



## **BROMSGROVE DISTRICT COUNCIL**

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

**TUESDAY 18TH OCTOBER 2011**  
**AT 5.15 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. C. R. Mallett and Mrs. M. A. Sherrey JP  
Parish Councils' Representatives: Mr. I. A. Hodgetts and Mrs. K. May (substituting for Mr. J. Cypher)

[Note: Mr. J. Cypher, who comprises part the normal Parish Councils' Representative membership of the Standards Committee, is precluded from participating in the proceedings as he is a Member of the same Parish Council as the Subject Member.]

### **AGENDA - FINAL DETERMINATION HEARING**

1. To receive apologies for absence and notification of substitutes
2. Declarations of Interest
3. Final Determination of Complaint References 03/10 and 04/10 (Pages 1 - 50)

[To make a final determination in relation to Complaint References 03/10 and 04/10 against Alvechurch Parish Councillor D Matthews.]

4. 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
5. 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 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

5th October 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)



## BROMSGROVE DISTRICT COUNCIL

### STANDARDS COMMITTEE

18TH OCTOBER 2011

#### FINAL DETERMINATION HEARING

#### COMPLAINT REFERENCES: 03/10 and 04/10

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

#### **1. SUMMARY**

- 1.1 On 15th June 2010 the Standards Assessment Sub-Committee met and considered two complaints made by Mr David Boardman and Mr Peter McHugh that Councillor David Matthews of Alvechurch Parish Council had breached the Alvechurch Parish Council Code of Conduct. Specifically, it was alleged that Councillor Matthews had failed to declare an interest during discussions of the proposed development of a site at Birmingham Road, Alvechurch at three Alvechurch Parish Council meetings. The Assessment Sub-Committee decided to refer the complaints for investigation. Accordingly, the Monitoring Officer appointed Mrs Tracy Lovejoy as the Investigating Officer.
- 1.2 The Investigating Officer's report into her enquiries was issued on 27th June 2011. The Investigating Officer's report was considered by the Standards Committee on 8th August 2011. The report contained one finding that Councillor Matthews had failed to follow the Code of Conduct by not declaring a personal interest during consideration of the proposed development site at Birmingham Road at the Alvechurch Parish Council meetings of 13th July 2009 and 14th September 2009. The Standards Committee referred the matter to a final hearing.
- 1.3 The hearing (known as a Final Determination Hearing) is to take place on 18th October 2011. The Committee is therefore requested to determine the allegation 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 any one, or any combination, of the following sanctions can be imposed:
  - 2.1.3.1 censure;
  - 2.1.3.2 restriction for a period not exceeding 6 months of the Subject Member's access to the premises of the authority or the Subject Member's use of the resources of the authority, provided that those restrictions are reasonable and proportionate to the nature of the breach and that they do not unduly restrict the Subject Member's ability to perform the functions of a Member;
  - 2.1.3.3 partial suspension of the Subject Member for a period not exceeding 6 months;
  - 2.1.3.4 suspension of the Subject Member for a period not exceeding 6 months;
  - 2.1.3.5 that the Subject Member submits a written apology in a form specified by the Committee;
  - 2.1.3.6 that the Subject Member undertakes such training as the Committee specifies;
  - 2.1.3.7 that the Subject Member participates in such conciliation as the Committee specifies;
  - 2.1.3.8 partial suspension of the Subject Member for a period not exceeding 6 months or until such time as the Subject Member submits a written apology in a form specified by the Committee;
  - 2.1.3.9 partial suspension of the Subject Member for a period not exceeding 6 months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Committee specifies;
  - 2.1.3.10 suspension of the Subject Member for a period not exceeding 6 months or until such time as the Subject Member has submitted an apology in a form specified by the Committee; or

- 2.1.3.11 suspension of the Subject Member for a period not exceeding 6 months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Committee specifies.

### **3. KEY ISSUES**

#### Financial Implications

- 3.1 There are no financial implications arising from this report.

#### Legal Implications

- 3.2 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.

- 3.3 Members are reminded that at the meeting of the Standards Committee on 8th July 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. Members are asked to note that both the Investigating Officer's report and the Schedule of Evidence contain personal data. Any written material that is published will be redacted to remove the personal data. However, Members are asked to note that personal data cannot be discussed in public session. Were members wishing to discuss the parts of the report and Schedule of Evidence which contain personal data in detail at the Final Determination Hearing, then that part of the meeting would have to be held in closed session.

#### Service/Operational Implications

- 3.4 Following the outcome of the Consideration Meeting on 8th July 2011, the complaint to be decided at the Final Determination Hearing is as follows:-
- That the Subject Member failed to declare a personal interest during consideration of the proposed development site at Birmingham Road at the Alvechurch Parish Council meetings of 13th July 2009 and 14th September 2009.

## Documents

- 3.5 A copy of the hearing procedure is attached at Appendix 1. A copy of the Alvechurch Parish Council Code of Conduct is attached at Appendix 2. The Investigating Officer's report is attached to this report as Appendix 3. The Schedule of Evidence (referred to as Appendices A to DDD in the Investigating Officer's report) has been circulated to Members of the Committee and Councillor Matthews and is included as background papers to this report. Additional comments have been received from Councillor Matthews and a copy of his letter dated 29th August 2011 is attached at Appendix 4, together with an addendum detailing a slight amendment to that letter.

## Pre-Hearing Process

- 3.6 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.

- 3.7 Councillor Matthews's response to the pre-hearing questionnaire is contained in the letter at Appendix 4. He states that he is not seeking to challenge the contents of the Investigating Officer's report. He accepts that there was an "unintended" breach of the Code of Conduct for which he apologises. He states that he will be attending the hearing. Councillor Matthews has further confirmed orally to Officers that he does not intend to be represented at the hearing, nor will he be calling any witnesses. Save for the personal data referred to earlier in this report which must remain exempt, Councillor Matthews has advised that he does not wish for any part of the Investigating Officer's report or the hearing to be withheld from the public/held in private. The Investigating Officer has also advised that it is not her intention to call any witnesses.

### Procedure for the Hearing

- 3.8 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

- 3.9 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

- 3.10 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

- 3.11 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.
- 3.12 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.
- 3.13 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

3.14 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

- 3.15 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.

### Customer/Equalities and Diversity Implications

- 3.16 None identified.

## **4. RISK MANAGEMENT**

- 4.1 The risk of negative public perception of the decision making process is the main risk associated with this report. Open and transparent decision making is a basic principle of governance and the Standards Committee has a role to promote high standards of conduct in public life throughout the District whether at Parish or District level.
- 4.2 This risk is being managed as follows:
- Risk Register: *Legal, Equalities and Democratic Services*  
Key Objective Ref No: 2  
Key Objective: *Effective ethical governance*

## **5. APPENDICES**

Appendix 1	Hearing Procedure
Appendix 2	Code of Conduct for Alvechurch Parish Council
Appendix 3	Investigating Officer's report dated 27th June 2011
Appendix 4	Letter from Councillor Matthews dated 29th August 2011

## **6. BACKGROUND PAPERS**

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

## **7. KEY**

N/a

**CONTACT OFFICER**

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## 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.

