



## **BROMSGROVE DISTRICT COUNCIL**

### **MEETING OF THE STANDARDS COMMITTEE**

**FRIDAY 8TH JULY 2011 AT 2.00 P.M.**

**COMMITTEE ROOM, THE COUNCIL HOUSE, BURCOT LANE, BROMSGROVE**

**MEMBERS:** Independent Members: Mr. N. A. Burke (Chairman), Ms. K. J. Sharpe (Vice-Chairman) and Mrs. G. Bell

Councillors: Mrs. S. J. Baxter, S. R. Colella, L. Mallett and Mrs. M. A. Sherrey JP

Parish Councils' Representatives: Mr. J. Cypher (for agenda items 1, 2 and 3 only as items 4 and 5 relate to a fellow Alvechurch Parish Councillor) and Mr. I. Hodgetts

### **AGENDA**

#### **HEARING PROCEDURE NOTES** (Pages 1 - 4)

1. To receive apologies for absence and notification of substitutes
2. Declarations of Interest
3. Final Determination of Complaint Reference 94/09 (Pages 5 - 76)

[To make a final determination in relation to Complaint Reference 94/09 against former District Councillor Mrs. J. D. Luck.]

4. Exclusion of the Public

[To consider, and if considered appropriate, to pass the following resolution to exclude the public from the meeting during the consideration of an item of business containing exempt information:

**"RESOLVED:** that under Section 100 I of the Local Government Act 1972, as amended, the public be excluded from the meeting during the consideration of the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Part I of Schedule 12A to the Act, as amended, the relevant paragraphs of that part being as set out below, and that it is in the public interest to do so:

<u>Item No.</u>	<u>Paragraphs</u>
5	1, 2 & 7C" ]

5. Consideration of Investigating Officer's Final Report into Complaint References 03/10 and 04/10 (Pages 77 - 118)

[To consider the Investigating Officer's Final Report into linked Complaint References 03/10 and 04/10 against Alvechurch Parish Councillor D. Matthews.]

6. To consider any other business, details of which have been notified to the Head of Legal, Equalities and Democratic Services prior to the commencement of the meeting and which the Chairman, by reason of special circumstances, considers to be of so urgent a nature that it cannot wait until the next meeting

7. Exclusion of the Public

[Should it prove necessary, in the opinion of the Chief Executive, to exclude the public from the meeting at any point during the proceedings in relation to any item(s) of business (in addition to the business set out at agenda item 5 above) on the grounds that either exempt and/or confidential information is likely to be divulged, the following resolution(s) will be moved:

"That under Section 100 I of the Local Government Act 1972, as amended, it/they involve the likely disclosure of exempt information as defined in Part I of Schedule 12A to the Act, as amended, the relevant paragraphs of that part being (...to be specified by the Chairman at the meeting), and that it is in the public interest to do so.", and/or

"That under Section 100 A of the Local Government Act 1972, as amended, it/they involve the likely disclosure of confidential information which would be in breach of an obligation of confidence."]

K. DICKS  
Chief Executive

The Council House  
Burcot Lane  
BROMSGROVE  
Worcestershire  
B60 1AA

6th July 2011

## **INFORMATION FOR THE PUBLIC**

### **Access to Information**

The Local Government (Access to Information) Act 1985 widened the rights of press and public to attend Local Authority meetings and to see certain documents. Recently the Freedom of Information Act 2000 has further broadened these rights, and limited exemptions under the 1985 Act.

- You can attend all Council, Cabinet and Committee/Board meetings, except for any part of the meeting when the business would disclose confidential or “exempt” information.
- You can inspect agenda and public reports at least five days before the date of the meeting.
- You can inspect minutes of the Council, Cabinet and its Committees/Boards for up to six years following a meeting.
- You can have access, upon request, to the background papers on which reports are based for a period of up to six years from the date of the meeting. These are listed at the end of each report.
- An electronic register stating the names and addresses and electoral areas of all Councillors with details of the membership of all Committees etc. is available on our website.
- A reasonable number of copies of agendas and reports relating to items to be considered in public will be made available to the public attending meetings of the Council, Cabinet and its Committees/Boards.
- You have access to a list specifying those powers which the Council has delegated to its Officers indicating also the titles of the Officers concerned, as detailed in the Council’s Constitution, Scheme of Delegation.

You can access the following documents:

- Meeting Agendas
- Meeting Minutes
- The Council’s Constitution

at [www.bromsgrove.gov.uk](http://www.bromsgrove.gov.uk)

# Declaration of Interests - Explained

## Definition of Interests

A Member has a **PERSONAL INTEREST** if the issue being discussed at a meeting affects the well-being or finances of the Member, the Member's family or a close associate more than most other people who live in the ward affected by the issue.

Personal interests are also things relating to an interest the Member must register, such as any outside bodies to which the Member has been appointed by the Council or membership of certain public bodies.

A personal interest is also a **PREJUDICIAL INTEREST** if it affects:

- The finances, or
- A regulatory function (such as licensing or planning)

Of the Member, the Member's family or a close associate **AND** which a reasonable member of the public with knowledge of the facts would believe likely to harm or impair the Member's ability to judge the public interest.

## Declaring Interests

If a Member has an interest they must normally declare it at the start of the meeting or as soon as they realise they have the interest.

### **EXCEPTION:**

If a Member has a **PERSONAL INTEREST** which arises because of membership of another public body the Member only needs to declare it if and when they speak on the matter.

If a Member has both a **PERSONAL AND PREJUDICIAL INTEREST** they must not debate or vote on the matter and must leave the room.

### **EXCEPTION:**

If a Member has a prejudicial interest in a matter being discussed at a meeting at which members of the public are allowed to make representations, give evidence or answer questions about the matter, the Member has the same rights as the public and can also attend the meeting to make representations, give evidence or answer questions **BUT THE MEMBER MUST LEAVE THE ROOM ONCE THEY HAVE FINISHED AND CANNOT DEBATE OR VOTE.**

However, the Member must not use these rights to seek to improperly influence a decision in which they have a prejudicial interest.

**For further information** please contact Committee Services, Legal, Equalities and Democratic Services, Bromsgrove District Council, The Council House, Burcot Lane, Bromsgrove, B60 1AA

Tel: 01527 873232 Fax: 01527 881414

Web: [www.bromsgrove.gov.uk](http://www.bromsgrove.gov.uk) email: [committee@bromsgrove.gov.uk](mailto:committee@bromsgrove.gov.uk)



# Appendix

## Standards Committee

### Final Determination – Hearing Procedure

#### Representation

1. The Subject Member who is the subject of the allegation (“the Subject Member”) may be represented or accompanied during the meeting by a solicitor, counsel or another person; the permission of the Standards Committee is required to allow the Subject Member to be represented or accompanied by a non-legal representative. The Committee may choose to withdraw its permission to allow a representative if that representative disrupts the hearing.

#### Legal Advice

2. The Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be announced to the meeting.

#### Introduction

3. The Chairman will introduce the members of the Committee, the Investigating Officer and the officers present. The Subject Member will introduce any person who is acting as his or her representative and any witnesses to be called on his or her behalf. The Investigating Officer will introduce any witnesses to be called.
4. The Chairman will outline the procedure to be followed.

#### Preliminary Issues

5. The Committee will then consider and decide on any preliminary issues which have not been resolved as part of the pre-hearing process.
6. The Committee may adjourn the meeting and move to another room to consider those issues. On its return, the Chairman will announce the Committee’s decision.

#### Facts in Dispute

7. The Committee will then identify whether there are any significant disagreements about the facts contained in the Investigating Officer’s report.
8. If there are no disagreements about the facts, the Committee will move to the next stage of the hearing – **Did the Subject Member fail to follow the Code** at paragraph 16 below.
9. If there is a disagreement, the Investigating Officer, if present, will be invited to make representations to support the relevant findings of fact in the report. The Investigating Officer may call witnesses to give evidence. The Committee will give the Subject Member an opportunity

to challenge any evidence put forward by any witness called by the Investigating Officer.

10. The Subject Member may then make representations to support his or her version of the facts and call any necessary witnesses to give evidence.
11. At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigating Officer to challenge any evidence put forward by witnesses called by the Subject Member.
12. If the Subject Member disagrees with most of the facts, the Investigating Officer may make representations on all the relevant facts, instead of discussing each fact individually.
13. If the Subject Member disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present, the Committee will consider whether or not it would be in the public interest to continue in the Investigating Officer's absence. After considering the Subject Member's explanation for not raising the issue at an earlier stage, the Committee may then:
  - a) continue with the hearing, relying on the information in the Investigating Officer's report;
  - b) allow the Subject Member to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
  - c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already.
14. The Committee will usually adjourn the meeting and move to another room to consider the representations and evidence in private.
15. On its return, the Chairman will announce the Committee's findings of fact.

**Did the Subject Member fail to follow the Code?**

16. The Committee will then consider whether or not, based on the facts it has found, the Subject Member has failed to follow the Code of Conduct.
17. The Subject Member will be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code.

18. The Committee will then consider any oral or written representations from the Investigating Officer.
19. The Committee may, at any time, question anyone involved on any point they raise in their representations.
20. The Subject Member will be invited to make any final relevant points.
21. The Committee will adjourn the meeting and move to another room to consider the representations.
22. On its return, the Chairman will announce the Committee's decision as to whether or not the Subject Member has failed to follow the Code of Conduct.

**If the Subject Member has not failed to follow the Code of Conduct**

23. If the Committee decides that the Subject Member has not failed to follow the Code of Conduct, the Committee will consider whether it should make any recommendations to the relevant authority.

**If the Subject Member has failed to follow the Code**

24. If the Committee decides that the Subject Member has failed to follow the Code of Conduct, it will consider any oral or written representations from the Subject Member as to whether or not the Committee should impose a sanction and what form any sanction should take.
25. The Committee may question the Subject Member, and take legal advice to ensure it has the information it needs in order to make a decision.
26. The Committee will then adjourn the meeting and move to another room to consider whether or not to impose a sanction on the Subject Member and, if so, what the sanction should be.
27. On its return, the Chairman will announce the Committee's decision.

**Recommendations to the authority**

28. After considering any oral or written representations from the Investigating Officer the Committee will consider whether or not it should make any recommendations to the relevant authority, with a view to promoting high standards of conduct among Members.

**The written decision**

29. The Committee will announce its decision on the day and provide a short written decision on that day. A full written decision will be issued shortly after the hearing.

### **Making the Findings Public**

30. The Committee must arrange for a summary of the decision and reasons for that decision to be published in one or more newspapers. If the Committee finds that the Subject Member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding. In these cases, the Subject Member is entitled to ask that no summary of the decision should be passed to local newspapers.
31. If the Committee finds that the Subject Member failed to follow the Code of Conduct but that no action is needed, the public summary must say that the Subject Member failed to follow the Code, outline what happened and give reasons for the Committee's decision not to take any action.
32. If the Committee finds that the Subject Member failed to follow the Code and it imposes a sanction the public summary must say that the Subject Member failed to follow the Code of Conduct, outline what happened, explain what sanction has been imposed and give reasons for the decision made by the Committee.

### **Appeal**

33. The Subject Member may appeal against the decision within 21 days from the date of the full written decision.

## BROMSGROVE DISTRICT COUNCIL

### STANDARDS COMMITTEE

08 JULY 2011

#### FINAL DETERMINATION HEARING

#### COMPLAINT REF 94/09

**Subject Member: Mrs. J. D. Luck**

**NOTE: Mrs Luck was a member of the District Council at the time of the alleged breaches of the Code of Conduct but ceased to be a Councillor when her terms of office expired on Monday 09 May 2011**

Responsible Portfolio Holder	Councillor Mark Bullivant
Responsible Head of Service	Claire Felton, Monitoring Officer

#### **1. SUMMARY**

- 1.1 In September 2009 a complaint was made to the Standards Committee that Mrs Jean Luck (who was a District Councillor at the relevant time) had given information to EON that electricity was being illegally abstracted at the complainant's address. The complaint was considered by the Standards Assessment Sub-Committee and referred for local investigation.
- 1.2 In the course of her investigation the Investigating Officer found out that the Subject Member had spoken to planning officers about planning applications made by the complainant. At the time those conversations took place the Subject Member would have been aware of the Standards investigation. The matter was referred back to the Standards Sub-Assessment Committee in March 2010 which was of the view that potentially there may have been further breaches of the Code of Conduct by the Subject Member. The Standards Assessment Sub-Committee directed that the investigation be expanded to include the involvement of the Subject Member in the planning applications.
- 1.3 The Investigating Officer's report into the complaints was issued on 24 February 2011. The Investigating Officer's report was considered by the Standards Committee on 23 March 2011. The Committee accepted the Investigating Officer's findings of "no breach" in relation the allegation that the Subject Member had brought the authority into disrepute by speaking to EON, and by involving herself in the complainant's planning application. The Committee also accepted the finding of "no breach" in relation to the

issue of the Subject Member having used her position improperly to confer a disadvantage by involving herself in the complainant's planning application.

- 1.4 The remaining two allegations where the Investigating Officer recommended that there had been a failure to follow the Code were referred to the Standards Committee for hearing.
- 1.5 The Subject Member did not stand for re-election in the District Elections in May 2011 and accordingly she ceased to be a member of the authority on 09 May 2011.
- 1.6 The hearing (known as a Final Determination Hearing) is to take place on 08 July 2011. The Committee is therefore requested to determine the two allegations of failure to follow the Code.

## **2. RECOMMENDATION**

- 2.1 Members are requested to consider the Investigating Officer's report attached at Appendix 2 and may reach one of the following decisions:
  - 2.1.1 that the Subject Member has not failed to comply with the relevant Code of Conduct; or
  - 2.1.2 that the Subject Member has failed to comply with the relevant Code of Conduct but that no action needs to be taken; or
  - 2.1.3 that the Subject Member has failed to comply with the relevant Code of Conduct and that a sanction should be imposed. The regulations provide that where a Subject Member has ceased by the date of the Committee meeting the Subject Member to be a Member of the relevant authority, the only sanction available to the Committee is censure.

