



BROMSGROVE DISTRICT COUNCIL

MEETING OF THE STANDARDS COMMITTEE

THURSDAY 24TH MAY 2012 AT 6.00 P.M.

COMMITTEE ROOM, THE COUNCIL HOUSE, BURCOT LANE, BROMSGROVE

MEMBERS: Independent Members: Mr. N. A. Burke (Chairman),
Ms. K. J. Sharpe (Vice-Chairman) and Mrs. G. Bell
Councillors: Mrs. S. J. Baxter, S. R. Colella, L. C. R. Mallett and
Mrs. M. A. Sherrey JP
Parish Councils' Representatives: Mr. J. Cypher and
Mr. I. A. Hodgetts

AGENDA

1. To receive apologies for absence and notification of substitutes
2. Declarations of Interest
3. Final Determination of Complaint Reference 01/11
[To make a final determination in relation to Complaint Reference 01/11
against District Councillor Dr. D. W. P. Booth.]
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

14th May 2012



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

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 email: committee@bromsgrove.gov.uk

BROMSGROVE DISTRICT COUNCIL

STANDARDS COMMITTEE

24TH MAY 2012

FINAL DETERMINATION HEARING - COMPLAINT REF: 01/11

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

1. SUMMARY

- 1.1 On 23rd November 2011 the Standards Assessment Sub-Committee considered a complaint made by District Councillor Sean Shannon in relation to District Councillor Del Booth. Councillor Shannon complained that Councillor Booth had breached the Code of Conduct by failing to declare a personal and prejudicial interest at a meeting of the Cabinet on 5th October 2011. The matter under consideration at the meeting was the transfer of land comprising the recreation ground at Housman Close, Charford, Bromsgrove to Bromsgrove District Housing Trust (BDHT). The complaint alleged that Councillor Booth owns land and a dwelling house at 15 Housman Close which overlooks the former play area and that he remained in the room and participated in the discussion about the transfer of the land. Councillor Shannon was of the view that as a result of the Cabinet decision the value of Councillor Booth's property would increase and that therefore he should have declared a personal and prejudicial interest. The Monitoring Officer appointed Mr. Michael Blamire-Brown as the Investigating Officer.
- 1.2 The Investigating Officer's report was issued on 29th February 2012. A copy of the report is attached at Appendix 3. The Schedule of Evidence (referred to as Appendices 1 to 15 in the Investigating Officer's report) has been circulated to Members of the Committee and is included as background papers to this report. The report contains one finding that Councillor Booth failed to follow the Code of Conduct by not declaring a personal interest at the Cabinet meeting on 5th October.
- 1.3 The Standards Committee considered the Investigating Officer's report on 27th April 2012 and decided to refer the complaint to a Final Determination Hearing to take place on 24th May 2012. 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 3 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.

Financial Implications

- 3.1 None

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 27th April 2012 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 the Schedule of Evidence contains a limited amount of 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.
- 3.4 The Committee is asked to note that at the time of writing this report the transitional arrangements for the introduction of the revised standards arrangements under the Localism Act 2011 have not been announced or introduced and that therefore the existing process/regulations for complaints are continuing to be followed at this time, save that Standards for England (SfE) as an organisation was formally disbanded on 1st April 2012. The existing sanctions available in the case of a finding of breach continue to apply.

Service/Operational Implications

Complaint

- 3.5 The background to this complaint is summarised at para 1.1 above.
- 3.6 Members will note that the Investigating Officer's findings are set out in paragraph 10 of his report. To summarise the Investigating Officer finds that Councillor Booth failed to comply with paragraph 9 of the Code of Conduct by failing to declare a personal interest in the decision relating to the land at Housman Close at the meeting on 5th October. He further finds that the personal interest did not amount to a prejudicial interest and therefore that Councillor Booth did not fail to follow paragraph 12 of the Code of Conduct which deals with the duty on Members to withdraw from meetings where they hold a prejudicial interest.

Documents

- 3.7 A copy of the Final Determination Hearing Procedure is attached at Appendix 1. A copy of the Bromsgrove District 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 1 to 15 in the Investigating Officer's report) has been circulated to Members of the Committee and Councillor Booth and is included as background papers to this report.