# ALVECHURCH PARISH COUNCIL CODE OF CONDUCT

Adopted 11/06/2007

under minute 07/083 from the

*Local Authorities (Model Code of Conduct) Order 2007 No.1159*

## THE MODEL CODE OF CONDUCT FOR PARISH AND TOWN COUNCILS

### Part 1

#### General provisions

#### Introduction and Interpretation

1.—(1) This Code applies to you as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State (see Annexure to this Code).

(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) any of the authority's committees or sub-committees, joint committees or joint sub-committees;

“member” includes a co-opted member and an appointed member.

(5) References to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

#### Scope

2.—(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your 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 your 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 your 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 your 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(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.

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 your authority—
  - (i) act in accordance with your authority's reasonable requirements; and
  - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes).
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7. Paragraph 7 does not apply to your authority.

## Part 2

### Interests

#### Personal interests

8.—(1) You have a personal interest in any business of your 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—
    - (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 your authority's area in which you have a beneficial interest;
  - (x) any land where the landlord is your 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—

- (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
  - (ii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (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 (5), where you have a personal interest in any business of your authority and you attend a meeting of your 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 your 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 your 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.

#### Prejudicial interest generally

- 10.—(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your 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 judgement 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 your authority in respect of—
    - (i) this sub-paragraph does not apply to your authority;
    - (ii) this sub-paragraph does not apply to your authority;



- (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.

11. Paragraph 11 does not apply to your authority.

#### **Effect of prejudicial interests on participation**

12.—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your 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 your authority's standards committee; and
  - (b) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting 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 your 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 your 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 your 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 your authority's monitoring officer agrees, you need not include that information when 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 your authority's monitoring officer asking that the information be included in your 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.

## Annexure - The Ten General Principles

The general principles governing your conduct under the *Relevant Authorities (General Principles) Order 2001* are set out below:

### *Selflessness*

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

### *Honesty and Integrity*

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

### *Objectivity*

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

### *Accountability*

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

### *Openness*

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

### *Personal Judgement*

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

### *Respect for Others*

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

### *Duty to Uphold the Law*

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

*Stewardship*

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

*Leadership*

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.





**INVESTIGATION: Ref: 03 and 04 of 2010**

**FINAL REPORT**

**27 June 2011**

This report has been prepared in relation to an investigation conducted under Section 59 of the Local Government Act 2000 by Tracy Lovejoy, Governance Lawyer (appointed by the Monitoring Officer), into an allegation concerning Parish Councillor David Matthews, a member of Alvechurch Parish Council ("APC"), who is alleged to have failed to declare an interest during the discussion of proposed development at [REDACTED] ("the Site") at 3 Parish Council meetings.

**CONTENTS**

- 1 Summary of the Allegation
- 2 Parish Councillor David Matthews official details
- 3 Relevant sections of the Code of Conduct
- 4 The evidence gathered
- 5 Findings of facts
- 6 Reasoning as to whether there have been failures to comply with the Code of Conduct
- 7 Councillor David Matthews's additional submissions
- 8 Additional comments following the issue of the draft report
- 9 Finding as to whether there have been failures to comply with the Code of Conduct

**APPENDICES**

- A. Decision Notice: Referral for Investigation



## B. Chronology of events

### Schedule of evidence taken into account

#### Meeting Notes

- C. Copy of notes prepared by Tracy Lovejoy of meeting with Councillor Matthews on 26 July 2010
- D. Copy of notes prepared by Tracy Lovejoy (from a tape transcript) following 2<sup>nd</sup> interview with Councillor Matthews on 24 February 2011
- E. Copy of notes prepared by Tracy Lovejoy following an interview with [REDACTED] on 17 August 2010
- F. Copy of notes prepared by Tracy Lovejoy (from a tape transcript) following interview with Peter McHugh on 20 January 2011
- G. Copy of notes prepared by Tracy Lovejoy following interview with David Boardman on 4 February 2011
- H. Copy of notes prepared by Tracy Lovejoy following telephone interview with [REDACTED] on 23 November 2010
- I. Copy of notes prepared by Tracy Lovejoy following interview with [REDACTED] dated 26 May 2011 and e-mail from [REDACTED] to Tracy Lovejoy dated 26 May 2011.

#### Correspondence

- J. Letter from Tracy Lovejoy to [REDACTED] dated 2 September 2010
- K. Letter from [REDACTED] to Tracy Lovejoy dated 9 September 2010
- L. E- mail from Sarah Sellers to Tracy Lovejoy dated 3 November 2010 (conversation with [REDACTED])
- M. Note from Alvechurch Residents Group regarding complaint dated January 2011
- N. Letter from the Alvechurch Residents Group to Tracy Lovejoy dated 18 January 2011 with enclosure
- O. Letter from Tracy Lovejoy to [REDACTED] dated 3 February 2011
- P. E-mail from Peter McHugh to Tracy Lovejoy on 6 February 2011
- Q. Letter from [REDACTED] to Tracy Lovejoy dated 8 February 2011
- R. Letter from Tracy Lovejoy to Councillor Matthews dated 14 February 2011
- S. Letter from David Boardman to Kevin Dicks dated 21 February 2010
- T. E-mail with draft conclusions to Councillor Matthews dated 1 April 2011

- U. Letter from Tracy Lovejoy to [REDACTED] dated 25 May 2011
- V. Letter from Councillor Matthews to Tracy Lovejoy dated 11 June 2011
- W. Letter from Peter McHugh to Tracy Lovejoy dated 12 June 2011
- X. Letter from Peter McHugh to Chairman of Alvechurch Parish Council dated 8 October 2010
- Y. Letter from Peter McHugh to Tracy Lovejoy dated 18 June 2011 enclosing Appendix to Minute of APC meeting of 12 January 2009
- Z. E-mail from David Boardman to Tracy Lovejoy dated 15 June 2011

Core Documents (copies)

- AA. Draft Report Issued on 3 June 2011
- BB. APC Code of Conduct
- CC. Minutes of APC of 11 June 2007 (showing adoption of the code of conduct)
- DD. Declaration of acceptance of office and undertaking to observe the code of conduct from Councillor Matthews dated 9 May 2007
- EE. Declaration of acceptance of office and undertaking to observe the code of conduct from Councillor Matthews dated 16 May 2011.
- FF. CV submitted by Councillor Matthews
- GG. Complaint 03 of 2010 from David Boardman dated 18 May 2010
- HH. Complaint 04 of 2010 from Peter McHugh dated 1 June 2010
- II. Notice, agenda and minutes for the meeting of APC of 12 January 2009
- JJ. Appendix to Minute of APC meeting of 12 January 2009
- KK. Agenda and minutes for the meeting of the Planning Committee of APC of 2 March 2009
- LL. Notice, agenda and minutes for the meeting of APC of 13 July 2009
- MM. Notice, agenda and minutes for the meeting of APC of 14 September 2009
- NN. Land registry title documents (office copy entries) title no. [REDACTED] dated July 2010
- OO. Response from APC to BDC in respect of Application Ref [REDACTED]
- PP. Extract from the Oxford Dictionaries Online