## **3. BACKGROUND**

### **Complaints**

- 3.1 Following the outcome of the Consideration Meeting on 23 March 2011, the complaints to be decided at the Final Determination Hearing are as follows:-
  - That the Subject Member failed to treat other with respect by reporting the complainant to EON contrary to para 3 of the Code of Conduct.
  - That the Subject Member used her position to confer a disadvantage by reporting the complainant to EON contrary to para 6 of the Code of Conduct.

## **Documents**

- 3.2 A copy of the Bromsgrove District Council Code of Conduct is attached at Appendix 1. The Investigating Officer's report is attached to this report as Appendix 2. Members are asked to note that Appendix 2 includes comments on the report headed as Appendix M. The Schedule of Evidence (referred to as Appendices A to L in the Investigating Officer's report) has been circulated to Members of the Committee and is included as background papers to this report.

## **Pre-Hearing Process**

- 3.3 Standards for England (SfE) advises that a pre-hearing process should be followed before a Final Determination Hearing to try to allow matters at the hearing to be dealt with more fairly and economically by alerting the parties to possible areas of difficulty and, if possible, allowing them to be resolved before the hearing itself. A questionnaire was sent to the Subject Member to identify:

- if the Subject Member disagrees with any of the findings of fact in the investigation report, and if so whether they are likely to be relevant to the issues to be determined;
- whether evidence about those disagreements will need to be heard during the hearing;
- decide whether there are any parts of the hearing that are likely to be held in private;
- any factors the Subject Member would wish the Standards Committee to take into account if it finds that the Subject Member has failed to follow the Code of Conduct;
- whether the Subject Member will be represented at the hearing;
- whether the Subject Member intend to call any witnesses; and
- whether any special arrangements need to be made.

- 3.4 At the time of writing this report the Subject Member has not returned the questionnaire and it is not known whether she intends to participate in the hearing. Standards for England guidance is that the process for complaints must be fully completed by Councils even in those cases where by the time of the Final Determination Hearing the Subject Member is no longer a member of the authority.

## **4. KEY ISSUES**

### **Procedure for the Hearing**

- 4.1 As referred to above, the procedure to be followed at the hearing is attached as Appendix 1 of the report.

### **Non-attendance of the Subject Member**

- 4.2 SfE guidance is that the Committee may consider the report in the Subject Member's absence if the Subject Member does not attend the hearing. If the Committee is satisfied with the Subject Member's reason(s) for not being able to attend the hearing, it should arrange for the hearing to be held on another date.

### **Determining the Complaint**

- 4.3 SfE guidance is that the hearing is a formal meeting of the Council and not a court of law. Evidence is not given under oath but the Committee is required to decide factual evidence on the balance of probabilities. The Committee should work in a demonstrably fair, independent and politically impartial way.

### **Sanctions**

- 4.4 If the Committee finds that a Subject Member has failed to comply with the Code of Conduct the sanctions which it may apply are set out in paragraph 2. Members are asked to note that Mrs Luck is no longer a Councillor. This means that if the Committee find that the Code of Conduct has been breached the only sanction that can be imposed is censure. None of the other usual sanctions will be available. The second option open to the Committee is that they can make a finding that the Code of Conduct has been breached but decide not to impose any sanction.
- 4.5 Whilst recognising that the only sanction available is as set out in 4.4 above, the Committee should be aware of the general guidance to be applied when considering sanctions and accordingly this is set out in paragraphs 4.6 to 4.8.
- 4.6 The Adjudication Panel for England has produced advice for its own case tribunals which the SfE suggests should be considered by Standards Committees. This advises that in deciding what action to take, the tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus the action taken by the Committee should be designed both to discourage or prevent the particular Subject Member from any future non-compliance and also to discourage similar action by others. Tribunals should take account of the actual consequences which have followed as a result of the Subject Member's actions while at the same time bearing in mind what the possible consequences might have been even if they did not come about.



4.7 SfE guidance provides that when deciding on a sanction the Committee should ensure that it is reasonable and proportionate to the Subject Member's behaviour. Before deciding what sanction to issue, the Committee should consider the following questions, along with any other relevant circumstances:

- What was the Subject Member's intention? Did the Subject Member know that he was failing to follow the Code of Conduct?
- Did the Subject Member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result of failing to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the Subject Member accept they were at fault?
- Did the Subject Member apologise to the relevant people?
- Has the Subject Member previously been warned or reprimanded for similar misconduct?
- Has the Subject Member failed to follow the Code of Conduct before?
- Is the Subject Member likely to do the same thing again?
- How will the sanction be carried out? For example who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a Subject Member has repeatedly or blatantly misused the relevant authority's information technology resources, the Committee may consider withdrawing those resources from the Subject Member.

#### **Aggravating and mitigating factors when deciding sanctions**

4.8 The Adjudication Panel for England has published guidance on aggravating and mitigating factors it takes into account when assessing an appropriate sanction and these include:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the Code of Conduct, particularly when formed after taking appropriate advice;
- A Member's previous record of good service;
- Substantiated evidence that the Member's actions have been affected by ill-health;
- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the Member;
- Compliance with the Code since the events giving rise to the determination;

- Actions which may have involved a breach of the Code may nevertheless have had some beneficial effect for the public;
- Dishonesty;
- Continuing to deny the facts despite clear contrary evidence;
- Seeking unfairly to blame other people;
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code;
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

## **Decision**

- 4.9 The Committee should announce its decision at the end of the hearing and SfE advises that it is good practice to make a short written decision available on the day of the hearing. The Committee must give its full written decision to the relevant parties as soon as possible after the hearing, in most cases this should be within 2 weeks of the hearing. The Committee must arrange for a summary of the decision and reasons for it to be published in at least one newspaper circulating in the area of the authority involved. If the Committee finds that the Subject Member did not fail to follow the Code of Conduct the Subject Member is entitled to decide that no summary of the decision should be passed to local newspapers.

## **5 FINANCIAL IMPLICATIONS**

None

## **6. LEGAL IMPLICATIONS**

- 6.1 The Local Government Act 2000 introduced primary legislation to enable the implementation of a Members' Code of Conduct, and this was amended by the Local Government and Public Involvement in Health Act 2007 (LGPIHA 2007) insofar as it related to the application of the Members' Code of Conduct to their private lives. The local assessment regime was introduced by the LGPIHA 2007, and further expanded in the Standards Committee (England) Regulations 2008 which also set out the rules and procedures governing the investigation and determination of complaints.
- 6.2 Members are reminded that at the last meeting of the Standards Committee on 23 March 2011 consideration was given to whether the complaint should remain confidential under Section 100 I of the Local Government Act 1972, as amended. The decision was made to lift the exemption on publicising this matter. However, Members will still need to be mindful not to disclose any personal information into the public domain. Whilst the Investigating Officers report does not contain any personal information, the Schedule of Evidence does contain some personal data. This would affect the ability of the Committee to discuss the Schedule of

Evidence in public session. Were members to wishing to discuss the documents in the Schedule of Evidence in detail at the hearing, then that part of the meeting would have to be held in closed session.

**7. POLICY IMPLICATIONS**

N/a

**8. COUNCIL OBJECTIVES**

N/a

**9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS**

9.1 The main risk associated with the details included in this report is:

- Risk of challenge to Council decisions.

9.2 This risk is being managed as follows:

- Risk Register: Legal, Equalities and Democratic Services  
Key Objective Ref No: 3  
Key Objective: Effective ethical governance

**10. CUSTOMER IMPLICATIONS**

None identified

**11. EQUALITIES AND DIVERSITY IMPLICATIONS**

None identified

**12. VALUE FOR MONEY IMPLICATIONS**

None identified

**13. CLIMATE CHANGE AND CARBON IMPLICATIONS**

None identified

**14. HUMAN RESOURCES IMPLICATIONS**

None identified

**15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS**

None identified

**16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF THE CRIME AND DISORDER ACT**

None identified

**17. HEALTH INEQUALITIES IMPLICATIONS**

None identified

**18. LESSONS LEARNT**

Not applicable

**19. COMMUNITY AND STAKEHOLDER ENGAGEMENT**

None identified

**20. OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	No
Chief Executive	No
Executive Director (s151 officer)	No
Executive Director – Leisure, cultural, Environmental and Community Services	No
Executive Director – Planning & Regeneration, Regulatory and Housing Services	No
Head of Service	Yes
Head of Resources	No
Head of Legal & Democratic Services	Yes
Corporate Procurement Team	No

**21. WARDS AFFECTED**

All wards

**22. APPENDICES**

Appendix 1	Code of Conduct for Bromsgrove District Council
Appendix 2	Investigating Officer's report dated 24 Feb 2011

**23. BACKGROUND PAPERS**

Schedule of Evidence (Appendices A to L of Investigating Officer's Report)

**CONTACT OFFICER**

Name: Claire Felton, Monitoring Officer  
Email: c.felton@bromsgrove.gov.uk  
Tel: (01527) 881429

This page is intentionally left blank

**BROMSGROVE DISTRICT COUNCIL**

**CODE OF CONDUCT**

**Part 1**

General provisions

**Introduction and interpretation**

1. (1) This Code applies to **you** as a member of the authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code—
- "meeting" means any meeting of
- (a) the authority;
- (b) the executive (Cabinet) of the authority;
- (c) any of the authority's or its executive's (Cabinet's) committees, sub-committees, joint committees, joint sub-committees, or area committees;
- (d) any other meeting at which you are conducting the business of the authority or are acting, claiming to act, or giving the impression that you are acting as a representative of the authority.
- "member" includes a co-opted member and an appointed member.

**Scope**

2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you:
- (a) conduct the business of the authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
- (b) act, claim to act or give the impression you are acting as a representative of the authority,

and references to your official capacity are construed accordingly.

- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of the authority:
  - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### **General obligations**

3. (1) You must treat others with respect.
- (2) You must not:
  - (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
  - (b) bully any person;
  - (c) intimidate or attempt to intimidate any person who is or is likely to be:
    - (i) a complainant,
    - (ii) a witness, or
    - (iii) involved in the administration of any investigation or proceedings,



## APPENDIX 1

in relation to an allegation that a member (including yourself) has failed to comply with the authority's Code of Conduct;

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority; or

(3) No member shall provide, or offer to provide, a reference for any candidate for employment or promotion within the authority.

4. You must not:

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is:

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

6. You:

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of, or under the control of, the authority:

- (i) act in accordance with the authority's reasonable requirements;
  - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by the authority's officers and in particular by:
- (a) the authority's section 151 Officer where that officer is acting pursuant to his or her statutory duties;
  - (b) the authority's Monitoring Officer where that officer is acting pursuant to his or her statutory duties; or
  - (c) the chief legal officer.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority.

## **Part 2**

### **Interests**

#### **Personal interests**

8. (1) You have a personal interest in any business of the authority where either:
- (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 your authority;
    - (ii) any body:

## APPENDIX 1

- (aa) exercising functions of a public nature;
  - (bb) directed to charitable purposes; or
  - (cc) 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;
- (iii) any employment or business carried on by you;
  - (iv) any person or body who employs or has appointed you;
  - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
  - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
  - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
  - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
  - (ix) any land in the authority's area in which you have a beneficial interest;
  - (x) any land where the landlord is the authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
  - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or

financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

- (2) In sub-paragraph (1)(b), a relevant person is:
- (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

**Disclosure of personal interests**

9. (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of the authority and you attend a meeting of the authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of the authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in the authority's

Register of Members' Interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of the authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

**Prejudicial interest generally**

- 10.(1) Subject to sub-paragraph (2), where you have a personal interest in any business of the authority 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 judgment of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business:
  - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
  - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
  - (c) relates to the functions of the authority in respect of:
    - (i) housing, where you are a tenant of your authority 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.

**Prejudicial interests arising in relation to overview and scrutiny committees**

- 11.** You also have a prejudicial interest in any business before an overview and scrutiny committee of the authority (or of a sub-committee of such a committee) where:
- (a) that business relates to a decision made (whether implemented or not) or action taken by the authority's executive (Cabinet) or another of the authority's committees, sub-committees, joint committees or joint sub-committees; and
  - (b) at the time the decision was made or action was taken, you were a member of the executive (Cabinet), committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

**Effect of prejudicial interests on participation**

- 12. (1)** Subject to sub-paragraph (2), where you have a prejudicial interest in any business of the authority:
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held:
    - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
    - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;
- unless you have obtained a dispensation from the authority's Standards Committee;

- (b) you must not exercise executive functions in relation to that business; and
  - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of the authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of the authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

### **Part 3**

#### **Registration of Members' Interests**

##### **Registration of members' interests**

- 13.** (1) Subject to paragraph 14, you must, within 28 days of:
- (a) this Code being adopted by or applied to the authority; or
  - (b) your election or appointment to office (where that is later),
- register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to the authority's Monitoring Officer.
- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to the authority's Monitoring Officer.

##### **Sensitive information**

- 14.** (1) Where you consider that the information relating to any of your personal interests is sensitive information, and the authority's Monitoring Officer agrees, you need not include that information when

## **APPENDIX 1**

registering that interest, or, as the case may be, a change to that interest under paragraph 13.

- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify the authority's Monitoring Officer asking that the information be included in the authority's Register of Members' Interests.
- (3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.



## APPENDIX 2

INVESTIGATION : ref 94/09

FINAL REPORT

24<sup>th</sup> FEBRUARY 2011

This report has been prepared in relation to an investigation conducted under Section 59 of the Local Government Act 2000 by Vanessa Brown, Litigation Solicitor (appointed by the Monitoring Officer) into an allegation concerning Councillor Jean Luck a Member of Bromsgrove District Council.

The initial complaint was reported to the Standards Assessment Sub-Committee for consideration and were referred to the Monitoring Officer for local investigation and determination, pursuant to Section 57A (2) of The Local Government Act 2000 as amended.