Pre-Hearing Process

- 3.8 In accordance with the usual process a pre-hearing questionnaire was sent to Councillor Booth. He has responded stating that he will be attending the hearing in person and that there are no areas of the Investigating Officer's report that he intends to challenge. In response to an issue raised by Members at the Consideration Meeting on 27th April, the Investigating Officer has confirmed that there are no additional documents to be disclosed over and above those contained in the Schedule of Evidence. The facts are set out in his report and Members are advised that the Investigating Officer will be in attendance on 24th May to respond to any questions and give any clarification that is needed regarding his findings.

Procedure for the Hearing

- 3.9 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

- 3.10 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

- 3.11 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

- 3.12 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.
- 3.13 The former Adjudication Panel for England (whose functions were subsequently transferred to the First-tier Tribunal (Local Government Standards in England) produced advice for its own case tribunals which SfE suggested should be considered by Standards Committees. This advised 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. Although SfE has been disbanded Members are advised that it would be good practice for the previous guidance to continue be taken into consideration when considering the issue of any sanction.
- 3.14 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

3.15 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

3.16 The Committee should announce its decision at the end of the hearing and 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

3.17 The Subject Member and the complainant will be notified of the outcome of the Final Determination Meeting and where appropriate a notice will be issued in accordance with the regulations.

4. RISK MANAGEMENT

The Council is required to perform the statutory functions in relation to Standards as required under the legislation referred to at 3.2. The Chief Executive and the Monitoring Officer work closely with the Leaders of all political groups to ensure where possible that effective working relationships with all Members can be maintained and from time to time it is necessary for specific measures to be introduced to enable this to continue effectively. All three Statutory Officers meet on a monthly basis to assess the risks associated with this and to ensure that any local issues are managed effectively and that support is given to all Members of the Council where appropriate

5. APPENDICES

Appendix 1 Final Determination Hearing Procedure
Appendix 2 Code of Conduct for Bromsgrove District Council
Appendix 3 Investigating Officer's report dated 29th February 2012

6. BACKGROUND PAPERS

Schedule of Evidence (Appendices 1 to 15 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 may 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 seek to appeal the Standards Committee's decision. Any request for permission to appeal must be made in writing to the First-tier Tribunal (Local Government Standards in England) within 28 days of the Subject Member's receipt of the Committee's full written decision.

BROMSGROVE DISTRICT COUNCIL

CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

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

Scope

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

and references to your official capacity are construed accordingly.

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

General obligations

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

APPENDIX 2

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

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

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

4. You must not:

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

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

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

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

(iv) the disclosure is:

(aa) reasonable and in the public interest; and

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

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

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

6. You:

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

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

May 2008

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

Part 2

Interests

Personal interests

8. (1) You have a personal interest in any business of the authority where either:
- (a) it relates to or is likely to affect:
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body:

APPENDIX 2

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

May 2008

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

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

Disclosure of personal interests

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

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

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

Prejudicial interest generally

- 10.(1) Subject to sub-paragraph (2), where you have a personal interest in any business of the authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business:
 - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - (c) relates to the functions of the authority in respect of:
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

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

Effect of prejudicial interests on participation

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

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

Part 3

Registration of Members' Interests

Registration of members' interests

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

Sensitive information

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

APPENDIX 2

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

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

APPENDIX 3
(Public Report)



FINAL REPORT

Case Reference: 1/2011

Bromsgrove District Council Standards Committee

Report of an investigation by Michael Blamire-Brown appointed by the Monitoring Officer for Bromsgrove District Council into an allegation concerning Councillor Del Booth.

DATE: 29th February 2012

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Contents

- 1 Executive summary
- 2 Councillor Del Booth - official details
- 3 The relevant legislation and protocols
- 4 Details of the complaint
- 5 The evidence gathered
- 6 Response by Councillor Del Booth
- 7 Summary of the material facts and findings of fact
- 8 Reasoning as to whether there have been failures to comply with the Code of Conduct
- 9 Responses to draft report
- 10 Finding