Background Documents

- QQ. Councillor Matthews' Register of Interests form dated 31 July 2007
- RR. Location plan of application site
- SS. Application form and certificate of ownership for Application Ref [REDACTED] dated 27 January 2009
- TT. Extracts from BDC Public Access webpage regarding Application No. [REDACTED]
- UU. Application form and certificate of ownership for Application Ref [REDACTED] dated 28 August 2009
- VV. Response from the Alvechurch Residents Group to Application No. [REDACTED]
- WW. Officer's report to BDC Planning Committee for Application No. [REDACTED]
- XX. Minutes of decision of BDC Planning Committee in relation to Application No. [REDACTED]
- YY. APC Standing Orders (Part 2 - extract)
- ZZ. Notice and Minutes of the annual APC meeting of 14 May 2010 (showing adoption of the standing orders)
- AAA. Minutes of the meeting of the Planning Committee APC of 5 October 2009
- BBB. Notice, agenda, agenda notes and minutes for the meeting of APC of 12 October 2009
- CCC. Minutes for meeting of APC of 2 November 2009
- DDD. Schedule of Unused Material

**1 Summary of the Allegation**

- 1.1 It is alleged that Councillor Matthews failed, contrary to the APC Code of Conduct, to declare an interest during the discussions of the proposed development of [REDACTED] ("the Site") at 3 APC meetings. It is alleged that, as Councillor Matthews is related to a co-owner of the Site, he is under a duty to declare such an interest.
- 1.2 The meetings are referred to are the APC meetings of 12 January 2009, 13 July 2009 and 14 September 2009. It is alleged that Councillor Matthews was present at those meetings.
- 1.3 The allegation was reported to the Standards Assessment Sub-Committee for consideration and was referred to the Monitoring Officer



for local investigation and determination, pursuant to Section 57A (2) of the Local Government Act 2000 as amended

### **Summary of Finding**

1.4 I find that Councillor Matthews failed on 2 occasions, being the meetings of 13 July 2009 and 14 September 2009, to declare a personal interest contrary to paragraph 9(1) of the APC Code of Conduct.

## **2 PARISH COUNCILLOR DAVID EDWARD MATTHEWS – OFFICIAL DETAILS**

2.1 Councillor Matthews was elected to office on 9 May 2007 for a term of 4 years on 9 May 2007 and following the May 2011 elections, has retained his seat as Councillor. He is also a member of the Alvechurch Village Society.

2.2 Councillor Matthews serves or has served on the following committees at APC - the Finance & General Purpose Committee, the Planning Committee, The Wiggln Committee, The St Laurence Church Yard Committee and the Staffing Committee (**Appendix FF and para 14 of Appendix E**).

2.3 Councillor Matthews gave a written undertaking to observe the Code of Conduct on 9 May 2007 and again on 16 May 2011 (**Appendices DD and EE**).

2.4 Councillor Matthews has received no training on the Code of Conduct.

## **3 Relevant sections of the Code of Conduct**

3.1 A revised Model Code of Conduct was introduced by the Local Authorities (Model Code of Conduct) Order 2007 on 3 May 2007 and was adopted by APC on 11 June 2007 in the form that appears in **Appendix BB**. The following paragraphs are included in the code:

### **a. Paragraph 2(1)**

(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you –

- (a) conduct the business of your 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 your authority,

and references to your official capacity are construed accordingly.

### **b. Paragraph 6 (a)**

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

### c. Paragraph 8(1) and (2)

1) You have a personal interest in any business of your 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—

(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 your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your 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—
    - (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
    - (ii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area
- (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).

#### d. Paragraphs 9

(1) Subject to sub-paragraphs (2) to (5), where you have a personal interest in any business of your authority and you attend a meeting of your 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 your 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 your 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.

e. Paragraph 10

1) Subject to sub-paragraph (2), where you have a personal interest in any business of your 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 judgement 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 your authority in respect of—
  - (i) this sub-paragraph does not apply to your authority
  - (ii) this sub-paragraph does not apply to your authority
  - (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

f. Paragraph 12

—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your 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 your authority's standards committee;

(b) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting 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.

#### **4 The evidence gathered**

- 4.1 I have taken account of oral evidence from
- a. A meeting with Councillor Matthews which took place on 26 July 2010. An attendance note of that meeting is found at **Appendix C.**
  - b. An interview with Councillor Matthews on 24 February 2011. An attendance note of that meeting is found **Appendix D**
  - c. An interview with [REDACTED] on 17 August 2010. An attendance note of that meeting is found at **Appendix E**
  - d. An interview with Peter McHugh on 20 January 2011. An attendance note of that meeting is found at **Appendix F**
  - e. An interview with David Boardman on 4 February 2011. An attendance note of that meeting is found at **Appendix G**
  - f. A telephone interview with [REDACTED] on 23 November 2010. An attendance note of that meeting is found at **Appendix H.**
  - g. A telephone interview with [REDACTED] on 25 May 2011. An attendance note of that conversation is found in **Appendix I.**
- 4.2 I have taken account of the correspondence listed in **Appendices J to Z.**
- 4.3 I have also taken into account the documents listed in **Appendices AA to PP** and the background documents in **Appendices QQ to CCC.**
- 4.4 The Decision Notice and Public Summary with instructions to commence the investigation is provided at **Appendix A.**
- 4.5 A Chronology of Events is provided at **Appendix B.**
- 4.6 A Schedule of unused material is provided at **Appendix DDD.**

#### **5 Summary of the material facts**

- 5.1 Councillor Matthews is an elected member of APC and was first elected on 13 May 2002 (see **Appendix K**). He signed an undertaking to observe the Code of Conduct on 9 May 2007 (**Appendix DD**) and again on 16 May 2011 (**Appendix EE**). On the 11 June 2007, the new Model Code of Conduct was adopted by APC (**Appendix CC**). Councillor Matthews is fully bound by the adopted Code of Conduct. Councillor Matthews has stated that he has received no formal training on the Code (**para 39 of Appendix C**).

- 5.2 The current standing orders, which were adopted on 14 May 2010 (after the events which led to the complaints), require members to undertake training in the code of conduct within 6 months of the delivery of their declaration of acceptance (**page 11 of Appendix ZZ**). The Investigating Officer has not seen a copy of the standing orders which were in place at the time of the events which are the subject of the complaints.
- 5.3 Mr Peter McHugh, who made the complaint under Ref 04 of 2010, was a councillor at APC from May 2007 until his resignation on 12 October 2009. Mr David Boardman, who made the complaint under Ref 3 of 2010 has no formal involvement in APC. Mr Boardman and Mr McHugh are members of the Alvechurch Residents Group ("ARG"). The ARG came into being following the APC's decision not to oppose BDHT's planning application 090670 (see **1<sup>st</sup> page of Appendix M**).
- 5.4 The Site is owned by [REDACTED] and [REDACTED]. The Office Copy Entries show that their interest in the Site was registered on 8 June 2006 (**Appendix NN**). [REDACTED] is the [REDACTED] of Councillor Matthews' [REDACTED] Both Councillor Matthews and [REDACTED] have confirmed that they do not see each other frequently (**para 7 of Appendix C, para 5 of Appendix L and Appendix V**).
- 5.5 On the 15 January 2009, BDHT carried out a consultation exercise in Alvechurch Parish regarding the development of the Site for affordable housing. On the 27 January 2009, [REDACTED] of Bromsgrove District Housing Trust ("BDHT") submitted, through an agent, an application (BDC Ref No. 09/0069) for the site to be developed for 32 affordable housing units (**Appendix SS**).
- 5.6 On the 2 March 2009, Application no. 09/0069 was considered by the Planning Committee of APC as Planning Log 2825 under item no. 6 in order to give its consultation response to BDC. Councillor Matthews attended this meeting. The application was supported by APC. The minutes note that Councillor Matthews declared a personal interest in respect of Planning log 2825 and 2820 (**Appendix KK**). This application was subsequently withdrawn (**Appendix TT**).
- 5.7 On the 27 August 2009, an application was submitted by [REDACTED] to Bromsgrove District Council ("BDC") for development of the site for 28 affordable housing units (Application 09/670 - **Appendix UU**). APC's consultation response was to support the application (**Appendix OO**) while Alvechurch Residents Group objected to the application (**Appendix VV**).
- 5.8 Mr Boardman spoke at the BDC Planning Committee meeting on 3 March 2010 against the application (**page 2 of Appendix WW**). The Planning Committee resolved to refuse planning permission and the decision notice was issued on 4 March 2010 (**Appendix WW**).