### CONTENTS:

1. Summary of the allegations.
2. Relevant sections of the Code of Conduct.
3. Evidence gathered.
4. Findings of Fact.
5. Reasoning as to whether there has been a Breach of the Code.
6. Findings as to whether there has been a failure to comply with the Code of Conduct.

### APPENDICES:

Schedule of evidence taken into account.

- A. Code of Conduct implemented by the Bromsgrove District Council on 18<sup>th</sup> July 2008.
- B. Copy of the meeting notes prepared by Vanessa Brown following a meeting on 29<sup>th</sup> January 2010 with [REDACTED] – the Complainant.
- C. Copy of the meeting notes prepared by Vanessa Brown following a meeting on 29<sup>th</sup> January 2010 with the Planning Officer.
- D. Copy of the meeting notes prepared by Vanessa Brown following a meeting on 29<sup>th</sup> January 2010 with the Planning Enforcement Officer.

- E. Copy of the meeting notes prepared by Vanessa Brown following a meeting on 8<sup>th</sup> July 2010 with the Development Control Manager.
- F. Copy of the meeting notes prepared by Vanessa Brown following a meeting on 29<sup>th</sup> July 2010 with the Team Leader for Pollution Control.
- G. Copy of the meeting notes prepared by Vanessa Brown following a meeting with Councillor Luck on 20<sup>th</sup> July 2010.
- H. Copy correspondence from NPower Customer Relations Department received on the 4<sup>th</sup> November 2010 – D0239 Report for Project 31184 and N Power – Revenue Protection.
- I. Decision Notice: Referral for Investigation dated 14<sup>th</sup> December 2009.
- J. Second Decision Notice: Referral for Investigation dated 20<sup>th</sup> April 2010.
- K. Chronology.
- L. Schedule of Unused Material.
- M. Comments from [REDACTED] and Councillor Luck following receipt of the Draft Report. Each comment has been considered by the Investigating Officer who has responded accordingly.

**NB:** Meeting Notes have been signed by the interviewees as an accurate record of discussions with the Investigating Officer.

**1. SUMMARY OF THE ALLEGATIONS**

There are two distinct allegations as identified by the two Decision Notices (**Appendix I – Appendix J**) the Investigating Officer has separated the evidence in relation to the two allegations and it is hoped that this assists in the presentation of the report and enables consideration to be given to the individual issues.

**(i) The first allegation – Decision Notice dated 14<sup>th</sup> December 2009 (Appendix I)**

The complainant, [REDACTED] was visited at her home address by representatives from EON (an energy supply company) who were carrying out an investigation following a report of a “suspected unmetered supply” of electricity at her address.

It is alleged that Councillor Jean Luck was responsible for making an unfounded and malicious accusation by informing EON that there was an unmetered supply of electricity being abstracted at [REDACTED] address.

The allegation is that Councillor Luck used her position as a councillor to gain influence with EON to advantage her friend. It is further alleged that Councillor Luck acted in an unprofessional manner, by bringing the Council into a personal dispute between the complainant and Councillor Luck's friend.

NB: The person referred to in the Decision Notice as Councillor Luck's friend will be referred to in this report as "neighbour A"

This complaint was considered by the Standards Assessment Subcommittee on the 9<sup>th</sup> December 2009 and a Decision Notice dated 14<sup>th</sup> December 2009 (**Appendix I**) identified the following relevant sections of the Code of Conduct:

Part 1 – General obligations

- Section 3 (1) - You must treat others with respect.
  - Section 5 - You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
  - Section 6 – You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person an advantage or disadvantage.
- 

During the course of the investigation into the above allegation, information became available to the Investigating Officer to suggest that Councillor Luck may have involved herself in the retrospective planning application submitted by the complainant [REDACTED]

The Investigating Officer established that after the Decision Notice (**Appendix I**) was issued and sent to Councillor Luck that she involved herself in the retrospective planning application by contacting the Planning Officer and indicating that if he were minded to grant planning permission that she would exercise her right to "call in" the application for the Planning Committee to make the determination.

It was noted that in the original letter of complaint that [REDACTED] had expressed concern that as a Member of the Planning Committee Councillor Luck might not be able to make a fair, unbiased decision in relation to the retrospective planning application should it appear on a Planning Committee agenda.

This, along with other information obtained by the Investigating Officer, was considered by the Standards Assessment Sub-Committee who decided to extend the original investigation to enable consideration to be given to whether Councillor Luck's involvement with [REDACTED] planning application amounted to a breach of the Council's Code of Conduct. (Appendix J).

---

## **SUMMARY OF THE SECOND ALLEGATION**

### **(ii) Decision Notice dated 20<sup>th</sup> April 2010 (Appendix J)**

On or about the 1<sup>st</sup> October 2009, Councillor Luck viewed what appeared to be building work being carried out at [REDACTED] address. Footings had been laid and a significant number of bricks and blocks could be seen indicating that work was taking place.

Councillor Luck contacted the Planning Enforcement Officer at Bromsgrove District Council, who as a result of the information received attended [REDACTED] [REDACTED] examined the building work and advised her that planning permission was required. As the work had already commenced the application would be for retrospective planning permission.

A valid retrospective planning application was received by the Planning Department on the 11<sup>th</sup> January 2010 and allocated to a Planning Officer for consideration.

On or about the 20<sup>th</sup> January 2010 Councillor Luck contacted the Planning Officer and advised him that if he was minded to grant planning permission she would "call in" the application for determination by the Planning Committee. (See **Appendix E** for details of the "calling in" process).

In February 2010, Planning Permission was refused by the Planning Officer and a further amended planning application was submitted by [REDACTED] in April 2010.

Again Councillor Luck contacted the Planning Officer and again advised him that if he were minded to approve the planning application she would wish to call it in.

It is alleged that Councillor Luck may have breached the Code of Conduct by involving herself in [REDACTED] planning application as it appears that at the time Councillor Luck told the Planning Officer she would call in the application that she was aware that an investigation had commenced as a result of the complaint made by [REDACTED]

The matter was referred to the Standards Assessment Sub-Committee under Regulation 16 (1) of the Standards Committee (England) Regulations 2008 and as a result a second Decision Notice dated 20<sup>th</sup> April 2010 (**Appendix J**) was issued to extend the investigation to include this area of complaint and the following sections of the Code of Conduct were identified:

Part 1 - General Obligations

- Section 5 - You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
- Section 6 – You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person an advantage or disadvantage

\_\_\_\_\_

**2. RELEVANT SECTIONS OF THE CODE OF CONDUCT**

The Code of Conduct was adopted by the Bromsgrove District Council on the 18<sup>th</sup> July 2008. (**Appendix A**).

The allegations made against Councillor Luck are covered by the sections of the Code of Conduct detailed below:-

Part 1 of the Code – General Obligations

3. (1) You must treat others with respect.
- (2) You must not –
  - (a) Do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006 (a));
  - (b) bully any person;

- (c) Intimidate or attempt to intimidate any person who is or is likely to be-
  - (i) a complainant
  - (ii) a witness, or
  - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
  - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You –

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your authority-
  - (i) act in accordance with your authority's reasonable requirements;
  - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 (a)

### **3. EVIDENCE GATHERED – IN RELATION TO THE TWO DECISION NOTICES.**

In the course of this investigation consideration has been given to the following evidence: -

- 3.1 The Code of Conduct **Appendix A.**
- 3.2 A meeting was held with the complainant, [REDACTED] at her home address. Attached to the Meeting Note are the papers provided to [REDACTED] by EON. The Meeting Note and accompanying documents can be found at **Appendix B.**
- 3.3 A meeting was held with the Planning Officer who was allocated the two retrospective planning applications submitted by [REDACTED]. The Meeting Note can be found at **Appendix C.**
- 3.4 A meeting was held with the Planning Enforcement Officer who visited [REDACTED] address, viewed the building work and determined that retrospective planning permission would be required. The Meeting Note can be found at **Appendix D.**
- 3.5 A meeting was held with the Development Control Manager. This evidence is provided purely to set out the procedures relevant to the involvement of councillors in relation to any planning application that falls within their Ward, specifically the ability to "call in" a planning application. The Meeting Note can be found at **Appendix E.**
- 3.6 A meeting was held with the Team Leader for Pollution Control who received complaints relating to noise issues relevant to [REDACTED] property and neighbouring properties. The Meeting Note can be found at **Appendix F.**
- 3.7 A meeting was held with Councillor Jean Luck to obtain her instructions in relation to the allegations as detailed in the two Decision Notices. The Meeting Note can be found at **Appendix G.**
- 3.8 Paperwork provided by N Power/EON to the Investigating Officer – DO239 Report for Project 31184 and Npower – revenue protection. The documents can be found at **Appendix H.**

- 3.9 The Decision Notice dated 14<sup>th</sup> December 2009 relating to the first allegation pertaining to the telephone call to EON can be found at **Appendix I**.
- 3.10 The second Decision Notice dated 20<sup>th</sup> April 2010 relating to Councillor Luck's involvement with [REDACTED] planning applications can be found at **Appendix J**.
- 3.11 Chronology of events is provided at **Appendix K**.
- 3.12 Schedule of Unused Material is provided at **Appendix L**.
- 3.13 Comments and response to the Draft Report provided at **Appendix M**

**4. FINDING OF FACT**

---

**(A) The First Allegation: Decision Notice dated 14<sup>th</sup> December 2009 (Appendix I) Telephone call to EON.**

- 4.1 The first allegation made against Councillor Luck, relates to an alleged telephone call made to EON concerning a hole that had been dug in the pavement/ verge outside [REDACTED] property.
- 4.2 [REDACTED] purchased their property at the end of 2007 and moved in mid way through 2008. The delay in the family occupying the property was to allow building work to take place.
- 4.3 As part of the continuing building work [REDACTED] began to build a brick built dog kennel on an area which had previously been a stable block. A concrete base remained although the stable structure had previously fallen down. Work on the kennel commenced sometime during October 2009.
- 4.4 [REDACTED] genuinely believed that as long as the kennel did not exceed the site of the concrete base that they would not need to apply for planning permission.
- 4.5 The Planning Enforcement Officer confirms that on the 1<sup>st</sup> October 2009 he received two complaints in relation to the building work at [REDACTED] address. The first was from Councillor Jean Luck who is the Ward



- Councillor for the relevant area and the second complaint was received from the owner of a property situated near by.
- 4.6 Councillor Luck's complaint was noted and documented as "Large footings laid next to the above location enough bricks and blocks delivered to build a small block of flats!"
- 4.7 The second complaint was recorded as "building works in progress including footings".
- 4.8 The Planning Enforcement Officer visited [REDACTED] address on the 23<sup>rd</sup> October 2009 and although the occupants were not at home he did see that there were builders on site and work was underway. A card was left for [REDACTED] to contact the Planning Enforcement Officer to arrange a mutually convenient appointment
- 4.9 On the 26<sup>th</sup> October 2009 at a pre arranged appointment, the Planning Enforcement Officer met with [REDACTED] at the property. The Officer recalls that when he arrived at the property that there was a tool box next to a hole that had been dug in the ground between the tarmac and the front door at the address. He recalls commenting to [REDACTED] that it was very trustworthy to leave the tools outside.
- 4.10 During the site visit, [REDACTED] confirmed to the Planning Enforcement Officer that the kennel was being built to house greyhounds, and the remainder of the field was to be used for exercising the greyhounds.
- 4.11 Having inspected the building work the Planning Enforcement Officer advised [REDACTED] that an application for retrospective planning permission would need to be made and the appropriate application form would be provided in due course.
- 4.12 The Planning Enforcement Officer telephoned Councillor Luck the following day (27<sup>th</sup>) to advise her of his findings. This is normal procedure when a complaint has been made by a councillor.
- 4.13 It was during that conversation with the Planning Enforcement Officer that Councillor Luck mentioned that she had safety concerns about some work being carried out to the energy supply at the front of the property. Councillor Luck confirmed to the Planning Enforcement Officer that she would contact the energy supplier and raise her concerns about the safety issue.
- 4.14 In accordance with enforcement procedure, on the 27<sup>th</sup> October 2009, both Councillor Luck and the second complainant were notified in writing that a site visit had taken place and that the building work would require planning permission.

- 4.15 The same day, 27<sup>th</sup> October 2009, a letter was sent to [REDACTED] confirming the outcome of the Planning Enforcement Officer's visit and that the submission of the retrospective planning application would be subject to the normal consultation process. The application form was also included with the letter.
- 4.16 Having received the planning application form, [REDACTED] contacted a nearby neighbour for help and guidance in completing the form. The neighbour was known to [REDACTED] to have previously been a councillor and as such she thought she might be familiar with the planning process and be able to offer assistance. (This is the person referred to as Councillor Luck's friend as identified in the Decision Notice (**Appendix 1**) and referred to in this report as neighbour "A".
- 4.17 It was during this conversation with neighbour "A" that [REDACTED] was told that the neighbour's friend, Councillor Luck, had previously looked at the building work and had said that there may be a problem with it. This was the first time [REDACTED] had heard Councillor Luck's name mentioned. It was clear to [REDACTED] and this is now confirmed by the Planning Enforcement Officer, that Councillor Luck had made a complaint about the building work.
- 4.18 On the 2<sup>nd</sup> November 2009, [REDACTED] returned home to find a card had been left by a representative of Central Networks (a company of E-ON). (**Appendix B**). The card stated that an appointment was required to "inspect the electricity meter".
- 4.19 [REDACTED] contacted Central Networks and arranged a new appointment for the 10<sup>th</sup> November 2009 for what she thought was a routine meter reading.
- 4.20 At the appointed time two gentlemen arrived and it was immediately apparent to [REDACTED] that they were not engineers and in fact were there in a much more official capacity. Having examined the meter they enquired whether [REDACTED] was aware of the purpose of their visit.
- 4.21 [REDACTED] was told that an allegation of "unauthorised use of electricity" had been made and they went on to explain that sometimes people have two meters, one for daytime use and one for night-time use, and if the property is extended it is possible to adapt one of the meters to run without incurring costs.