Appendix Schedule of Documents

1 Executive summary

- 1.1 I have been appointed by the Monitoring Officer for Bromsgrove District Council to undertake an investigation into an allegation that Councillor Del Booth, a member of Bromsgrove District Council, may be in breach of the Code of Conduct for members of the Council.
- 1.2 The allegation (see **Document 1**) is that Councillor Del Booth failed to declare a personal interest at a meeting of the Bromsgrove District Council's Cabinet held on 5th October 2011.
- 1.3 The allegation was made by Councillor Shannon, also an elected member of Bromsgrove District Council and considered by the Assessment Sub-Committee by way of local assessment on 23rd November 2011. The decision (see report and decision - **Document 2**) was to refer the allegation to the Monitoring officer for investigation.
- 1.4 The outcome of the investigation is that Councillor Del Booth, the subject of the allegation, is in breach of the code of conduct of Bromsgrove District Council by failing to declare a personal interest as required by paragraph 9 of the Code but that he did not have a prejudicial interest and was not in breach of paragraph 12 of the code.

2 Councillor Del Booth - official details

- 2.1 Councillor Del Booth was first elected to office as a member of Bromsgrove Council on 3rd May 2007 for a term of 4 years and subsequently re-elected for a further term on 5th May 2011.
- 2.2 Councillor Del Booth gave a written undertaking to observe the code of conduct for Bromsgrove District Council on 19th May 2011.
- 2.3 Councillor Del Booth is the Portfolio Holder for Business Transformation with special responsibility for town centre regeneration and special projects. He is also a member of the Appointments Committee of Bromsgrove District Council.
- 2.4 Councillor Del Booth has completed the register of interests.
- 2.5 Councillor Del Booth has received code of conduct training, the Council's records showing that he attended a code of conduct session on 18th June 2008.

3 The relevant legislation and protocols

- 3.1 Bromsgrove District Council has adopted a code of conduct (see **Document 3**). The adopted code is in the form set out in the Schedule to the Local Authorities (Model Code of Conduct) Order 2007 (the mandatory code).
- 3.2 The mandatory code of conduct states that it should be read together with the general principles prescribed by the Secretary of State. The

general principles do not form part of the code but set out the principles which are to govern the code.

- 3.3 An extract of the provisions of the code of conduct (as set out in full in **Document 3**) which appear to be relevant to the scope of the investigation are as follows:-

Paragraph 8(1) Personal interests

You have a personal interest in any business of the authority where either:-

- (a) It relates to or is likely to affect:-
- (ix) any land in the authority's area in which you have a beneficial interest

or

- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(2) In sub-paragraph 1(b), a relevant person is:

- (a) a member of your family or any person with whom you have a close association; or

Paragraph 9(1) Disclosure of personal interests

Subject to paragraphs (2) to (7), where you have a personal interest in any business of the authority and you attend a meeting of the authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

Paragraph 10(1) Prejudicial interest generally

10(1) Subject to paragraph (2) where you have a personal interest in any business of the authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

10(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

Paragraph 12(1) Effect of prejudicial interest on participation

12(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of the authority:

(a) you must withdraw from the room or chamber where the meeting is being held:

.....

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting.

4 Details of the complaint

4.1 The allegation(see **Document 1**) relates to a meeting of the Cabinet of Bromsgrove District Council held on 5th October 2011 when the meeting had under consideration the transfer of land comprising the recreation ground at Housman Close, Charford, Bromsgrove to Bromsgrove District Housing Trust (BDHT). It is alleged that Councillor Del Booth owns land and a dwelling house at 15 Housman Close which overlooks the former play area, that he remained in the room and participated in the discussion about the transfer of the land.

4.2 The complainant is Councillor Sean Shannon. Attached as **Document 4** is a note of my meeting with him.

4.3 Councillor Shannon did not attend the meeting of the Cabinet held on 5th October 2011. Matters had been raised at that meeting which caused him to listen to the official tape recording of the meeting kept by the Council. Whilst listening to the tape Councillor Shannon realised that Councillor Del Booth, who he knew lived at 15 Housman Close had taken part in the discussion on the item relating to the proposed disposal of the former play area at the rear of Housman close.

4.4 Councillor Shannon was of the view that as a result of the Cabinet decision, the value of Councillor Del Booth's property would increase and that as a result Councillor Del Booth should have declared a personal and a prejudicial interest.