- 5.9 Discussions about proposed affordable housing development of the Site took place at APC and committee meetings in 2009. In the APC meeting of 12 January 2009, a presentation was made to the parish council from representatives BDHT and BM3 Architects (**Appendix JJ**). At the meeting, the Clerk to Parish Council reported that BDHT had arranged for public consultation on the proposed development on 15 January 2009. The minutes of this meeting are at **Appendix II**.
- 5.10 Councillor Matthews attended the meeting of 12 January 2009 but did not attend the public consultation (**Appendix D - page 14**). The Clerk's Notice of Meeting and Agenda notified parish councillors that she was going to report on this matter. No further discussion was recorded in the minutes and no declaration was made by Councillor Matthews.
- 5.11 As set out in paragraph 5.6, the response to application 09/0069 was considered at APC's planning sub-committee on 2 March 2009.
- 5.12 On 13 July 2009 (minutes at **Appendix LL**), the Site was discussed by the District Councillor [REDACTED] as part of his District Councillor's report. Councillor Matthews attended this meeting. The Clerk's Notice of the Meeting and Agenda did not give the members notice that the Site would be discussed. The minutes of the meeting show that Councillor Matthews took an active part in the discussions. The item 9/143 was noted as follows:

"Councillor [REDACTED] reported on the following:

1. Affordable Housing Project Birmingham Road. It is believed that funding will not be available for this project therefore it may not proceed. There may however be funding available for houses on the old schools site in 2011/2012. Despite announcements from the Government about more housing, funding for rural housing is disappearing. BDC want to have possible sites ready though.

2. ....[not relevant]

Cllr Matthews commented on the Birmingham Road site, as he had recently spoken to the owner who believed the site is still going ahead. They are in the process with BDHT of putting in an amended application and starting a consultation process. In addition the owner is planning to offer an acre of land to APC for use as allotments. There had been delay with issues with WCC Highways but understood that it is now sorted.

It was mentioned that a large ah development is planned in Stoke Prior, 49 Homes. However a large group was established to fight the proposal

Cllr [REDACTED] questioned whether if the housing application fails whether the allotments will also fall through as someone else has recently contacted her about land that may be available for allotments, this however is not such an ideal location for the village." (**page 15 of Appendix LL**)

At that meeting, no declaration of interest was made by Councillor Matthews

5.13 The Site was also discussed at the APC meeting on 14 September 2009. Councillor Matthews attended this meeting. In that meeting, Application [REDACTED] the parish council considered its consultation response to BDC. The item was 09/143. Prior to the meeting, [REDACTED] of BDHT gave a presentation to the Parish Council. The application was supported by the Parish Council. The minutes show that Mr McHugh who was then a parish councillor proposed that the parish council should strongly object to the building and that there was no secondar for the proposal. No declaration of interest was made by Councillor Matthews. The minutes are at **Appendix MM**.

5.14 In the Parish Council meeting of 12 October 2009, a special resolution by a signed request made by Mr McHugh was raised to rescind resolution 09/143. The minutes show that proposal to rescind was not agreed. Councillor Matthews attended that meeting and did not declare a personal interest but complaints 03 and 04 of 2010 do not refer to or include this meeting. The minutes of this meeting are at **Appendix BBB**.

5.15 It is not clear when Councillor Matthews became aware that [REDACTED] owned the Site. This is partly due to confusion with dates due to the time period that had elapsed between the events and the interviews conducted by the Investigating Officer. It seems that Councillor Matthews had found out this information prior to APC'S planning sub-committee meeting on 2 March 2009 where he made his declaration.

5.16 It is also not clear how he found out this information. Councillor Matthews claims he found out from [REDACTED] but [REDACTED] denies ever telling Councillor Matthews, or any other Councillor this information or specifically approaching Councillor Matthews about the development of the Site (**Appendix I**). [REDACTED] does not remember speaking to Councillor Matthews at all although Councillor Matthews could have been present at a parish council meeting where [REDACTED] and another gentleman gave a presentation about the proposed development to a group of parish councillors. [REDACTED] does not remember the date of that meeting where this presentation was given.

5.17 [REDACTED] has said that he never personally told Councillor Matthews that he [REDACTED] owned the land (**Appendix H**). However [REDACTED] has said that he told Councillor Matthews in a telephone conversation that the landowners would be prepared to give an acre of land for allotments. This is because [REDACTED] had understood from BDHT that a District Councillor [REDACTED] had asked whether allotments could be made available for elderly people. There is some doubt as to whether Councillor Matthews knew whether the Site was co-owned by [REDACTED] prior to the meeting on 12 January 2009.



5.18 In or around October 2009, Mr McHugh approached Councillor Matthews about the ownership of the Site. This was prompted by comments from residents which he had heard while campaigning against the proposed development of the Site on behalf of the ARG which suggested that Councillor Matthews was the owner of the Site. Mr McHugh and Councillor Matthews are in agreement that Councillor Matthews acknowledged that [REDACTED] was a distant relative (para 31 of Appendix C, pages 10 to 12 of Appendix D and page 10 of Appendix F).

5.19 Mr McHugh recalls that this meeting took place towards the end of October or possibly early November and stated that it took place after the APC meeting of 12 October 2009 which is mentioned in paragraph 5.13 of this report above (first page of Appendix W). Mr McHugh has also challenged the account of the conversation given by Councillor Matthews on page 10 of Appendix C (see the first page of Appendix W), and states that all Councillor Matthews said was that the landowner was a distant relative.

5.20 Following the conversation between Mr McHugh and Councillor Matthews, in February 2010, Mr Boardman paid for a land registry search which confirmed that the co-owners of the Site were [REDACTED] and [REDACTED].

5.21 On the 21 February 2010, Mr Boardman wrote to Mr Kevin Dicks, the Chief Executive of BDC, complaining about Councillor Matthews' failure to declare, during discussions about Application 09/0670, that the Site was co-owned by a relative of his (Appendix S). Mr Boardman was advised by the Senior Solicitor at BDC to submit a complaint that a member had breached a provision of the Code of Conduct. The complaint, No. 3 of 2010, was received by BDC on 20 May 2010 (Appendix GG). On 1 June, a further complaint regarding the same allegations was received by Mr McHugh (complaint No. 4 of 2010 - Appendix HH).

5.22 As stated above, BDC resolved to refuse planning permission on 1 March 2010. On the 4 June 2010, Mr Boardman confirmed to the Deputy Monitoring Officer of BDC that the meetings referred to in the complaint took place on 12 January, 13 July and 14 September 2009.