- 4.22 [REDACTED] was told that the person who had made the allegation had suggested that there were two meters at the property and one had been tampered with to unlawfully abstract electricity. A full inspection of the meter revealed that there was only one meter at the property and it was "all ok". This is detailed in the documents provided to [REDACTED] (Appendix B) in DO239 Report for Project 31184. The same documentation was subsequently provided to the Investigating Officer (Appendix H).
- 4.23 [REDACTED] asked who had made the complaint and she was asked if she knew anyone by the name of "Luck". Initially she did not know the name but then the officer from Central Network said "Councillor Luck". [REDACTED] recalled the conversation some short time earlier with neighbour "A" who had referred to her friend "Councillor Luck" as having looked at the building work at the rear of the property.
- 4.24 [REDACTED] subsequently, contacted the energy supplier for more information about the complaint made against her and on two occasions she spoke to representatives from N-Power who confirmed the complaint was of an "illegal abstraction of electricity" and that the complaint had been made on the 29<sup>th</sup> October 2009 by Councillor Luck.
- 4.25 Although on two occasions [REDACTED] was advised on the telephone that the complaint had been made by Councillor Luck when the requested complaint form was released to [REDACTED] details of the person who had made the complainant had been removed. (Appendix B).
- 4.26 The Investigating Officer has however; obtained from EON a copy of the complete form in which it states that the report of the suspected unmetered supply was received from Councillor Luck. (Appendix H).
- 
- 4.27 At a meeting with the Investigating Officer on the 20<sup>th</sup> July 2010 Councillor Luck confirmed that she was contacted by neighbour "A" sometime late September/ early October 2009 in relation to a building that was being constructed at the rear of [REDACTED] address.
- 4.28 Councillor Luck confirmed that she went to look at the building work and although she could not see the footings she could see a quantity of concrete bags, sand and aggregate piled up outside the property.
- 4.29 Councillor Luck confirmed that as a result of what she saw, she contacted the Planning Enforcement Officer at Bromsgrove District Council.
- 4.30 Councillor Luck viewed the building work on a second occasion by which time the building was about a metre high. Councillor Luck confirmed that by this time she had received telephone calls from a number of other

neighbours enquiring if she knew “what was going on” with the building work.

- 4.31 Councillor Luck confirmed that following the Planning Enforcement Officer’s visit to [REDACTED] property that she received a letter advising her of the outcome of his visit and that an application for planning permission was required.
- 4.32 Councillor Luck stated that “about a week went by, perhaps a little more...” when she received a message on her answer machine saying that a hole had been dug in the pavement outside [REDACTED] property and would she go and have a look at it as it was dangerous. There were no contact details left and Councillor Luck does not know who had left the message.
- 4.33 A short time later Councillor Luck received a telephone call from neighbour “A” saying that someone had dug a hole in the verge/footpath outside [REDACTED] property and that it had been left with just a couple of planks across it and without any lights. As there are no street lights in the road it was considered dangerous.
- 4.34 Shortly after Councillor Luck received this information she drove passed the property and viewed the hole. She formed the opinion that the concerns raised were genuine and that the hole posed a danger to anyone using the footpath especially after dark.
- 4.35 Councillor Luck contacted neighbour “A” who had made the call to her and confirmed that she had driven passed the hole. Councillor Luck was advised by neighbour “A” that she had seen two men in a white van arrive and, whilst she had not seen the hole being dug, she did notice that a short time later that the hole had appeared.
- 4.36 Councillor Luck was also told by neighbour “A” that she understood that the pipes in the hole were for the electricity supply and she went on to say “they are digging up the electricity”
- 4.37 Councillor Luck recalls that neighbour “A” then said “you know what they are doing don’t you?...they have gone and put in rogue electric...”. Councillor Luck describes neighbour “A” as being very annoyed.
- 4.38 Councillor Luck confirmed that she would contact the energy supplier as she felt she had to become involved in this matter because of the safety concerns she had about this unguarded, unlit hole.
- 4.39 Information obtained by the Investigating Officer from EON, confirms that Councillor Luck made a telephone call to them on 29<sup>th</sup> October 2009. This is

three days after the Planning Enforcement Officer attended [REDACTED] property to inspect the building work.

4.40 It should be noted that the Planning Enforcement Officer recalls speaking to Councillor Luck on the 27<sup>th</sup> October 2009 to confirm the outcome of his visit to [REDACTED] address. It was during this conversation that Councillor Luck advised him that she was going to contact the energy supplier about the hole in the verge/footpath as she felt it was dangerous. It was two days later on the 29<sup>th</sup> October that she made the call.

4.41 Councillor Luck accepts contacting EON who confirmed it was Central Networks who would need to deal with her enquiry. Councillor Luck was given the telephone number and she immediately called Central Networks and was eventually put through to a Supervisor. Councillor Luck enquired whether any works were being carried out in relevant area and she told the Supervisor "somebody has dug this blooming great hole it's already been there three or four days. There are no lights on it at night.:" Councillor Luck went on to tell the supervisor that it was "gross negligence" to leave the hole in such a dangerous state.

4.42 The Supervisor confirmed that no work was being carried out by Central Networks in that area, and they did not contract work out as it was highly specialised work. However, he did go on to say that he would go out and have a look. Councillor Lucks recalls the rest of the conversation with the Supervisor as follows:-

4.43 "...he said now is there anything else that you can, you know, tell me that might help? Well I said the only thing is and I went on to explain about the building work at the top of this field and I said but I can only say to you what the neighbours have said that in their opinion it is so badly done that it is unlawful. I said but that is hearsay. I said I am a District Councillor, I will tell you what I know but I am quoting hearsay. And he said "Oh well in that case then I will make my site visit and don't think this is rare, he said it happens all the time which is why we have a Revenue Protection Team because when this happens you have to pay and you have to pay a substantial amount of money to have another line put in".

4.44 It was four days later on the 2<sup>nd</sup> November 2009 that officials from Central Networks visited [REDACTED] address and left a card for [REDACTED] to make a mutually convenient appointment. On the 10<sup>th</sup> November 2009 by appointment the Central Network officials returned to [REDACTED] address.

4.45 It has been extremely difficult to obtain information from the energy company regarding the complaint made by Councillor Luck and it is clear

from the initial lack of response that there was a reluctance to provide any information.

4.46 However, with signed authorities from both [REDACTED] and Councillor Luck it has been possible to obtain the job sheet – headed N Power – Revenue Protection – which is the instruction sheet issued to prompt an investigation. This states “revd report dated 29/10/09 states info from councillor luck. Report of suspected unmetered supply. Please visit and investigate on our behalf on priority b ...” (Appendix H)

4.47 Also obtained was the D0239 Report for Project 31184 document (Appendix H) which is the report of the investigation and the findings of the officers who attended the property and examined the meter. The comments made are as follows:

“No signs of interference, RP operative called 10 November 2009. He found a single rate credit meter on site. All intact and no signs of interference. It appears the consumer is having a problem with neighbours who has made malicious claims against her including one of unmetered supply for out buildings at the property. The off peak meter has been removed by MOP. All okay existing meter retained and left as found.”

4.48 It appears without dispute that Councillor Luck’s telephone call to the energy supplier prompted the visit to [REDACTED] property by the Revenue Protections Services on behalf of N Power.

4.49 During the discussions between the Investigating Officer and Councillor Luck it was apparent that she was aware other issues raised by [REDACTED] neighbours. The Investigating Officer has considered it appropriate to examine Councillor Luck’s response to those issues to establish whether or not her reaction to the issue relating to the hole in the pavement was reasonable. Further this is necessary to establish Councillor Luck’s ability to identify those matters which it was appropriate for her to become involved with and those which she should stay clear of. This is examined as follows:-

4.50 Enquires indicate that in May 2010 the Environmental Health Department received complaints from two of the residents in the area relating to an allegation of noise from barking dogs at [REDACTED] address.

4.51 In June 2010 the Environmental Health department received a complaint from [REDACTED] about barking dogs at the property opposite, which was owned by one of the complainants in the allegation made against [REDACTED] in May 2010 of barking dogs at her address.



- 4.52 In discussions with Councillor Luck she refers to the issue of the barking dogs at [REDACTED] address and she confirms that she received reports about this problem. Councillor Luck said she advised those raising the concerns to get in touch with the Environmental Health Department. Councillor Luck was of the opinion that this was an issue they (The Resident's Association) could deal with themselves. [REDACTED]
- 4.53 Councillor Luck stated that she continued to receive telephone calls about [REDACTED] and her family and when it was suggested to her that their behaviour was anti social and threatening, she confirmed that she would not get involved with such a matter and if necessary those complaining should go to the police.
- 4.54 Councillor Luck describes the problems as "a running saga" denoting that she was aware of the ongoing neighbour dispute. Specifically she stated that she will not involve herself in such matters "I can't afford to get involved in neighbour disputes".
- 4.55 Councillor Luck reaction to the concerns raised about the building work was however different and she did feel that this was a matter in which she could actively respond. Having viewed the building work Councillor Luck contacted the Planning Enforcement Officer whose paperwork shows that in addition to Councillor Luck's complaint he also received a complaint from a neighbour at a nearby property. It is these complaints that started the enforcement process which began with the Planning Enforcement Officer's visit to [REDACTED] property. As a Member of the Planning Committee Councillor Luck was aware of the process and could properly involve herself by lodging a complaint with the Planning Enforcement Officer.
- 4.56 Following on from the visit, [REDACTED] submitted a Retrospective Planning Application which was received in November 2009. As part of the planning process the application was publicised by way of a Site Notice and also as part of the consultation process occupants of the neighbouring properties are afforded the opportunity to comment. In total six objections were received from the occupants of nearby properties.
- 4.57 A similar response was received to the subsequent planning application when the initial planning application for the kennels was refused.
- 4.58 With regard to the issue surrounding the hole in the pavement, Councillor Luck gave clear instructions to the Investigating Officer that due to her concerns about the safety issues that she felt she had to become involved in this matter. It must follow that Councillor Luck also felt able to involve

herself in the issue of the allegation of an unmetered supply of electricity as she made the comments to the Supervisor during the same conversation.

**FINDING OF FACT**

---

**(B) The Second Allegation: Decision Notice dated 20<sup>th</sup> April 2010 (Appendix J) Councillor Luck's involvement with [REDACTED] planning application**

4.59 In the original complaint letter to the Monitoring Officer, [REDACTED] raised concerns in relation to her Retrospective Planning Application and Councillor Luck's involvement in the decision making process of that application.

4.60 During the course of the investigation into the first allegation, it became apparent that Councillor Luck had contacted the Planning Officer who had been allocated [REDACTED] planning application and advised him that she intended to "call in" the application should he be minded to grant it.

4.61 It is this involvement that forms the basis of the second Decision Notice (**Appendix J**) thereby extending the original investigation to determine whether or not Councillor Luck's involvement in [REDACTED] application for retrospective planning permission amounted to a breach of the Code of Conduct.

4.62 As already detailed above, [REDACTED] submitted an application for retrospective planning permission in November 2009. Planning applications are allocated to a Planning Officer according to the area with in which they fall.

4.63 It is essential at this stage to have an understanding of a councillor's involvement in any planning application and the subsequent planning process. Therefore as part of this investigation the Development Control Manager, has provided what is hoped to be a helpful account of how a councillor knows of a planning application and what involvement they can properly have in any process and determination. (**Appendix E**)

4.64 The evidence provided by the Development Control Manager confirms that some uncomplicated planning applications which relate to small developments are determined by a Planning Officer rather than by Planning Committee. There is a strict criteria which is applied and it is apparent that [REDACTED] retrospective planning application satisfied the criteria and was duly allocated to a Planning Officer.



- 4.65 Each week all councillors receive a list of all new planning applications to enable them to be up to date with any proposed developments in their Ward.
- 4.66 All councillors have the right to "call in" a planning application which is in their Ward.
- 4.67 The right to "call in" an application enables a Ward Councillor to put a matter before the Planning Committee to be debated in a public forum. Once aware that a planning application is being considered the councillor can tell the Planning Officer that they wish to have the application "called in".
- 4.68 In such cases where the Ward Councillor does no more than say that they require the matter to be "called in" the Planning Officer will not make a determination but will instead prepare a full report for the Planning Committee within which he will make a recommendation as to how the application should be determined.
- 4.69 Alternatively a Ward Councillor can specify that they require the application to be "called in" only if the Planning Officer is minded to approve the application. In such cases if the Planning Officer is minded to approve the application he will not make that formal determination but he will prepare a report for Planning Committee with a recommendation that the application is approved. The matter will then be formally considered by the Planning Committee. If the Planning Officer is minded to refuse the application then the refusal notice is issued to the applicant who can if they wish exercise their right of appeal.
- 4.70 In relation to [REDACTED] retrospective planning application the Planning Officer confirms that he received the first application on the 24<sup>th</sup> November 2009. The application was incomplete and additional information was requested. The required information was received and the application was deemed valid, and thus ready for consideration, on the 11<sup>th</sup> January 2010.
- 4.71 On the 20<sup>th</sup> January 2010 the Planning Officer was passed a telephone message from a colleague to say that Councillor Luck had called to say that should he be minded to approve the retrospective planning application that it would be her intention to "call it in".
- 4.72 The Planning Officer had no contact with Councillor Luck until 28<sup>th</sup> January 2010 when Councillor Luck came into the office, for an unrelated matter, and at that time the Planning Officer was able to confirm that he had received her message. Again Councillor Luck confirmed her intention to "call in" the application should the Planning Officer be minded to grant it.

4.73 At this stage it is perhaps worth confirming that the first Decision Notice (**Appendix I** - relating to the telephone call to EON) had been sent to Councillor Luck under cover of a letter from the Monitoring Officer on the 14<sup>th</sup> December 2009. The Investigating Officer wrote to Councillor Luck on the 15<sup>th</sup> January 2010 enclosing a further copy of the Decision Notice and confirming the details of the allegation. Additionally, the Investigating Officer recalls that prior to sending the letter that a telephone call was made to Councillor Luck on or about the 13<sup>th</sup> January 2010 by way of a courtesy call and introduction.

