councillors did not consider a formal declaration necessary. Perhaps tempers and confusion prevented the point from being articulated. Perhaps they accepted that the Mayor was relying upon legal advice and did not wish to personalise their protest further.

But the omission also invites a less comfortable question: was the walkout motivated solely by concern for constitutional principle, or partly by anger at the spectacle of Cllr Dallen receiving public credit for a project which others believe he had previously frustrated?

From obstruction to championship?

EET has received consistent accounts from three councillors within Cllr Dallen's own Residents' Association group and two people closely connected with Epsom and Ewell Football Club.

They allege that proposals for Hook Road Arena were repeatedly pushed "from pillar to post" and between processes, contributing to delay. Cllr Dallen has also been quoted as saying: "I want the fireworks four more years."

These remain allegations to which Cllr Dallen is entitled to respond and since Sunday when he was asked to EET has received no comment from him.

Was the walkout driven not merely by the disputed legal interest, but by a sense of hypocrisy? Did councillors object to seeing someone whom they believed had privately impeded progress now appearing publicly as the development's leading promoter?

If so, the protest was about political ownership and credibility as well as legal compliance.

That would explain why councillors who supported the motion nevertheless refused to remain for it. They were not rejecting Hook Road Arena. They were rejecting the presentation of Cllr Dallen as its champion.

But that interpretation also carries a warning for the protesters. If their objection was truly one of principle, they should have applied that principle consistently—including to the Mayor's position in the chair. Selective indignation is no more attractive from the opposition than selective compliance is from the administration.

The small scale is no excuse

It would be easy to regard this as a parochial quarrel in a council which will cease to exist in eight months.

That would be a mistake.

Respect for the rule of law is built from the bottom upwards. It begins with small decisions, modest offices and local institutions. It depends upon people following rules even when the consequences are inconvenient and even when ignoring them might produce the same substantive result more quickly.

The erosion usually starts harmlessly: a procedure is treated as unnecessary because everybody supports the outcome; an interest is dismissed because the individual believes himself honest; a relationship is left undeclared because everybody already knows about it; an awkward question is silenced because it is said to be outside the scope of the debate.

Each departure can be rationalised. Together, they create a culture in which rules become optional for those exercising power.

At national and international level, the same habit has graver consequences. Selective obedience breeds cynicism; cynicism produces contempt for institutions; and contempt for institutions opens the way to disorder, violence and, ultimately, conflict.

Epsom and Ewell is not on the verge of anarchy because of a disagreement over a fireworks display. But the principle is indivisible. We cannot demand fidelity to constitutional rules in Westminster, respect for courts nationally or adherence to international law abroad while treating procedural safeguards as dispensable in our own council chamber.

Rules matter most when they are inconvenient.

Hook Road Arena deserved to be made a strategic priority. It did not need Cllr Dallen to move the recommendation, and the proposal would have passed without his participation.

The Council could therefore have avoided the entire controversy at virtually no cost. Cllr Dallen could have withdrawn; another councillor could have proposed the recommendation; the Mayor could have disclosed the family relationship and allowed her deputy to determine the procedural objections.

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The same substantive decision would have been reached, but through a process carrying far greater public confidence.

That is the point of procedure. It is not there to frustrate good decisions. It is there to ensure that good decisions are reached in a way that deserves respect.

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