5.23 On 15 June 2010, the matter was considered by BDC's Standards Assessment Sub-Committee. On 25 June 2010, BDC published the decision to refer the matter for local investigations. On 28 June 2010, the subject members, complainants and clerk to APC were informed about the decision.

6 Reasoning as to whether there have been failures to comply with the Code of Conduct

6.1 The subject of the complaint is Councillor Matthews' failure to declare an interest at APC meetings of 12 January 2009, 13 July 2009 and 14 September 2009 during the discussion of the development of [REDACTED] ("the Site"). The Alvechurch Parish Code of Conduct was in place and Councillor Matthews was bound by the code at the time of the meetings

6.2 The Site is, and was at the time of the meetings, jointly owned by [REDACTED] of [REDACTED] and [REDACTED] of [REDACTED]. This is confirmed by Office Copy Entries for Title no. [REDACTED] which shows the [REDACTED] and [REDACTED] were registered as site owners on 8 June 2006. This has also been confirmed by [REDACTED] (para 8 of Appendix H).

6.3 Both Councillor Matthews and [REDACTED] have confirmed that [REDACTED] is the [REDACTED] of Councillor Matthews' [REDACTED] but have questioned whether they are relatives, within the ordinary meaning of the word (pages 10 and 11 of Appendix D, paras 4 and 5 of Appendix H and Appendix L).

6.4 Page 20 of Standards for England's Guide to the Code answer to the question "Who is a member of your family ... ?" is as follows:

"A member of your family should be given a very wide meaning. It includes a partner (someone you are married to, your civil partner, or someone you live with in a similar capacity), a parent, a parent-in-law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, a brother or sister of your partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece, and the partners of any of these people." (*my emphasis*)

Although the [REDACTED] of a [REDACTED] is not specifically mentioned in that paragraph, I take the view that the inclusive and wide nature of the definition would include a relationship within the meaning of 'member of the family' in accordance with the Code. I also note that the Oxford Dictionaries Online describes the [REDACTED] of a person's [REDACTED] as the [REDACTED] (Appendix PP).

6.5 Despite Councillor Matthews' doubts about whether [REDACTED] is a relative, he said that he declared a personal interest at the planning sub-committee meeting of 2 March 2009 because he had found out by then that [REDACTED] was a co-owner of Site (para 6 of Appendix C).

6.6 I do not consider that Councillor Matthews has a close association with [REDACTED] as set out in the code but the definition of a 'relevant' person' in paragraph 8(2) (a) includes a member of the Councillor's family OR a person with whom he has a close association.

6.7 The proposed development of the Site was discussed or referred to at the 3 meetings mentioned above. Councillor Matthews was present at all 3 meetings as is shown by the minutes to the meeting (**Appendices II, LL and MM**) and confirmed by the complainants, subject member and Parish Clerk.

6.8 Because of [REDACTED] co-ownership of the Site and his relationship to Mr Matthews, I consider that Councillor Matthews could potentially have a personal interest in the consideration of the Site at any Parish Council meeting. This is because consideration of the Site could affect the well-being and financial position of [REDACTED], a member of Councillor Matthew's family and a 'relevant person' as defined by the Code, to a greater extent than other inhabitants of Alvechurch.

6.9 In relation to the meeting of 13 July 2009, even though the Site did not appear on the agenda, it is clear that there was some discussion relating to the redevelopment of the Site which Councillor Matthews took an active part in. Although the Parish Council did not make any specific decision relating to the site in that meeting, I consider the discussion to be of such extent that it amounted to a consideration of the Site. In particular, it is my view that such discussion could have had some impact on the APC's future consideration of the development at the Site. The relevant parts of the discussion are reproduced in paragraph 5.12 of this report.

6.10 In the meeting of 14 September 2009, [REDACTED], for the development of the Site for 28 affordable units, was being considered in order for the APC to give its consultation response to Bromsgrove District Council. In both meetings Councillor Matthews was aware that [REDACTED] owned the site as has been confirmed by him in his meeting of 26 July 2010 and interview of 24 February 2011 (**para 6 of Appendix C and page 6 of Appendix D**). Therefore to comply with paragraph 9(1) of the Code of Conduct, I consider that Councillor Matthews should have declared a personal interest in the Site prior to or during discussions relating to the Site.

6.11 I do not consider that Councillor Matthews had a prejudicial interest in respect of the Site during those 2 meetings. The main reason for this is that a member of the public, knowing the relevant facts, would not have regarded his interest as so significant that it would have been likely to prejudice his interest. The particular circumstances in this case is the distance of the family relationship in this case and the lack of contact between Councillor Matthews and [REDACTED]. This has been confirmed by both persons.

6.12 I do not consider that Councillor Matthews breached the code in the meeting dated 12 January 2009, as there is insufficient evidence to determine, on the balance of probabilities, that he was aware that [REDACTED] owned the land on the date of that meeting.

Paragraph 9(4) of the APC Code of Conduct states that the duty to disclose a personal interest only arises where the Councillor is or ought to be reasonably aware of the existence of a personal interest.

Councillor Matthews has said that he did not know, at the meeting of 12 January 2009, that [REDACTED] co-owned the Site (**Appendix C**).

- 6.13 He also said that the application form would not reveal who owns the land (**para 5 of Appendix C**). In fact the application was made after the 12 January 2009 (on the 27 January 2009 – see the Chronology at **Appendix B**).

- 6.14 Councillor Matthews said he found out from [REDACTED], the other co-owner of the Site, that [REDACTED] co-owned the Site in a presentation prior to the APC Planning sub-committee meeting on 2 March 2009 (**para 6 and 18 of Appendix C**). Although it is not completely clear how many times Councillor Matthews claims to have spoken to [REDACTED], he also says he spoke to [REDACTED] on the phone about this development (**para 14 of Appendix C and page 5 of Appendix D**). [REDACTED] has denied ever speaking to Councillor Matthews about the development (**Appendix I**).

- 6.15 Councillor Matthews has said that the only discussion about the Site at the meeting of 12 January 2009 was the clerk's report that BDHT had arranged a public consultation. He said that this was not on the agenda and although the clerk's report is on the agenda, no one has any idea of what she will say (**para 13 of Appendix C**). During my interview with [REDACTED], the parish clerk, she said that the clerk's report would not have been more detailed than what was on the agenda and notes (**para 31 of Appendix E**).

- 6.16 Since meeting with Councillor Matthews on 26 July 2010, I have noted that the agenda and the agenda notes of the meeting of 12 January 2009 does in fact make it clear that the clerk was going to report the BDHT consultation of the Site. I put this to Councillor Matthews at the interview of 24 February 2011 and he said that that was what he thought but he could not at the date of interview remember. He had no comment about the fact that the BDHT consultation did in fact appear on the clerk's agenda and notes to the agenda (**page 15 of Appendix D**).

- 6.17 The second reason for my view that Councillor Matthews was under no duty to declare an interest on 12 January 2009 is that I do not think that the clerk's report amounted to a consideration of the Site at that meeting in accordance with paragraph 9(1) of the Code.

- 6.18 I am unable to assess whether the failure to declare a personal interest was a mere oversight or a blatant disregard for the Code of Conduct. There are 2 areas where the evidence gathered contradicts Councillor Matthews' account of events.