4.74 In all the circumstances it is apparent that Councillor Luck would have received the letters from both the Monitoring Officer and the Investigating Officer and had also spoken to the Investigating Officer before she contacted the Planning Officer to say that she required [REDACTED] retrospective planning application to be "called in" should the Planning Officer be minded to approve it.

4.75 In discussions with the Investigating Officer Councillor Luck stated that she did not recall knowing that a complaint had been made against her by [REDACTED] at the time she contacted the Planning Officer to say she wished to call in the application. However, Councillor Luck further confirmed that in any event knowledge of the complaint would not in any way have changed the course of action she took. Councillor Luck stated:

"As far as I am concerned the complaint would not have changed my mind or made me do anything different to my usual actions"

4.76 It is clear from Councillor Luck's comments to the Investigating Officer that she felt entirely justified in calling in the application due to the complaints she had received from the neighbours.

4.77 The planning application would only have been called in before the Planning Committee if the Planning Officer was minded to grant the application. However, as it was refused it did not need to be "called in" for determination by the Planning Committee.

4.78 A second retrospective planning application was then submitted by a Planning Consultant on behalf of [REDACTED] on the 16<sup>th</sup> April 2010.

4.79 It should be noted that the second Decision Notice, (**Appendix J**) which stated that the investigation had been extended to include Councillor Luck's involvement in the planning application, was sent to Councillor Luck by the Monitoring Officer on Thursday 22<sup>nd</sup> April 2010 some six days after the second planning application was received.

- 4.80 On Monday 26<sup>th</sup> April 2010, the Planning Officer received a telephone call from Councillor Luck asking if a new planning application had been submitted. It was confirmed that it had been received and Councillor Luck again stated that if the Planning Officer were minded to approve the application that it should be called in before the Planning Committee.
- 4.81 It is without doubt that Councillor Luck knew of the investigation at this time, and further that she knew that [REDACTED] was the complainant. The letter from the Monitoring Officer was sent out four days before Councillor Luck's call to the Planning Officer and it is therefore more likely than not it had been received before the telephone call was made to the Planning Officer on the 26<sup>th</sup> April 2010.
- 4.82 Councillor Luck again does not recall receiving the letter from the Monitoring Officer enclosing the second Decision Notice although again confirms that she would have taken exactly the same approach to the planning application irrespective of the Decision Notice.
- Councillor Luck stated:  
" I have to reiterate, I don't know how serious these are (referring to the Decision Notices) but it will not alter my decision and as far as I am concerned as a local Member and a Member of the Planning Committee I consider that there was a serious breach of the Planning Regulations and I would have asked for it to have been called in..... "
- 4.83 During the course of the investigation [REDACTED] has raised concerns with the Investigating Officer about the influence placed on the Planning Officer when making his determination in relation to her planning application.
- 4.84 [REDACTED] suggested that she had been told by her Planning Consultant in relation to the second application that during a conversation with the Planning Officer that he told the Planning Consultant that he had been put under pressure from councillors to refuse the application because it was retrospective.
- 4.85 The Investigating Officer has spoken directly to the Planning Officer, who recalls a conversation with the Planning Consultant about the second planning application. It is an entirely normal part of the process for discussions to take place between the Planning Officers and the applicants or representatives on their behalf. However, the Planning Officer does not accept that he said or implied that he was under pressure to refuse [REDACTED] application.
- 4.86 The Investigating Officer has also personally spoken to the Planning Consultant who confirms that she did speak to the Planning Officer about

the application but he did not say anything about being put under pressure by Councillors.

4.86 A chronology of events is at Appendix K.

**5 REASONINGS AS TO WHETHER THERE HAS BEEN A BREACH OF THE CODE**

**(A) The First Allegation: Decision Notice dated 14<sup>th</sup> December 2009 (Appendix I) Telephone call to EON.**

5.1 In assessing the evidence in relation to this allegation, it is necessary to have an understanding of Councillor Luck's role within the community and also the nature of the community for which Councillor Luck is the District Councillor and within which [REDACTED] and her family live.

5.2 Alvechurch is the largest Ward within the Bromsgrove District and this is reflected by the fact it has three Ward Councillors of which Councillor Luck is one. Councillor Luck also lives within the Ward and has done so for over 50 years. It is a rural area surrounded by countryside.

5.3 Not only is Councillor Luck the Ward Councillor for Alvechurch but she is also one of the Parish Councillors for Beoley.

5.4 It is clear that due to her involvement with the community as a District and Parish Councillor that Councillor Luck knows almost all of the residents in the village many of whom she would regard as friends.

5.5 Councillor Luck is by no means a passive councillor, and it is clear from her involvement with various committees that she is a very active member of the Council who has dedicated a vast amount of time and energy to not only her Ward but the District as a whole. There is no denying Councillor Luck's commitment and good intentions.

5.6 In discussion with Councillor Luck it is apparent that she can clearly identify those issues that merit her involvement and intervention and those issues which can and should be left to the local residents to resolve. Within Councillor Luck's Ward is a Resident's Association which, whilst not very active, does serve to support the community.

5.7 [REDACTED] moved to the area in June 2008 and from discussions with [REDACTED] she felt reluctance to their presence even before they moved in to the property. [REDACTED] describes a problem that arose with the neighbour "A" in relation to looking after the previous owners animals. However, this issue appeared to have been amicably resolved and it was

not until the building work was commenced in October 2009, that any further difficulties arose.

5.8 Councillor Luck had not met the [REDACTED] and the first involvement she had with them was when she was made aware that there may be a potential breach of the planning regulations in relation to the building work at the rear of the property.

5.9 Councillor Luck received a telephone call from neighbour "A" who had been advised by someone nearby that building work was being carried out at the rear of [REDACTED] property.

5.10 Councillor Luck contacted the Planning Enforcement Officer, having seen signs of building work specifically the sand, and aggregate outside the property.

5.11 A second complaint was also received by the Planning Enforcement Officer from another neighbour and following a visit to view the building work [REDACTED] was advised that the building required planning permission and that an application for retrospective planning permission would need to be submitted.

5.12 Councillor Luck's involvement in the planning process that followed forms the basis of the second Decision Notice (**Appendix J**) and will therefore be considered later in this report.

5.13 It is clear from the evidence provided by Councillor Luck that the building work attracted a very significant amount of interest from many of the residents in the immediate area. Councillor Luck recalls telephones from a neighbour in the same road and in a nearby road. Whilst Councillor Luck makes it clear that these were not necessary complaints they were just enquires to find out what was going on with the building work at [REDACTED] address.

5.14 Councillor Luck describes the immediate area around the property, as having only about 20 houses and she states that "I don't think there is a neighbour within two hundred yards that hasn't either complained or something....."

5.15 In addition to the complaints or enquires received about the building work, Councillor Luck was also aware of other issues and concerns relating to the [REDACTED] address.

5.16 Whilst Councillor Luck refers to a number of neighbours contacting her, it does seem clear that neighbour "A" was the source of much of the information. [REDACTED]

- 5.17 It is clear that Councillor Luck has high regard neighbour "A" having known her for a significant number of years, [REDACTED]
- 5.18 In any event what is without doubt is that Councillor Luck was aware of an escalating neighbour dispute and describes the situation as a "running saga".
- 5.19 Councillor Luck refers to telephone calls in which she was told that the occupants of [REDACTED] address had been, anti-social, threatening and rude. Councillor Luck clearly identifies these complaints as outside her remit as a councillor and she makes it clear she would not become involved in such matters and she advised that other avenues must be explored.
- 5.20 A noise issue relating to [REDACTED] dogs was brought to Councillor Luck's attention and this again was a matter she advised she would not assist with but suggested those complaining contact the appropriate department within the Council.
- 5.21 Councillor Luck specifically refers to the Resident's Association [REDACTED] and that the noise issue was something they should be dealing with themselves and that "they knew jolly well what to do in a matter like that.....!"
- 5.22 During this investigation and in discussions with Councillor Luck it has become apparent that she has a very comprehensive understanding of what falls within her remit as a councillor and what should be left to individuals to sort out amongst themselves. It is clear Councillor Luck can identify those matters which should be kept at arms length and which she should not become involved in.
- 5.23 When referring to the ongoing problems, Councillor Luck states "I can't afford to get involved in neighbour disputes" and even when the neighbours are described as "getting very twitchy, they have actually asked [REDACTED] what's going on, they have been told to mind their own business". It is clear that even when, no doubt put under some pressure, Councillor Luck was still about to stand clear of becoming involved in what was developing into a neighbour dispute.
- 5.24 Many of the issues raised with Councillor Luck by the neighbours came about after the telephone call to EON which led to the complaint being lodged by [REDACTED]



- 5.25 However, these issues do go towards establishing Councillor Luck's ability to distinguish between those matters that she was able to assist with and those which should be left to the residents either individually or collectively to resolve.
- 5.26 Moving on directly to the problem which led to Councillor Luck contacting EON, it appears that there is some confusion about the timing of this issue.
- 5.27 Councillor Luck describes being told about the hole about a week after she received the letter from the Planning Enforcement Officer saying that retrospective planning permission was required for the building work.
- 5.28 It was a call to Councillor Luck's answer machine that alerted her to the hole in the verge/footpath and this was followed up shortly after by a call from neighbour "A". This call prompted Councillor Luck to drive passed the hole and see for herself the concerns raised.
- 5.29 Upon returning home Councillor Luck contacted neighbour "A" and enquired if she knew who had dug the hole. Councillor Luck was told that two workmen had been seen at the property and it was assumed that they had dug the hole.
- 5.30 In the same conversation neighbour "A" tells Councillor Luck that it was believed that the pipes in the hole were for electricity. Councillor Luck describes neighbour "A" as being "very annoyed" and she goes on to tell Councillor Luck that "they [redacted] have gone and put in rogue electric.."
- 5.31 Councillor Luck was confident in her instructions to the Investigating Officer that she felt that reporting the issue of the hole to the energy company was her responsibility and whilst saying "well I cant afford to get involved in neighbour disputes..... I had to get involved about this hole.....". It is clear that Councillor Luck felt she had to do something about this particular matter and she therefore telephoned the energy company about her concerns.
- 5.32 There appears to be an issue with the timing of Councillor Luck's telephone call to the energy company, as she states that she made the call about a week after receiving the letter from the Planning Enforcement Officer detailing the outcome of his visit to [redacted] address. This does not appear to be correct as the Planning Enforcement Officer recalls clearly visiting [redacted] on the 26<sup>th</sup> October 2009, and speaking to Councillor Luck on the 27<sup>th</sup> October 2009 when she said she intended to call the energy supplier about the safety concerns she had about the hole.

- 5.33 Councillor Luck must have viewed the hole, to have been able to form the opinion that it was dangerous; she would not otherwise have been able to tell the Planning Enforcement Officer on the 27<sup>th</sup> October 2009 that she intended to contact the energy supplier. Logically therefore this conversation must have been after Councillor Luck had spoken to neighbour "A" and viewed the hole.
- 5.34 It was not until the 29<sup>th</sup> October 2009 that Councillor Luck made the call to EON. It must then beg the question why it took so long for the call to be made if Councillor Luck was so concerned about the state of hole because of the lack of lighting and barriers.
- 5.35 Councillor Luck confirms that the purpose of her call to EON was to raise with them her concerns in relation to the safety issues and that it was only at the end of the conversation when asked if there was anything else she wished to tell them, that she went on to say that she had heard that something "unlawful" was occurring.
- 5.36 Councillor Luck in discussions with the Investigating Officer was firm in her instructions that what she told the Supervisor was "hearsay" that she had heard from the neighbours. Councillor Luck recalls the conversation she had with the Supervisor at EON as follows:
- 5.37 "...I can only say to you what the neighbours have said that in their opinion it is so badly done that it is unlawful. I said but that is hearsay. I said I am a District Councillor, I will tell you what I know but I'm quoting hearsay".
- 5.38 Clearly Councillor Luck was telling the Supervisor, albeit hearsay, that the meter at the [REDACTED] house was being interfered with. By saying she was "quoting hearsay" it appears that Councillor Luck was intent on reporting the allegation although anxious to distance herself from the comments.
- 5.39 Whilst Councillor Luck maintains that her comments were very much an aside to the main purpose of her call it is apparent from the response from the Supervisor that Councillor Luck had gone into some detail as to the extent of the "unlawful" activity.
- 5.40 Councillor Luck recalls the Supervisors response as follows:
- 5.41 "Oh well in that case then I will make my site visit and we, don't think this is rare, he said it happens all the time which is why we have a Revenue Protection Team because when this happens you have to pay and you have to pay a substantial amount of money to have another line put in..."



- 5.42 It is clear from the Supervisors response that Councillor Luck must have suggested that electricity was being extracted unlawfully to prompt him to refer to the Revenue Protection Team, and to say “when this happens you have ...to pay a substantial amount to have another line put in.....” This response is only possible if it had been suggested to him that the [REDACTED] were unlawfully abstracting electricity.
- 5.43 To the Supervisor it was no doubt irrelevant that the information was hearsay, as far as he was concerned it was a matter suitable for referral to the Revenue Protection Team for investigation.
- 5.44 Further evidence to establish the extent of Councillor Luck’s comments to the Supervisor is found in the documentation provided by EON to [REDACTED] and to the Investigating Officer. (Appendix B and Appendix H).
- 5.45 On the “n-power – revenue protection” document a request is made for a visit to be made to ...” following information from Councillor Luck of a “Report of suspected unmetered supply”.
- 5.46 The document headed “D0239 Report for Project 31184 was prepared following the visit to [REDACTED] address in which it is confirmed that there are “no signs of interference”...the comments continue “it appears that the consumer is having problems with the neighbours who have made malicious claims about her including one of unmetered supply for out buildings at the property....”
- 5.47 What is apparent from this documentation is that Councillor Luck clearly told the Supervisor, that the [REDACTED] had an unmetered supply for the outbuildings they would not otherwise have known about the building at the rear of the property. It is relevant that at the time Councillor Luck made the call to EON she had already been in touch with the Planning Enforcement Officer about the building work at the rear of the property.
- 5.48 It is of note that the Officers from EON who attended [REDACTED] address told her that the complaint made had suggested that she had two meters at the address. This when considered with the response from the Supervisor to Councillor Luck who advises that installing a second line costs a “substantial amount of money” indicates that Councillor Luck must have made reference to a second source of electricity. It is noted that [REDACTED] believes that neighbour “A” would have known that the property had previously had two meters but neighbour “A” would not have known that after moving into the property [REDACTED] had one of them removed.
- 5.49 Having regard to the documentation and the comments made by the Supervisor to Councillor Luck and also the comments made to [REDACTED]

about having a second line put in, the Investigating Officer is without doubt that Councillor Luck made more than a passing comment about what she perceived had occurred with the energy supply and the hole in the pavement.