4.5 Councillor Shannon has referred to a statement by the Leader of the Council reported in the local press, describing the former play area as "troubled". Councillor Shannon has also referred me to an article in the Bromsgrove Advertiser (see **Document 5**) which refers to the "troubled area of open space".

4.6 Councillor Shannon has also referred to the crime statistics for the locality and from his own knowledge as local councillor being aware that there was considerable trouble in the area involving criminal offences and anti-social behaviour. There had been an off licence in Rock Hill nearby which had previously been involved in under age sales. The recreation land itself was a conduit for crime on the

Charford estate with escape being readily available along the footpath adjoining the recreation land. There had been reports of drug taking and the presence of needles on the land.

4.7 Councillor Shannon gave an example of a similar area of land nearby "the Old Quarry" where there had been problems of crime and anti-social behaviour where development had successfully dealt with these problems.

4.8 Councillor Shannon considers that the redevelopment of the recreation land at the rear of Housman Close will lead to an increase in property prices generally in the area because the possibility for interference with adjoining properties will be eliminated and that this will have an effect upon the attractiveness of properties in the area. He maintains that the development of the recreation land for social housing on the recreation land will contribute to making the area generally safer and improve the locality. Location being an important element in determining property prices and an improved location leading to an increase in house prices.

5 The evidence gathered

5.1 The facts in this case are as follows:-

- (a) Councillor Del Booth is the owner of 15 Housman Close Charford Bromsgrove where he lives with his partner. The property which is in the Charford ward is held in joint names with his partner.
- (b) Councillor Booth is an elected member of Bromsgrove District Council and on election following the May 2011 elections signed a declaration of acceptance of office which included an undertaking to observe the Council's code of conduct.
- (c) Bromsgrove District Council has adopted a code of conduct for its members as required by the Local Government Act 2000.
- (d) Bromsgrove District Council's register of member's interests maintained by the Monitoring Officer shows that Councillor Booth has, as required by the code of conduct, registered his interest as owner of land at 15 Housman Close.
- (e) Councillor Booth is a member of the Council's Cabinet and in that capacity attended a meeting of the Cabinet held on 5th October 2011. On the agenda as item No 10 was an item which related to the proposed transfer of former recreation land at Housman Close to BDHT entitled "Support to Principal Preferred Partner Registered Providers in the delivery of Affordable Housing". A copy of the report is **Document 6**. The report was circulated with the agenda in advance of the meeting and members of the Cabinet would have had an opportunity to read the papers in advance.
- (f) Councillor Booth did not declare a personal interest in agenda item 10. Furthermore the minutes (see **Document 7**) make no record of any declaration of interest.

- (g) Councillor Booth remained in the room during the whole consideration of the item and took part in the discussion.
- (h) On 13th December 2011 I visited Number 15 Housman Close to check the views of the recreation land and also to see the recreation land itself.
- (i) The recreation land is proximate to the Councillor Booth's property. Number 15 is a corner plot and the boundary of his land at the end of his garden does not quite extend to the recreation land boundary. The Land Registry Title Plan (see office copy and plan – **Document 8**) shows the extent of the land ownership of 15 Housman Close and its relationship with the recreation land. The distance from the boundary fence of Number 15 to the recreation land at its nearest point is approximately 8 metres.
- (j) The recreation land (see plan attached to the Cabinet Report of 5th October 2011 (see **Document 9**) is a small area of open grassed land which at one time was used as a children's' play area. The land is surrounded by properties in Housman Close, Austin Road and Morris Walk. A footpath runs at the edge of the recreation land connecting Austin Road and Rock Hill. The boundaries of gardens adjoining the land in Austin Road, and Housman Close are well fenced with trees and hedges so the recreation land is well screened from properties in Housman Close.
- (k) The rear of 15 Housman Close is visible from the recreation ground and from the Number 15 there is a view of the corner of the recreation land site from an upstairs bedroom. The recreation land is not visible from either downstairs or the garden.
- (l) The recreation land is open space land which was the site of a recreation area which is no longer required by the Council for formal recreation. It is a small area of land which is unused and its future use is proposed as affordable housing. Paragraph 3.23 of the Cabinet report indicates that the recreation land might provide for four or six bungalows. The minutes of the meeting state that BDHT had included a scheme for the provision of six bungalows.
- (m) In December 2006 the Cabinet considered a report on the proposed disposal of the recreation land to BDHT (see report and minute **Document 10**). The minute of the decision shows that approval was at that time given for disposal on a below market value basis to be negotiated.
- (n) I made enquiries of the Council's Strategic Housing Manager (Mr Coel) and asked him why it was necessary for the proposed disposal of the recreation land to be subject to a further approval from the Cabinet. He conceded that strictly it was probably not necessary for a further consent to be given, the only difference being that the decision in October 2011 sought specific approval on the basis of a nil capital receipt. The October 2011 Cabinet report was also concerned with the ring fencing of the new homes bonus for re-investment in affordable housing.