6.19 Councillor Matthews said that there was nothing in the agenda and notice of the meeting of 12 January 2009 that informed him that the Site would be discussed at the meeting. The notice and agenda clearly refer to the proposed consultation regarding the Site. As I have come to the conclusion that there was no failure to observe the Code at that meeting, this is of little relevance as to my conclusions but does impact on the reliability of Councillor Matthews' evidence. The Standards Committee should, however, bear in mind the length of time between the parish council meeting and my initial meeting and second interview with Councillor Matthews, which may affect his memory.

6.20 Secondly and more importantly, [redacted] evidence does not correspond with Councillor Matthews' evidence that [redacted] told him that [redacted] owns the site. [redacted] first told me in a telephone conversation in January 2011 that he has never spoken to Councillor Matthews. This was put to Councillor Matthews in his interview on 24 February 2011 and he maintained that he had spoken to [redacted] about the Site and [redacted] informed him of the land ownership. When [redacted] was formally interviewed on 25 May 2011, he stated that he had not spoken to Councillor Matthews about the land ownership.

6.21 According to [redacted], he had been involved in promoting the proposed development and had made a presentation to a group of Alvechurch parish councillors at a meeting. He cannot remember if that group included Councillor Matthews and if he spoke to Councillor Matthews, he could not remember doing so. However he had never telephoned Councillor Matthews or contacted him about the development. The only Councillor he spoke to on a few occasions was District Councillor [redacted]. Although [redacted] was aware of a relationship between Councillor Matthews and [redacted], he would not have mentioned as it was not relevant to the proposed development (**Appendix I**).

6.22 The Standards Committee is invited to come to their own conclusions about this evidence. Following my interview with [redacted], I prefer his evidence to Councillor Matthews' because it is supported by [redacted] evidence (**Appendix L**) and there appears to be no reason for [redacted] to deny speaking to Councillor Matthews about the ownership of the Site.

6.23 Mr McHugh has told me that that while he was campaigning against the development, some of the local residents in Alvechurch made comments suggesting that Councillor Matthews actually owned the Site (**pages 9 to 14 of Appendix F**). When pressed, Mr McHugh was reluctant to disclose the names of the people who said this. He said he would make enquiries and confirmed to me on 6 February 2011 that no one was able to provide firm evidence of this allegation (see **Appendix P**). On checking the title documents, there were no copies of documents of previous deeds listed on the office copy entries

(Appendix NN) which would allow me to trace the ownership of the Site beyond [REDACTED] and [REDACTED].

6.24 I put this allegation to Councillor Matthews who flatly denied this was the case (**pages 16 and 17 of Appendix D**). I have found no other evidence to support this allegation and the person or persons who made the allegation are unwilling to speak to me. Accordingly I have given this allegation little or no weight in coming to my conclusions.

6.25 On the 2 March 2009, the planning sub-committee of APC met to the Application 09/0069, item number 2825 on the minutes of that meeting (**Appendix KK**). The minutes show that Councillor Matthews declared a personal interest in respect of this item. Councillor Matthews has stated in his meeting with me on 26 July 2010 that he found out about [REDACTED] ownership of the Site prior to the planning meeting on 2 March 2009 and declared an interest in respect of the consideration of the Site at that meeting.

6.26 Also when Councillor Matthews was approached by Mr McHugh in October 2009 about this matter, despite the differences in both accounts about what was actually said (see the first page of **Appendix W**), both parties agree that Councillor Matthews freely admitted that [REDACTED] was a relative (see **para 31 of Appendix C, page 10 of Appendix D and page 10 of Appendix F**). The above 2 facts are, in my view, persuasive evidence, in my view, that there was no deliberate attempt by Councillor Matthews to conceal his relationship with [REDACTED].

6.27 I find that Councillor Matthews failed, contrary to paragraph 9 of the Alvechurch Parish Code of Conduct to declare a personal interest during the consideration of the Site at the APC meetings of 13 July 2009 and 14 September 2009. If the Standards Committee reaches the same conclusions, members may impose whatever sanction they feel is necessary. I would recommend that Councillor Matthews is required to undertake training for the reasons set out in the following paragraphs.

6.28 Firstly Councillor Matthews has received no training on the Code of Conduct and has been a Councillor since the mandatory legislation relation to Code of Conduct came into effect in 2001. He confirms this in our meeting of 26 July 2010 (**para 29 of Appendix C**) and states that he has been offered training but his work commitments had made it difficult to attend. The fact that he has received no training for a long period of time and his comments in his interview and to me in conversation gives me the impression that he does not appreciate the need for training in this area.

6.29 When asked to give his understanding of the rules in our meeting of 26 July 2010, Councillor Matthews states that a personal interest arose if he, as Councillor knew the people whose business was being discussed, for instance if he had business dealing with them but if he could gain financially, the interest was a prejudicial interest (**para 9 of**

**Appendix C).** In our interview of 24 February 2011, Councillor Matthews clarified his understanding of personal and prejudicial interests stating that a personal interest is when the councillor has some interest in it personally and a prejudicial interest is when the councillor knows that a member of his family could benefit or gain from the decision. He said he would always declare a personal interest if someone he does insurance business with submits a planning application (**pages 11 and 13 of Appendix C**).

6.30 While this is not an inaccurate analysis of the rules on interests, I feel that Councillor Matthews would benefit from more detailed training and understanding of this area. For instance, when asked the reason for not declaring his personal interest at the APC meetings of 13 July 2009 and 14 September 2009, he said that he did not think he had to declare an interest because he had done so before (**para 16, 25 and 32 of Appendix C**). I anticipate that formal training would have emphasised the need to declare an interest at every meeting where business in which the Councillor has a personal interest is discussed, in accordance with the terms of paragraph 9(1) of the Code and that the declaration of an interest in a previous meeting is not an exemption to declaring the same interest in a subsequent meeting.

## **7 Councillor David Matthews' additional submissions**

7.1 In the meeting between the Investigating Officer and Councillor Matthews of 27 July 2010 and the interview with Councillor Matthews of 24 February 2011, Councillor Matthews spoke about the following issues.

7.2 He spoke about his passion for affordable housing in Alvechurch especially for the young, who may not be able to afford suitable housing after they move out of their parents' home. He says that Mr McHugh is against the building of affordable housing.

7.3 He spoke about the reasons for his lack of contact with [REDACTED] do so would involve disclosing sensitive material which in my view is not relevant to the complaint. For this reason, I have redacted the references to the sensitive material from the Appendices C and D.

7.4 He set out his relationship with the previous owner of the Site. He spoke about what he believes were the complainant's and the ARG's views about the development and about residential development in the area in general. He also spoke about a client of his who is trying to develop some land near the Site and how he has directed this person to the proper channels.

7.5 When he returned the transcript of his second interview, it included his handwritten notes which are set out in **Appendix D** and state following:

7.5.1 Councillor Matthews thinks that the confusion arose from the fact that he has a son called [REDACTED] and wonders if Peter McHugh thinks that the co-owner of the site is his son.

7.5.2 Councillor Matthews mentions that he knows of 2 men named [REDACTED], one who was formerly employed by BDC as a [REDACTED] and the co-owner of Site.

7.5.3 He also notes again Peter McHugh's opposition to and his enthusiasm for Affordable Housing in Alvechurch Village.

7.6 I have considered the above information, but I do not believe that it is directly relevant because it does not affect the main points in issue in this investigation, namely whether Councillor Matthews had a personal interest in the discussion of the Site at various committee meetings and whether he failed to declare that interest.