5.50 The Investigating Officer deemed it appropriate to consider why Councillor Luck distinguished the issue with the hole in the pavement different to the two issues raised by the neighbours with Councillor Luck such as the noise issues and the suggestion of anti social behaviour.

5.51 It is relevant to recall that Councillor Luck considered that the Resident's Association should be able to deal with certain issues themselves:

"they (Resident's Association) knew jolly well what to do in a matter like that.....!".

In relation to the suggestion made to Councillor Luck that members of the [REDACTED] family had been threatening and anti social, she advised those raising the issue to contact the police. Again demonstrating that Councillor Luck knew she should distance herself from such matters..

5.52 Councillor Luck clearly felt the issue with the hole in the pavement fell within her remit and in her discussion with the Investigating Officer she made it clear that the safety issues were her paramount concern and that this was "different" to the other matters raised with her by the neighbours.

5.53 It would have been entirely possible for Councillor Luck to have advised neighbour "A" to contact the energy company herself.

5.54 Alternatively, Councillor Luck could have contacted the Highways Department who would have dealt with the matter accordingly and who would have barriers and lighting equipment available to make the area safe whilst enquiries were on going.

5.55 When speaking to the EON Supervisor Councillor Luck confirms that she described the state the hole had been left in as "gross negligence". The Investigating Officer is satisfied that Councillor Luck did have genuine concerns about the safety issue and, although the paperwork from EON does not make any reference to safety issues, it is accepted that Councillor Luck did raise such concerns when she telephoned on the 29<sup>th</sup> October 2009. This is supported by the comments Councillor Luck made to the Planning Enforcement Officer during the telephone conversation with him on the 27<sup>th</sup> October.

- 5.56 Having considered all of the relevant factors the Investigating Officer, whilst remaining surprised at the delay in the call being made, does accept that Councillor Luck's actions in contacting EON in relation to the safety concerns, did fall within her remit as a District Councillor. Clearly there were alternatives but on balance the Investigating Officer accepts that Councillor Luck was within her remit to contact EON about the safety concerns.
- 5.57 However, the Investigating Officer makes a very significant distinction between Councillor Luck's comments to the Supervisor relating to the safety concerns and the comments she made in relation to "a suspected unmetered supply".
- 5.58 The fact that Councillor Luck advised the EON Supervisor that her comments were "hearsay" is entirely irrelevant. Sufficient detail was provided by Councillor Luck to EON to enable them to report this as an "unmetered supply for out buildings at the property". The response from the EON Supervisor "don't think this is rare...it happens all the time which is why we have a Revenue Protection Team because when this happens you have to pay...a substantial amount of money to have another line put in" provides clear evidence that Councillor Luck made an unfounded accusation.
- 5.59 The Supervisor's comments, the documents provided from EON (**Appendix H**) and the comments made to [REDACTED] by the Officials who attended her home can only mean that Councillor Luck told them that electricity was being unlawfully abstracted. It therefore must follow that Councillor Luck made more than a passing comment about the energy supply to the extent that EON began an investigation into the allegation of a criminal offence.
- 5.60 Councillor Luck also named those she thought were responsible and this again provides evidence that Councillor Luck was making more than a passing comment, she gave sufficient details to prompt an immediate response and investigation.
- 5.61 It matters not that the comments made by Councillor Luck were preceded by her stating that what she was saying was "hearsay". It was for those who directly made the allegations to have reported them; it was not for Councillor Luck to do so on their behalf.
- 5.62 The reaction and subsequent investigation by EON was an entirely foreseeable reaction to the information provided to them by Councillor Luck.
- 5.63 What the Investigating Officer found surprising was that with all her years of experience as a councillor, with her very clear understanding of what fell

within her remit, that Councillor Luck allowed herself to become involved in a neighbour dispute when she had exercised caution and deflected those issues which she identified as suitable to be dealt with by the residents either individually or collectively.

- 5.64 It seems that whilst Councillor Luck stated and clearly knows "I can't afford to get involved in neighbour disputes" that in making the comments to EON about the electricity meter she did allow herself to become involved in a dispute that resulted in her making an accusation of criminal activity

### **Applying the Relevant Section of the Code of Conduct to the Facts**

In all sections of the Code of Conduct a councillor must be acting or purporting to be acting in their capacity as a councillor. The Investigating Officer is satisfied that Councillor Luck acted or purported to act in her capacity as a councillor when making the telephone call to EON.

This is based on the evidence that when contacting EON, Councillor Luck refers to herself as a District Councillor and the EON paperwork refers to the complaint being made "councillor luck".

Councillor Luck did not make the telephone call to EON as a concerned neighbour or as someone living in the street that may use the pavement and be directly at risk, she made the telephone call as "Councillor" Luck and clearly did so on behalf of the residents as their representatives.

Councillor Luck did not cease to be acting in her capacity as a councillor simply by saying she was "quoting hearsay" when telling the Supervisor about the alleged unlawful activities.

For all sections of the Code of Conduct considered, the Investigating Officer finds that Councillor Luck was acting in her official capacity as a councillor.

### **Part 1 – General Obligations**

#### **Section 3 – You must treat others with respect.**

- 5.65 In considering this section of the Code of Conduct the Investigating Officer has had regard to the Case Reviews relevant to this section of the Code of Conduct.

- 5.66 Most of the case reviews relate to complaints made by councillors against councillors or against council officers, primarily due to a difference of

political opinion or in the case of officers, because of inappropriate comments or actions.

5.67 It appears that in many cases where a breach of the Code was found the conduct amounted to personal abuse rather than political expression and in many cases the conduct was in a public arena.

5.68 It must follow that the nature of a councillor's work will lead to disagreement with others who hold different political views and opinions. As such at meetings it is possible that things are said in the heat of a debate which may other wise seem disrespectful.

5.69 The Investigating Officer is of the opinion that when taking office there must be an acceptance that there will be a certain amount heated debate which, may, in other circumstances be seen as unacceptable. In other words for a councillor it may be that a certain amount of confrontation, disagreements or verbal unpleasantness "comes with the territory". It could be argued that such discussions form part of the democratic process and differences of opinion are an essential part of the cut and thrust of political life. The case reviews do make a distinction between comments and actions directed on a personal level and those which are said generally on the basis of political opinion

5.70 In applying the Code of Conduct and considering the relevance of the Case Reviews the Investigating Officer finds a significant distinction between complaints made by councillors and, as in this current matter, where the complaint is made by a member of the public.

5.71 The comments made to EON about ██████████ were not made in a public arena and whilst this does mean that only the representatives of EON were aware of the allegation made by Councillor Luck, it also meant that ██████████ was without any right to reply or to defend herself at the time the allegation was made. Whilst clearly ██████████ was totally exonerated by the representatives who came to her home to examine the meter this was after a serious allegation of a criminal offence was made against her.

5.72 There can be no doubt that the comments made to EON were personal to ██████████ and her family. Councillor Luck accepts giving her name to EON although at the time she said thought it was ██████████. Irrespective of this slight error, it is clear that the accusation was directed personally toward ██████████ and her family.

5.73 The Investigating Officer finds two very distinct parts to Councillor Luck's conversation with EON. The first part in which she raises the safety issue is not making any aspersions toward the ██████████ family and is in fact purely Councillor Luck reporting her concerns as viewed for herself. The fact that

the hole is in the verge/pavement, may reasonably suggest that someone other than the [REDACTED] have instructed the work to be carried out. As such the Investigating Officer does not find that in this part of the conversation that Councillor Luck failed to treat [REDACTED] with respect.

5.74 The second distinct part of the conversation with EON is different. Whilst accepting that Councillor Luck may be “quoting hearsay” the allegation she is making is very personal to the [REDACTED] family. The comments could not be considered to be vague or general they are direct and specific making reference to an allegation and naming those responsible.

5.75 The Investigating Officer remains surprised that a councillor with so much experience involved herself with unfounded and untruthful gossip and felt it appropriate to make allegations which left EON with no alternative but to carry out a formal investigation.

5.76 To make an unfounded allegation, without any personal or direct evidence was wholly inappropriate and the comments were made in such a way that only a formal investigation could be considered by EON. Thus the first [REDACTED] was aware of the allegation was when confronted by two EON officials who made attended her property.

5.77 Having regard to all of the above the Investigating Officer, finds that Councillor Luck failed to treat [REDACTED] with respect, by making an unfounded allegation of a serious nature for which she had no more than inflammatory rumors from a neighbour who appears to have been in dispute with [REDACTED]

#### Part 1 – General Obligations

#### Section 5 – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

5.78 Guidance from the Standards for England case reviews provides some assistance in relation to this particular matter and whether Councillor Luck’s actions could reasonably be regarded as bringing her office into disrepute. The case reviews primarily centre on actions of councillors who publically make false accusation or their actions or failure to act provides a personal advantage to them.

5.79 The question of what amounts to “disrepute” can be defined as a lack of good reputation and respectability. The Investigating Officer has considered whether Councillor Luck’s actions could be seen to reduce the public’s confidence in her being able to fulfil her role or has her action so adversely affected the reputation of councillors generally.



5.80 It is relevant that the comments to EON made by Councillor Luck were not made in public, and so limited those affected by Councillor Luck's actions. Although [REDACTED] had no right of reply at the time the allegation was made she was totally exonerated by EON who carried out an investigation and examination of the meter. No other authorities or persons were involved in the process.

5.81 The test to be applied to decide if Councillor Luck's actions could "reasonably be regarded as bringing her office into disrepute" is an objective test. The Investigating Officer has on the balance of probability determined that although Councillor Luck's comments were entirely inappropriate they were not views expressed in a public arena and whilst clearly her actions have caused considerable upset to [REDACTED] and her family, the Investigating Officer does not find that Councillor Luck's actions called her office into disrepute.

5.82 In coming to this conclusion the Investigating Officer has had regard to the overall effect of Councillor Luck's actions and whilst not underestimating the impact on [REDACTED], it is clear that a breach of this part of the Code is usually reserved for instances where the councillor's actions can be seen to damage the reputations of the Member's office or authority as a whole as opposed to damaging the reputation of the individual councillor.

### Part 1 – General Obligations

#### Section 6 – You

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

5.83 In considering Section 6 of the Code of Conduct, the Investigating Officer has had regard to any advantage or disadvantage achieved as a result of the telephone call made by Councillor Luck.

5.84 The actions of the Member must be improper and whilst there is no definition of "improper" within the Code of Conduct the underlying principle is that Members are elected or appointed to public office to serve the public interest. A Member's conduct would be seen to be improper if they were to use their public position to further private interests of themselves or others, to the detriment of the public interest.

- 5.85 In the letter of complaint from [REDACTED] she refers to Councillor Luck's friend and also in the Decision Notice (**Appendix I**) reference is made to Councillor Luck using her position to advantage her friend.
- 5.86 Whilst it is clear that neighbour "A" is the provider of much of Councillor Luck's information, it is not apparent that she gains any advantage from Councillor Luck's telephone call to EON. It has been commented upon much earlier in the report that neighbour "A" herself could have made the call to EON whose reaction would no doubt have been the same. Therefore the Investigating Officer can find no advantage to neighbour "A" by Councillor Luck making the call.
- 5.87 Whilst the Decision Notice (**Appendix I**) suggests that there may be a potential breach by Councillor Luck in conferring an advantage upon her friend, the same Decision Notice allows the Investigating Officer to consider and identify other potential breaches of the Code of Conduct.
- 5.88 Therefore under the same section of the Code of Conduct (section 6 (a) the Investigating Officer has considered any disadvantage that arose as a result of Councillor Luck's telephone call.
- 5.89 Clearly the information provided to EON was unfounded and untruthful and it may be considered malicious to make such accusations.
- 5.90 Whilst Councillor Luck may not have given any thought to the consequences of her actions it was entirely foreseeable and reasonable that EON would immediately commence an investigation based on the information supplied to them. As such this conferred a disadvantage upon [REDACTED] who was made the subject of a formal investigation in which it was clear that an allegation of an offence of dishonesty had been made against her.
- 5.91 The Investigating Officer finds that even though [REDACTED] was completely exonerated as a result of the investigation by EON, that Councillor Luck used her position as a councillor to confer a disadvantage upon [REDACTED] by making an unfounded and untruthful allegation against her.
-



**REASONINGS AS TO WHETHER THERE HAS BEEN A BREACH OF THE CODE**

**(B) The Second Allegation: Decision Notice dated 20<sup>th</sup> April 2010 (Appendix J) Councillor Luck's involvement in the "calling in" process.**

- 5.92 The second Decision Notice (Appendix J) was issued following the Investigating Officers establishing that Councillor Luck had "called in" the planning application submitted by [REDACTED]
- 5.93 There are two potential breaches of the Code of Conduct to be considered and to be able to make a determination it has been essential to have a clear understanding of the "calling in" process available to District Councillor.
- 5.94 To fully understand this process the evidence provided by the Development Control Manager, has played a significant part in the determination process. (Appendix E).
- 5.95 In his evidence the Development Control Manager confirms that all District Councillors are made aware, on a weekly basis, of all of the planning applications which have been submitted. The Ward Councillor for the relevant application is able to "call in" an application which in simple terms means that they can ask for a matter to be considered by the Planning Committee rather than a determination being made under delegated powers by the allocated Planning Officer.
- 5.96 There are two ways in which an application can be "called in". Firstly, a councillor can simply tell the Planning Officer that they require the application to be "called in" and they do so without any expression or opinion about the application.
- 5.97 The second option, and the one Councillor Luck adopted, is to say that if the Planning Officer is minded to make a determination that the councillor disagrees with then the matter is "called in" before the Planning Committee. (see para 12 – 16 of Appendix E ).
- 5.98 The wording used by Councillor Luck is standard and clearly indicates that if the Planning Officer was minded to grant the application for [REDACTED] then it should be "called in".
- 5.99 In this instance Councillor Luck felt that the interest of the neighbours would be best served by allowing the application to be heard before the Planning Committee and hence she asked for the matter to be "called in" should the Planning Officer be minded to grant the application.