- (o) Mr Coel has also confirmed to me that as yet no application for planning consent has been made by BDHT in relation to the recreation land.
- (p) On 5th October 2011 the Cabinet received a report (see **Document 6**) which:-
- referred to the decision taken in December 2006 to approve the disposal of the land.
 - Stated that the land was currently an open space play facility within the boundary of the Charford Regeneration Scheme, an area that had since then undergone extensive estate layout remodelling and refurbishment by BDHT.
 - Pointed out that that consultation had indicated the benefits of developing four or six additional units (bungalows) for older people in close proximity to the OAP bungalows in Morris Walk.
 - Advised that feedback from residents and the police indicated that the land in question was not suitable for a play area and not conducive to the overall improvements targeted through the wider Austin Road regeneration scheme.
 - Pointed out that over the years there had been a history of complaints by local residents of annoyance and nuisance emanating from the site.
 - Progress of the scheme had been delayed due to prolonged negotiations with the National Playing Fields Association and Fields in Trust who had the benefit of a covenant.
 - BDHT had included the development of 6 bungalows on the land for the purpose of their bid to the Homes and Communities Agency.
- (q) Councillor Shannon referred me to crime statistics for the area. I have checked the www.police.uk website which gives details of crime statistics. A search as against the post code B60 3LY provides figures in respect of all types of crime for the Charford neighbourhood area. The extent of the Charford area for this purpose is shown on the plan at **Document 11**. The level of crime in December 2011 was 71 crimes (a crime rate of 13.73 per 1,000 population). This is stated to be above average for the rest of England and Wales.
- (r) I have considered the general property prices in the Housman Close area based on the postcode B60 3LY. There are a number of websites which provide details of property prices paid and estimates of current value with reference to average house prices in the area. One such site is "Zoopla" (www.zoopla.co.uk) and a search result is shown as **Document 12**.
- (s) The purchase price of 15 Housman Close (January 2007) as shown on the Land Registry Proprietorship Register was £147,000. The Zoopla estimate today (February 2012) is £144,471. The Zoopla website also provides a graph showing average home values for B60 comparing the property (15 Housman Close), properties in B60 and the UK average.

- (t) I have decided in this investigation not to incur the expense of instructing a valuer to verify the above figures. My conclusion in relation to the available evidence is that property prices will be governed by a number of factors such as the housing market generally, the demand for particular house types and availability of similar properties, the area in which a property is situated and the state of repair of a property.
- (u) I accept that the incidence of crime in an area will have some influence on confidence by purchasers and in turn may have some effect on values but I do not think it is possible to draw a definite conclusion as to whether in the specific circumstance of this case the development of the recreation land will materially affect the value of 15 Housman Close as against all the other influencing factors.