7.7 Councillor Matthews has also sent a letter dated 11 June 2011 in response to the draft report (**Appendix V**). The letter contains the following points.

7.8 In response to paragraph 5.4 of the draft report at **Appendix W**, Councillor Matthews has stated that he does not see [REDACTED] frequently, the family relationship between himself and [REDACTED] is a very distant one and the only contact is at certain events such as funerals. This is consistent with the evidence previously given by Councillor Matthews and [REDACTED] as referred to in the appendices mentioned in paragraph 5.4.

7.9 Councillor Matthews also says, in relation to paragraph 5.14 of the draft report, that [REDACTED] is only a co-owner of the site along with [REDACTED] and that the fact of co-ownership is part of the confusion around the subject matter of the complaint. I do not consider that any of the parties are confused about the ownership of the site. As stated in paragraph 5.14 of the draft report (now 5.15), I have not been able to establish exactly when Councillor Matthews found out about the site ownership.

7.10 Regarding paragraphs 6.4 and 6.5 of the draft report, Councillor Matthews states:

"I think you are confused, both for those making the complaint and for yourself in respect of knowing who the owners of the site, that came from the fact that several people in this matter have the names "[REDACTED]" and "[REDACTED]" respectively"

The paragraphs referred to come from Councillor Matthews hand written comments on the transcript of our interview of 24 February 2011 (**Appendix D**). I do not consider that any confusion has arisen from the fact that other people called "[REDACTED]" and "[REDACTED]" have been referred to during the course of the investigation.



7.11 Regarding paragraphs 7.17 of the draft report, Councillor Matthews states that the status of the APC Clerk's report in meetings is that it is the Clerk's own report and only exceptionally leads to discussion at that stage in the meeting. This is consistent with the evidence provided by Councillor Matthews and [REDACTED], the parish council clerk, during the course of the investigation referred to in the appendices mentioned in paragraph 6.15 of this report. Councillor Matthews also made the following further comments in his letter of 11<sup>th</sup> June.

7.12 He said he thought he had sufficient working understanding of the Code of Conduct and how it relates to personal and prejudicial interest although he has had not formal training as such but has always been guided by the Chairman of the APC at meetings when an item was discussed.

7.13 He also said that although his relationship with [REDACTED] is of a family kind, it is a very distant one, there is no regular contact and he has no interest or involvement in promoting his business concerns.

7.14 He clarifies that he did declare a personal interest at the APC Planning Meeting on 2 March "just in case". I believe that the statements in paragraphs 7.12 to 7.14 above are relevant to the issues at hand and are consistent and clarify statements already given by Councillor Matthews.

7.15 He states that at the meeting of 17<sup>th</sup> July 2010 (I assume he means 13 July 2009) when the matter of housing on the site in question was introduced by a District Councillor it was merely a reporting item. He did contribute to some discussion about allotments as a related matter, but thought that his previous declaration of personal interest still applied and he did not have to mention the matter again. He also states that this was not a matter on which any vote would have taken place at the Parish Council meeting.

7.16 He states that at the September 2010 parish council meeting (again I assume he means September 2009), he thought that the previous declaration of a personal interest applied. He did not take part in the debate although he was among those who supported the application. He points out the minute of the discussion only mentions Councillor McHugh's name. I consider the statements in paragraphs 7.15 to 7.16 to be relevant to the consideration of the issues in this complaint. They clarify and expand on the reasons why Councillor Matthews did not make a declaration of personal interest in the meetings of 13 July 2009 and 14 September 2009 and are largely consistent with the evidence he provided during the course of his interview and meeting.

7.17 Councillor Matthews also states the following in his letter of 11 June 2011:

"I also appreciate the logic of your argument, that there was a possible breach of the Code of Conduct, in that I didn't declare a personal interest in the matter (albeit one through a distant family connection, but there is nothing in the English Dictionary defining the relationship"

This is not what the draft report (and the final report) states. The finding is that Councillor Matthews did breach of the Code of Conduct, by failing to declare a personal interest at the meetings of 13 July 2009 and 14 September 2009 (**para 8.1 of Appendix AA**). Although paragraph 7.4 of the Draft Report acknowledges that the [REDACTED] of a [REDACTED] is not specifically mentioned in the guidance to the Code of Conduct, it does state that it is described in the extract from Oxford Dictionaries Online.

7.18 Councillor Matthews states that, if required and the Standards Board makes a finding of breach, he is willing to offer his apologies and accept additional training.

7.19 I have considered Councillor Matthews' additional submissions when drafting my final report but they have not changed my findings in paragraph 9 below.

## 8 Additional comments following the issue of the draft report

8.1 Mr Peter McHugh's comments are contained in his letters to me, with enclosures, of 12 June 2011 and 18 June 2011 (**Appendices W, X and Y**). The comment headed '**Chronology of Events**' has been noted and the Chronology at **Appendix B** of this report has been amended accordingly. I have also added this information to paragraph 5.18 above.

8.2 Mr McHugh also comments on Councillor Matthews' evidence in paragraph 33 of **Appendix C**. In his letter of 12 June 2011, Mr McHugh states:

"CM states incorrectly that he thought I made this complaint "because I did not get my own way", in fact: "The Good Councillors Guide" issued to all councillors, states on page 45: "**councillors must report fellow councillors to the Standards Board for England, if they breach the code of conduct**" ie. non discretionary

Although I did ask Councillor Matthews why he thought the complaint was made, his reply in paragraph 33 of **Appendix C** formed no part of my reasoning which led to my finding as I did not find either of the complaints to be vexatious, frivolous or malicious. Therefore I do not feel that the above comment is directly relevant to the issues to be determined in these complaints.

8.3 In the next section of Mr McHugh's letter – '**Section E page 6 item 35**' Mr McHugh comments on [REDACTED] interview notes (**Appendix E**). He states that contrary to para 35 of **Appendix E** (in the last 2 lines), he did not at any time as a councillor formally request a Local Referendum.

He states that another councillor requested one and he has pointed out to the APC on several occasions that the law does provide for this course of action and many have been carried out. The statement in paragraph 35 of **Appendix E** forms no part of my reasoning which led to my finding.

8.4 In the next section of Mr McHugh's letter – '**Section D – top of page 10**', Mr McHugh comments about the conversation between him and Councillor Matthews where Mr McHugh asked him about the ownership of the Site. Mr McHugh states Councillor Matthews version of the conversation that took place between the two of them, at the top of page 10 of **Appendix D**, is not accurate. Mr McHugh states that is version, towards the bottom of page 10 of **Appendix D**, is practically a word for word account. Mr McHugh states that neither himself nor Councillor Matthews mentioned the word 'cousin' or the name '█'. Mr McHugh also states that at the end of the exchange, he remained largely unconvinced with the explanation provided.

8.5 I have made amendments to paragraphs 5.19 and 6.26 to reflect Mr McHugh's comments. However in the report, I have also referred to that the consistent theme in both accounts which was that that both parties agreed that Councillor Matthews stated that █ was a relative when he was approached by Mr McHugh. Councillor Matthews account of the meeting in his meeting with me (paragraph 31 of **Appendix C**) is more consistent with Mr McHugh's account referred to in the paragraph above.