- 5.100 In discussion with the Investigating Officer, Councillor Luck stated that she was not aware of the complaint made against her by [REDACTED] at the time she "called in" the first planning application but in any event it would have made no difference to her actions.
- 5.101 The Investigating Officer has considered the sequence of events that took place to establish whether or not it is reasonable to accept that Councillor Luck had no knowledge of the complaint made by [REDACTED] when she asked to "call in" in the planning application.
- 5.102 The sequence of events was as follows:
- [REDACTED] letter of complaint was received on the 2<sup>nd</sup> December 2009, and was considered by the Standards Assessment Sub-Committee on the 9<sup>th</sup> December 2009. The resulting Decision Notice (**Appendix I**) of the same day was sent to Councillor Luck with a covering letter on 14<sup>th</sup> December 2009. The Investigating Officer spoke with Councillor Luck on the 13<sup>th</sup> January 2010 and on the 15<sup>th</sup> January 2010 the Investigating Officer wrote to Councillor Luck with a further copy of the Decision Notice. [REDACTED] planning application was accepted as valid on the 15<sup>th</sup> January 2010 and on the 20<sup>th</sup>/21<sup>st</sup> January 2010 Councillor Luck advised the Planning Officer that she would wish to "call in" the application.
- 5.103 In light of the above the Investigating Officer does not accept that at the time Councillor Luck expressed a wish to "call in" the application that she was unaware of the complaint made by [REDACTED]
- 5.104 The first planning application was refused by the Planning Officer as it failed to meet the criteria for approval.
- 5.105 The refusal having been issued, [REDACTED] submitted a second planning application which again, using the same procedure, Councillor Luck asked to be "called in" if the Planning Officer was minded to approve it.
- 5.106 It was during the process for the second planning application that [REDACTED] says her Planning Consultant spoke to the Planning Officer about the application. It was suggested by [REDACTED] that during the course of that conversation that the Planning Officer advised the Planning Consultant that he had been put under pressure by councillors to refuse the application.
- 5.107 The Investigating Officer has considered this matter as it goes to the core of [REDACTED] concerns as raised in her initial letter of complaint that Councillor Luck may have influenced the planning application and subsequent decision.

- 5.108 The Investigating Officer has spoken personally to the Planning Officer who recalls speaking to the Planning Consultant but does not accept that he in any way suggested that he had been put under pressure with regards to the planning application.
- 5.109 The Planning Consultant was also personally spoken to by the Investigating Officer and whilst accepting a conversation did take place with the Planning Officer about the application she did not recall any suggestion that he was in any way being influenced by a councillor to make a decision.
- 5.110 The Investigating Officer had no previous knowledge or understanding of the planning procedure relating to the "calling in" process and initially found it a little surprising that a Ward Councillor could have such input in a planning application. However with now a much clearer understanding of the process it seems that the involvement of a councillor before the Planning Officers decision may in some cases allow for important factors to be considered in the determination of a planning application.
- 5.111 A Ward Councillor will have local knowledge and may be aware of local issues that affect a development that should properly be considered by the Planning Committee. The ability to call in an application is therefore an important part of the process and can be seen as a safety net to ensure that all views are considered.
- 5.112 It is entirely appropriate and in fact a regular occurrence for a Ward Councillor to raise matters with the Planning Enforcement Officers and so it must follow that there is a likelihood that the same councillor may ask for a planning application to be "called in" should a subsequent planning application be submitted.
- 5.113 In applying this to the current matter, the Investigating Officer is satisfied that Councillor Luck correctly raised her concerns with the Planning Enforcement Officer and was subsequently entitled to exercise her right as a Ward Councillor to request that the application be "called in".
- 5.114 Such a process would only have the possibility of allowing the matter to be determined by the Planning Committee rather than a Planning Officer and as such Councillor Luck was not a party to the determination she was purely identifying where that determination may be made.
- 5.115 The Investigating Officer enquired of Councillor Luck whether with knowledge of the investigation that one of the other two councillors for the Ward could have "called in" the application. In response Councillor Luck confirmed that she was the councillor on the Planning committee and therefore would have more knowledge of the procedure. As Councillor Luck had made the initial complaint to the Planning Enforcement Officer based

upon what she had seen, it would follow that she should be the councillor to "call in" the application.

5.116 As indicated above the Investigating Officer does not accept that Councillor Luck was unaware of the complaint made by [REDACTED] at the time she spoke to the Planning Officer. However, the Investigating Officer does not find that the existence of the complaint or investigation prevented Councillor Luck from exercising her right as a Ward Councillor to call in the application.

5.117 It is relevant that Councillor Luck had reported the initial planning breach which led to the investigation by the Planning Enforcement Officer which in turn led to the need for a retrospective planning application.

5.118 The process of "calling in" a planning application is a transparent process that simply allows for a second form of determination. The process would have been no different if one of the other two councillors had made the request. There is no discussion between the councillor and the Planning Officer as to the reasons for the application being "called in" and whilst Councillor Luck would clearly have had to declare an interest at the Planning Committee it was not beyond her remit to "call in" the planning application

5.119 The Investigating Officer is therefore satisfied that Councillor Luck was entitled to make the request to the Planning Officer to "call in" the application regardless of the complaint or investigation and doing so was within her remit. Therefore Councillor Luck has not breached the Code of Conduct in relation to the "calling in" process for either of the two planning applications submitted.

6. FINDINGS AS TO WHETHER THERE HAS BEEN A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

The First Allegation: Decision Notice dated 14<sup>th</sup> December 2009 (Appendix I) Telephone call to EON.

6.1 With regard to this allegation that Councillor Luck failed to comply with the Code of Conduct I find as follows:

Part 1 paragraph 3 (1) – You must treat others with respect.

For the reasons set out at paragraph 5, I find that Councillor Luck failed to comply with Part 1 paragraph 3 (1) of the Code of Conduct that she failed to treat ██████████ with respect by contacted EON and suggesting that ██████████ was unlawfully abstracting electricity.

Part 1 paragraph 6 (a) – You must not use your position as a member improperly to confer on any other person, a disadvantage.

Further I find that Councillor Luck failed to comply with Part 1 paragraph 6 (a) by using her position as a member improperly to confer a disadvantage upon ██████████ by making the unfounded allegation which resulted in ██████████ being subjected to a formal investigation by EON.

Part 1 paragraph 5 – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office into disrepute.

I do not find a breach of the Code of Conduct in relation to Part 1 paragraph 5 I do not find that Councillor Luck's actions could reasonably be regarded as bringing her office or authority into disrepute.

\_\_\_\_\_

I therefore find that Councillor Luck has breached Part 1 paragraph 3 (1) and Paragraph 6 of the Code of Conduct.

The Second Allegation: Decision Notice dated 20<sup>th</sup> April 2010(AppendixJ)  
Councillor Luck's involvement with [REDACTED] Planning Application

6.2 With regard to the allegation that Councillor Luck failed to comply with the Code of Conduct I find as follows:

For the reasons set from paragraph 5.92 I find that Councillor Luck acted within her remit as a councillor by "calling in" the planning application regardless of the existence of the complaint or investigation.

I therefore find that Councillor Luck did not breach the Code of Conduct in relation to this Decision Notice.

---

The evidence collated in the course of this investigation has been carefully considered and assessed and my findings are based on the balance of probability burden of proof.

This is the Final Report prepared by Vanessa Brown which represents the findings and conclusions of the investigation into two allegations made against Councillor Jean Luck.

Signed

Dated

APPENDIX M

COMMENTS IN RESPONSE TO THE DRAFT REPORT

The Investigating Officer's Draft Report was sent to Councillor Luck and [REDACTED] and their comments and the Investigating Officer's responses to those comments are detailed below.

It should be noted that the Investigating Officer has responded only to those matters which are relevant to the investigation. The purpose of the investigation and the subsequent report was only to establish whether or not Councillor Luck had breached the Council's Code of Conduct. Some of the matters raised by [REDACTED] are beyond the boundaries of the investigation and whilst finding it understandable that such comments are made, it is not within the Investigating Officer's jurisdiction to respond to them.

Comments received from [REDACTED] these are detailed below exactly as received by the Investigating Officer.

**A. [REDACTED] comment:**

Page 10 paragraph 4.16:

[REDACTED] merely contacted Neighbour 'A' to see if she knew the Enforcement Officer who had attended the property."

**B. Investigating Officer's response:**

The Meeting Note was prepared by the Investigating Officer following a meeting and discussions with [REDACTED] It was signed by [REDACTED] on the 12<sup>th</sup> March 2010 as an accurate record of the discussions that had taken place. It is noted at paragraph 7 of the Meeting Note that [REDACTED] had stated that [REDACTED] and [REDACTED] felt that she (Neighbour A) may be able to give them some guidance and advice on the procedure surrounding their application for retrospective planning permission".

The Investigating Officer has taken this instruction from the Meeting Note and referred to it in the Report. There is nothing within the Investigating Officers notes or in the Meeting Note to suggest that [REDACTED] had said she had made contact with Neighbour A to see if she knew of the Enforcement Officer's visit.



**A. [REDACTED] comments:**

Page 21 paragraph 5.15:

“ ‘ ....other issues and concerns relating to the address’  
what are these issues and when were they raised and by whom ?”

**B. Investigating Officer's response:**

As referred to within the report Councillor Luck was aware of other issues and concerns relating to [REDACTED] address.

Firstly at (inter alia) page 22 paragraph 5.19 the report refers to the alleged complaint received by Councillor Luck of “anti-social, threatening, and rude” behaviour.

Secondly, the report at (inter alia) page 22 paragraph 5.20 details the alleged “noise issue” relating to [REDACTED] dogs. The Meeting Note for the Team Leader for Pollution Control who confirms that a complaint was received can be found at **Appendix F**.

These examples are used by the Investigating Officer to demonstrate Councillor Luck's response to the specific complaints received and her ability to identify those matters which she should become involved in and those which she should not.

The purpose of the investigation was to establish whether or not Councillor Luck had breached the Code of Conduct in contacting EON and suggesting an unlawful activity was taking place. The Investigating Officer did not find it appropriate or necessary to investigate in detail the individual complaints made against [REDACTED] other than the complaint made relating to the hole and the report to EON by Councillor Luck.

**A. [REDACTED] comments:**

Page 22 paragraph 5.18:

‘ ....an escalating neighbour dispute....’ What is this in relation to ?

**B. Investigating Officer's response:**

When read in context it is clear that having already referred to the enquiries raised with Councillor Luck about the building work, the allegation relating to the hole, the noise issue, and the suggestion of anti-social behaviour, the Investigating Officer considers this to be an escalating neighbour dispute.



**A. [REDACTED] comments:**

Page 22 paragraph 5.19:

“ .... anti-social, threatening and rude.....’ who, when and to whom ?”

**B. Investigating Officer’s response.**

It is not part of the remit set out within the Decision Notices to investigate this allegation.

---

**A. [REDACTED] comments:**

Page 22 paragraph 5.20:

‘a noise issue’, surely we would have been contacted by Environmental Health if there was a noise issue relating to our address.

**B. Investigating Officer’s response:**

In the course of this investigation evidence was obtained from the Team Leader for Pollution Control in relation to complaints made. His evidence can be found at **Appendix F** in which he confirms that he received a complaint concerning noise from barking greyhounds at the rear of [REDACTED] property. It was not within the Investigating Officer’s remit to go into any further detail concerning this event or to establish what action was taken by the Environmental Services Team in relation to any allegation.

---

**A. [REDACTED] comments:**

Page 22 paragraph 5.23:

‘On going problems.....they have been told to mind their own business’

What are these and when did they occur? No one has ever asked us what was going on, I did take it upon myself to speak with our immediate neighbour during October 2009 to let her know that we had had a litter of pups and the building was for them, as the garage was too small.

**B. Investigating Officer's response:**

It is not relevant for the purposes of this report for the Investigating Officer to establish who told Councillor Luck or when the [REDACTED] allegedly said that the neighbours were to "mind their own business". This comment made by Councillor Luck to the Investigating Officer is included to again demonstrate that Councillor Luck was experienced enough to know that there were certain issues that she should not become involved in. To use Councillor Luck's own words "can't afford to get involved in neighbour disputes".

---

**A. [REDACTED] comments:**

Page 23 paragraph 5.28:

"No hole was ever made in the footpath/verge. There is no verge in front of our cottage, only footpath. We did have a trench dug in our own garden for the laying of water and electricity pipes.

I can produce photographic evidence to prove that we have never disturbed the footpath, as the tarmac remains intact."

**B. Investigating Officer's response:**

[REDACTED] comments are noted. A hole did exist as seen by the Planning Enforcement Officer who comments at page 2 paragraph 9 of the Meeting Note found at **Appendix D** that "he noticed a tool box and a hole in the ground between the tarmac and the front door."