8.6 Mr McHugh also states, in the last paragraph of the first page of his letter of 12 June 2011 (**Appendix W**), that Councillor Matthews account of the meeting gives the impression that Mr McHugh arrived unannounced and in a confrontational mood. Mr McHugh states that he phoned beforehand and the exchange was polite but curt. Although I do not get this impression from Councillor Matthews' account, members are asked to note this comment.

8.7 In the next section of Mr McHugh's letter – '**Section H – page 3 – item 6**', Mr McHugh comments on James Matthews' evidence. Mr McHugh letter states:

"he [█] could understand if the Parish Council had reached a 'hung' decision, but he understood that all of the Parish Councillors supported the decision except Cllr McHugh"

In fact this is not an exact quote from paragraph 6 of **Appendix C** but it is roughly what is in the paragraph.

8.8 Mr McHugh then states the following:

"My letter to the Chairman of APC dated 8-10-09 (copy enclosed) gives several reasons why I thought the decision was unsound and inadequately

discussed, and that Alvechurch public opinion was not being reflected or heeded.

The APC October meeting, attracted an abnormally high public attendance, all requesting that this development be opposed, despite this, my "special resolution" to reopen the dialogue was defeated."

As Mr McHugh's motives for making complaint 04 of 2010 are not in issue, I do not consider any of the comments in paragraphs 8.8 or 8.9 above to be relevant to the issues to be determined in this complaint.

8.9 I have also considered the attached letter dated 8 October 2009 from Mr McHugh to the Chairman of APC (**Appendix X**). The letter is Mr McHugh's comments on the events that led to the APC resolving to support Application 09/670. Although not directly relevant to the issues at hand, it does provide useful background information to the matter.

8.10 After receiving Mr McHugh's letter of 12 June 2011, I asked if he could send me the appendix to the minutes of the APC meeting of 12 January 2009, which he sent me under cover of his letter of 18 June 2011. The appendix is attached in **Appendices Z and JJ**.

8.11 In the next section of his letter - '**Appendix WW**', Mr McHugh comments on [REDACTED] evidence. His comments relate to her interview with me and specifically the remark made in paragraph 34 of **Appendix E** where [REDACTED] states that his resignation letter was "not very pleasant". Mr McHugh asks if this is justified. I consider that the letter should be retained in the Schedule of Unused Evidence (**Appendix WW**) as it is not relevant to the issues at hand. However I am happy to provide a copy of the letter to members of the Standards Committee if requested to do so.

8.12 Mr McHugh's final comments are as follows:

"Declarations of interest' are commonplace at Council Meetings and any councillor serving for a long period of time would see the practise [sic] in operation in numerous occasions, and be familiar with it.  
From personal experience of APC, these declarations occurred quite frequently, particularly from councillors who served at District level, and they always left the room.  
Finally, there are many: "Guidance to Councillors" booklets available, which cover the subject fully, and unambiguously."

Members of the Standards Committee are asked to note these comments.

8.13 Mr McHugh's covering letter to me of 18 June 2011 (**Appendix Y**) also has some comments where he explains his decision to resign which are based on his view that APC had not acted in the interest of parishioners in considering the development of the Site. I do not consider these comments to be directly relevant to the issues surrounding this complaint.

8.14 Mr David Boardman sent an e-mail in response to the draft report (**Appendix Z**). He said he had no comments to make on the content of the report but recorded 2 matters. Firstly he said that contrary to the evidence provided by Councillor Matthews, he is not related to [REDACTED] who ran a Vet's practice at [REDACTED]. The notes of the meeting on 26 July 2010 with Councillor Matthews, he states that he knew Mr Boardman's father who used to be a vet (**para 3 of Appendix C**).

8.15 Mr Boardman also states that the comments made [REDACTED] in her interview on 17 August 2010, noted in paragraph 36 of **Appendix E**, are inaccurate and unsubstantiated. [REDACTED] states that Mr Boardman sent correspondence as a resident to APC which was not very pleasant. Mr Boardman comments that there are no details given about he correspondence and that [REDACTED] view of the correspondence is subjective. I have not seen the correspondence.

8.16 I do not consider the two issues to be directly relevant to the issues surrounding the complaints. As stated above, neither Mr Boardman nor Mr McHugh's motives for making the complaints are at issue, as I do not find either of the complaints to be frivolous or malicious.

8.17 I have considered the additional submissions above when drafting my final report but they have not changed my findings in paragraph 9 below.

**9 Finding as to whether there have been failures to comply with the Code of Conduct**

9.1 I find that, Councillor Matthews failed, contrary to paragraph 9 of the Alvechurch Parish Code of Conduct to declare a personal interest during the consideration of the Site at the APC meetings of 13 July 2009 and 14 September 2009.





Bromsgrove District Council  
Ethical Standards Officer  
Legal, Equalities and Domestic Services  
The Council House

Burcot Lane  
Bromsgrove  
Worcs B60 1AA

29/08/2011

Attention Debbie Parker-Jones

Dear Debbie



Thank you for your e-mail about the arrangements leading up to the Standards Committee discussing the report from the investigating officer into the complaint made about me. I note that a date for the Hearing is still to be arranged but I do intend to be at the Hearing.

I do not wish to contest the complaint against me, the first one in 11 years as a Parish Councillor.

I do not wish to provide a response in the detail set out in your pro-forma you have sent me. The investigating officers report is a full. Sufficient to say that I do not have any significant dispute with the facts in the report, I accept with hindsight that I have committed a breach of the Alvechurch Parish Council Code of Conduct ( although this is more technical than in any way deliberate) and I am prepared to accept training on the Code or other guidance as the Standards Committee may require.

I would like the Statement that follows to be put to the Standards Committee at an early point in the Hearing.

“ I wish to apologise for an unintended breach of the Alvechurch Parish Council Code of Conduct relating to declarations of interest. As a local Alvechurch businessman over 38 years and also born in Alvechurch, I do know a lot of people and thus in my Councillor role have always looked to consider whether I have an interest to declare in planning or other business before the Parish Council. Given my successful long term business in the Parish I have always viewed the opportunity to serve as a Parish Councillor as a way to give something back to the Parish. My 11 years experience and commitment I have enjoyed and currently serve on 6 Committees and chair one sometimes two which includes the Planning Committee. I also help the Parish Council on Sunday Mornings organising the help of the Probation Service.

Regarding the complaint about my failure to declare an interest in the planning matter in question I do want to emphasise that I was initially unclear about the ownership of the land in question because of the confusion about peoples names. Subsequently, given a remote family connection with the land's co-owner, I did make a declaration at one Council meeting which I now appreciate should have been repeated on a

couple of other occasions when the land was under discussion though not formally listed as a Council agenda item.

I shall accept any further guidance requirement on the Code of Conduct that the Standards Committee may require. I hope I may then put this matter behind me and continue to serve Alvechurch Parishioners to the best of my ability, which I have really enjoyed over the last 11 years.

Yours Sincerely

Councillor David Matthews

[Note: Original letter contains Councillor Matthews's address and signature.  
Both have been removed from this version for publication purposes.]



**Amendment to letter submitted by Councillor Matthews dated  
29th August 2011**

Councillor Matthews has advised the Ethical Standards Officer by telephone that the second sentence of the third paragraph of his letter dated 29th August 2011 is incomplete and that this should read:

*"The investigating officers report is a full **and satisfactory report.**"*

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