Councillor Luck saw the hole and it is apparent that it is the same hole as seen by the Planning Enforcement Officer. The Investigating Officer is satisfied that the hole existed and although the exact location may be a matter in dispute the Investigating Officer is entirely satisfied that this is the basis of the complaint made to EON and the exact location may not be a significant factor for the purposes of this report.

---

**A. [REDACTED] comments:**

Page 13 paragraphs 4.41, 4.43, Page 24/25 paragraphs 5.37, 5.41, and 5.42:

“How can Councillor Luck possibly remember the exact words of the conversation in her call to E-ON made in October 2009, when she didn't have the meeting with yourself until July 2010 some 8 months later.”

**B. Investigating Officer's response:**

Due to the extent of the investigation and the substantial information gathered, the Investigating Officer felt that tape recording the discussions with Councillor Luck would ensure that an exact record of instructions was obtained.

The tape was transcribed to ensure that the Investigating Officer had an accurate account of Councillor Luck's comments.

Within the report anything that appears in quotation marks denotes the exact words used by Councillor Luck to the Investigating Officer these are not necessarily the exact words used by Councillor Luck to the EON representative.

It is however apparent that Councillor Luck had given some thought to the conversation she had had with EON and no doubt this was as a result of receiving the Decision Notices.

---

**A. [REDACTED] comments:**

Appendix G: page 2 paragraph 6:

“Councillor Luck states that the land is subject to an Agricultural Grant, indeed the previous owner did receive this , but we did not wish to purchase this paperwork and so we do not receive any agricultural subsidy, perhaps this is some incorrect information that neighbour 'A' supplied her with.”

**B. Investigating Officer's response:**

This background information was given merely to show that Councillor Luck had an extensive knowledge of the area. No further comment is necessary.

---

**A. [REDACTED] comments to the Report in general**

In relation to the report in general;

- If there was a safety issue with the hole then surely, the Enforcement Officer, would have at the very least commented on it or indeed reported it to the Highways Division when he returned to the office, otherwise he would have been neglectful in his duty. He notes that he made a comment about the toolbox being left out and also that the hole was between the tarmac and the front door (in other words in our garden) so he had noticed the hole but was not alarmed by it. The hole was covered over at night with building pallets and while there are no street lights we had already installed lights on the front of the cottage to illuminate the area for our own safety when coming home late at night.
- Having personally contacted E-ON and N Power, I have been assured that if the complaint made to them by Councillor Luck was only in regard to a safety issue, after ascertaining that they were not carrying out any work in the area, they would have informed her that they would not take any action as it would not be under their jurisdiction, however they also confirmed that they must have had a report that something unlawful was going on to take the action that they did and contact Revenue Protection to investigate.
- The fact that Councillor Luck reported the hole to E-ON on 29th October, at least 5 days after it was made, shows that she had no real safety concerns, otherwise why did she not contact them immediately when neighbour 'A' telephoned her.
- We have previously dug a trench in front of the cottage when we first moved in to elevate a damp problem, this trench was left uncovered for several months whilst we had a new floor and damp course put in and was only filled in after the problem sorted, no-one made a comment about it or indeed complained to E-ON about that particular work.
- Councillor Luck states that it was neighbour 'A' who informed her of the hole, she also states that she has a high regard for neighbour 'A', so when neighbour 'A' states that we were putting in rogue electricity she obviously

believed her, she makes no mention of a safety issue, so the only reason for the phone call must have been the accusation of illegal abstraction of electricity (THEFT).

- As correctly pointed out, most (if not all) of the other issues made by Councillor Luck relate to time after 29th October, up until that point we had no indication of any objection by the neighbours to the building work, indeed no objections were made until late January/early February so we had no knowledge of what the neighbours were thinking, indeed we sent Christmas cards to them all as in previous years! So any issues relating to 'Anti-social, threatening and rude behaviour' are completely unfounded and inflammatory and I believe have been put in to try and discredit us and try and make us sound like undesirable neighbours. In fact I can produce a list of neighbourly activities that were still taking place up until October 2009, such as meals at one neighbour's house, another neighbour signing a legal document for us, a neighbour looking after our cats and chickens while we were on holiday (late Aug 2009), we disposed of another neighbour's garden waste (Sept 2009) So you have to ask when and how we suddenly became such undesirable people!!!

- The only reason I can think of for Councillor Luck to have taken this course of action is due to her close, trusted, personal friend neighbour 'A' giving her information, due to her dislike of me as I did not wish to become involved with a woman who wished to gossip about all the other neighbours, as she had done so on several occasions when I happen to pass her out side.

- Until reading about the Residents Association in this report, I was unaware that there is one, surely neighbour 'A' would have asked us to join when we moved here if she runs it, perhaps she had already decided we were outsiders and not suitable to join !!!!!!!

#### **B. Investigating Officer's response:**

The above comments are observations made by [REDACTED] The Investigating Officer has noted the comments and does not find it necessary to add anything further.

Comments received from Councillor Luck - these have been provided in the form of a letter and the Investigating Officer has separated this into paragraphs to enable a clear response to be made. Councillor Luck's comments have been taken directly from the letter received by the Investigating Officer.

#### **A. Councillor Luck's comments**

"Having carefully read your report, I cannot help but feel that if the transcript of my original telephone call to EON/Central Networks had been made available to you, this whole matter may have been viewed from a very different perspective.

I cannot reiterate too strongly, as I have done throughout, my sole reason for calling EON was that a large hole had been excavated in the verge and footpath on [REDACTED] had been left overnight, barely covered, no warning notices, with apparently no thought to the safety of pedestrians.

99% of the call was to enquire (1) Had Central Networks staff dug the hole? (2) Why was it left in such a state as to be a real and dangerous hazard to pedestrians and (3) Had they (Central Networks) engaged contractors to carry out the work."

#### **B. Investigating Officer's response:**

The only information made available to the Investigating Officer by the energy supply company is that which is provided at **Appendix H**. Whilst some telephone calls are recorded for training purposes it appears that not all are recorded and when asked for all information and documents pertaining to this matter the Investigating Officer was advised that all that was held on the file was the documents that now form **Appendix H** of this report.

Councillor Luck has clearly identified the concerns she had and that in her opinion the hole presented a "real and dangerous hazard to pedestrians". Having raised these comments it remains a concern to the Investigating Officer that if the danger was so significant why did she wait at least three days to report this issue. There is indisputable evidence that Councillor Luck was aware of the hole on the 27<sup>th</sup> October but that she did not report it until the 29<sup>th</sup> October.

**A. Councillor Luck's comments**

"It was only at the very end of quite a lengthy call, and after I was assured that Central Networks staff would visit the site, examine the works and contact the adjoining property [REDACTED] and make enquires, was I asked if I had any other information that might help them. I then told the gentleman of the suspicions of adjacent property owners, one of whom is a civil engineer, that an attempt to put a rogue line through to a building which was being erected in the field adjacent to [REDACTED] without planning permission was taking place.

**B. Investigating Officer's response:**

In the full knowledge that Central Networks staff were intending to visit the site, why was it necessary to give them any further information. If there was anything untoward occurring then it would have been apparent to those visiting the property. As already detailed in the report it was not for Councillor Luck to make unfounded allegations of a criminal nature on behalf of others.

---

**A. Councillor Luck's comments**

"From that moment, the gentlemen's focus appears to have completely changed. From your report, Central Network's only priority then was whether they were being cheated of revenue. It is obvious from their report sheet, completed by Central Networks staff at the conclusion of their second visit to [REDACTED] that no further mention or interest had been shown to the dangerous excavation outside the property, even though electric cables and fittings were in full view in the hole on their first visit.

After this first visit with no one at home, a card was left I understand, asking the occupier to contact Central Networks.

At dawn the following day, the men who had dug the hole and left it in such a dangerous condition arrived and very quickly filled in the hole and made good."

**B. Investigating Officer's response:**

The Investigating Officer finds it incredible that Councillor Luck is surprised that the gentleman she was talking to change his focus at the suggestion that there was unlawful activity.



Having expressed concerns about the safety of the hole and having been advised that someone would visit the site, Councillor Luck then proceeded to give what can only be described as a detailed account of the fact that she believed a criminal offence was taking place. It should be noted that it is an offence under the Theft Act 1968 to unlawfully abstract electricity and this is exactly the allegation Councillor Luck was making. She provided significant detail about the building at the rear of the property and the lack of planning permission, the fact that a neighbour was a civil engineer implying that his opinion was more credible than others, also that the rouge line was going to the building at the back of the house. With this detail is it really any surprise that the "gentleman's focus appears to have changed...."

It is noted that Councillor Luck is surprised that the report sheets make no mention of the "dangerous excavation" even though electric cables and fittings were in full view in the hole on their first visit.

The hole, according to Councillor Luck was visible and "in full view" on the first visit of the Central Network officials when [REDACTED] was not at home. It must be assumed that they had no concerns with regards to the hole otherwise they would have taken action to make the area safe. It should also be noted that the Enforcement Officer also saw the hole yet his only comment was that he saw that a tool box had been left outside. In all the circumstances, and again with the concern that it took Councillor Luck three days to report this matter, it must beg the question as to how dangerous the hole really was.

Councillor Luck's instructions to the Investigating Officer during interview were that she had only driven passed the hole thus she would not have seen the electric cables and fittings. It must again be assumed that she was reliant on others for this information.

Councillor Luck goes on to say that the next day "at dawn" the men who had dug the hole and left it in such a dangerous condition arrived and very quickly filled it in.

As Councillor Luck did not see who had dug the hole and in fact her evidence is that Neighbour A who reported the problem to her, had not seen who had dug the hole how is it she is now able to say it was the same men.



**A. Councillor Luck's comments**

"At this point I should perhaps mention that the building erected in the field without planning permission has been the subject of enforcement action, a government inspector has deemed it inappropriate development in the green belt and the applicant [REDACTED] has lost her appeal."

**B. Investigating Officer's response:**

The Investigating Officer fails to understand why Councillor Luck finds it appropriate or necessary to make such comments as they are totally irrelevant to the investigation.

---

**A. Councillor Luck's comments**

"On reading your report, it is obvious that my priority and that of Central Network's staff differed greatly.

**B. Investigating Officer's response:**

The Investigation Officer is of the view that Councillor Luck has failed to appreciate the gravity of her actions.

It appears that Councillor Luck fails to see that the accusation she made to the energy company was so serious that it amounted to an allegation of theft.

The Investigating Officer does not accept that 99% of the conversation was about the safety of the hole it is clear that, having regard to the extent of information provided to the energy supplier that Councillor Luck made more than a passing comment.

The Investigating Officer accepts that some of the conversation with the energy company related to the safety issue but this investigation and report is concerned only with the fact that Councillor Luck made an unfounded and malicious allegation that [REDACTED] was acting unlawfully.

In simple terms if Councillor Luck had only called about the safety issue then [REDACTED] would not have made a complaint and this investigation would not have been necessary.

It matters not what percentage of the conversation was attributed to the safety issue and how much to the allegation of unlawful activity the fact is that Councillor Luck did make an accusation of criminal activity and as such has breached the Code of Conduct.

Councillor Luck suggests that her priority and that of Central Network's staff differed greatly. The Investigating Officer would disagree with this statement. With the extent of the information given by Councillor Luck to Central Network it was entirely foreseeable that an investigation into [REDACTED] activities would commence and to suggest otherwise would be naive. As such it is arguable that this was the course of action that Councillor Luck intended to provoke and as such the two priorities would be the same.

---

#### A. Councillor Luck's comments

"From the beginning of this complaint, and after trying to remember all that happened, I have been perplexed as to why [REDACTED] feels that I insulted her and treated her with disrespect. That was never my intention, and is very far from the actual truth. I have never at any time had any contact with [REDACTED]

#### B. Investigating Officer's response:

It is concerning that Councillor Luck appears to have a total lack of understanding of [REDACTED] position. Councillor Luck accused [REDACTED] of committing a criminal offence, an allegation that was totally unfounded and untrue for which [REDACTED] was made the subject of a formal investigation from which she was totally exonerated.

It is almost beyond words that Councillor Luck is perplexed as to why [REDACTED] should feel insulted.

Possibly Councillor Luck should consider how she would feel if she were accused of an offence of theft based on nothing more than idle gossip by someone she had never even met.

**A. Councillor Luck's comments**

" I am also perplexed that this investigation into this incident has been conducted without any apparent corroboration from any other party but on [REDACTED] words alone."

**B. Investigating Officer's response:**

It is perfectly apparent that this investigation has not been based purely on the "words" of [REDACTED]

The initial complaint was made by [REDACTED] after she had been made the subject of an investigation by EON.

The substantive evidence in this case comes from the documentation provided by EON in which they provide the indisputable proof that Councillor Luck contacted them.

The evidence from the Enforcement Officer, the Planning Officer, the Team Leader for Pollution Control, and the Development Control Manager all form part of the investigation. In fact [REDACTED] evidence forms a very small part of the overall investigation as all that she has said has been corroborated by others.

The number of witnesses interviewed and the extent of the investigation as detailed in this report make it absolutely clear that the findings in this report are based on reasoned and considered evidence which was obtained from a significant number of sources not only the "word" of [REDACTED]

---

**A. Councillor Luck's comments**

"I have not had an accusation such as the one levelled against me by [REDACTED] made in over 40 years of public service as a parish and a district councillor.

Finally, after going over and over your reports, I feel in all honesty I must say that I consider that I acted at all times within my duties and responsibilities as a District Councillor, and that I could not, and would not have acted differently to the way I did."

**B. Investigating Officer's response:**

The Investigating Officers findings are that Councillor Luck breached the Code of Conduct by her actions in this matter.

By the comments made by Councillor Luck it seems that she does not consider that she in any way breached the Code of Conduct by contacting EON and even on reflection she confirms that she "would not have acted differently to the way I did."

The Investigating Officer finds this comment most concerning as it implies that Councillor Luck would not hesitate to do the same again.

---

By virtue of paragraph(s) 1, 2, 7c of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 1, 2, 7c of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank



Document is Restricted

This page is intentionally left blank