6 Response by Councillor Del Booth

- 6.1 Councillor Del Booth has co-operated fully and helpfully with the investigation.
- 6.2 Attached as **Document 13** are his answers to a short questionnaire which I asked Councillor Del Booth to complete. His answers confirm certain factual matters set out in this report.
- 6.3 In answer to question 14 Councillor Del Booth states that he made a conscious decision not to declare a personal interest as his property was not attached to the boundary of the land in question as a garden is between his property and the garden in question. He states that he cannot see the property (the recreation land) from his garden and refers to a photo. 1 (See **Document 14**). He can see the property from his rear window, although only a corner of it as the majority is obscured by trees and he refers to photo. 2 (See **Document 14**).
- 6.4 Councillor Del Booth states that he did not believe the sale would affect his wellbeing as he has never had any issues with the land and his neighbours in the past or current have never expressed any issue with the land.
- 6.5 Councillor Del Booth does not believe he would gain financially (i.e his house price increasing) due to the area he lives in having a high proportion of social housing and a reputation within Bromsgrove (rightly or wrongly) of being a troubled area. Therefore, he considers that the sale of this land for 2 – 3 retirement bungalows would he believes have no financial impact on his property.
- 6.6 I interviewed Councillor Del Booth on 14th December 2011. He confirmed the answers given to me in response to the questionnaire (see **Document 13**). He accepts that he may have misjudged the requirement in the Code for him to declare a personal interest on the basis that the proposals in the report to the Cabinet would be likely to have an effect his property, although not financially and that a member of the public knowing the relevant facts would have expected a member to declare such an interest in the interests of transparency.

6.7 I have concluded that although Councillor Del Booth may have considered before the meeting whether he did have a personal interest, he did not do so sufficiently in accordance with the Code and did not seek advice. He clearly regrets that he did not declare a personal interest and states that in future he will very carefully consider the need to declare and act on personal interests.

7 Summary of the material facts and findings of fact

7.1 Councillor Del Booth is the owner of Number 15 Housman Close together with his partner.

7.2 He attended a meeting of the Cabinet on 5th October 2011 and did not declare a personal interest in agenda item 10 relating to the proposal to transfer the recreation land at Housman Close to BDHT at nil consideration.

7.3 Number 15 Housman Close is in close proximity but does not adjoin the recreation land. The distance from the end of the garden at Number 15 to the recreation land is approximately 8 metres. The recreation land is only visible from an upstairs window.

7.4 The report to the Cabinet on 5th October 2011 is on the basis that the recreation land is no longer suitable as a play area and is no longer conducive to the overall improvements targeted through the wider Austin Road regeneration scheme. The recreation land is within the boundary of the Charford Regeneration Scheme. The report points out that there has been a history of complaints by local residents of annoyance and nuisance emanating from the site.

7.5 The Cabinet had already determined in December 2006 the principle that there should be a disposal of the recreation land to BDHT but the issue was the basis of valuation.

7.6 The planning status of the land had not changed as a result of the disposal decisions and a planning application would need to be made and approved by the Council before any development could take place. There would also need to be a statutory advertisement under the Local Government Act 1972 advertising the proposed disposal of open space land (see paragraph 3.6 of the Cabinet Report).

7.7 I have not sought to obtain a professional valuation of the value of Number 15 Housman Close before and after the decision of 5th October but on the balance of probability I find that it is more likely than not that there would have been no change in the value of Number 15 on the basis that the Cabinet decision was in effect to approve the principle of nil consideration. The Cabinet was not making a planning decision in relation to the land; that would be a matter to be determined on a planning application. Furthermore, I accept that a land transaction itself in these circumstances is unlikely in itself to have a financial impact on nearby property.

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

- 8.1 Councillor Booth in attending the Cabinet meeting on 5th October 2011 in his capacity as an elected member of the Council was clearly acting in an official capacity by conducting authority business within the meaning of paragraph 2(1) of the code of conduct. The code of conduct is therefore engaged and Councillor Booth was subject to its provisions when attending that meeting.
- 8.2 Paragraph 1(4) of the code defines "meeting" as including any meeting of the executive (Cabinet) of the authority. The provisions of paragraphs 8, 9, 10 and 12 of the code govern the obligations placed upon Councillor Del Booth to declare personal interests and to act upon prejudicial interests.
- 8.3 The first question is whether a personal interest arises under paragraph 8(1)(a)(ix) - "*You have a personal interest in any business of your authority where either (a) it relates to or is likely to affect – (ix) any land in your authority's area in which you have a beneficial interest..... or (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or the financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision,*". Does the proposal for disposal of land at Housman Close relate to or affect Councillor Booth's ownership of 15 Housman Close and does it affect his well-being?
- 8.4 The Standards for England (Guide for Members – May 2007) makes it clear that there are two types of personal interest. First, "*a personal interest in any business of your authority where it relates to or is likely to affect an interest you must register*" and secondly, an interest that is not on the register, but where the wellbeing or financial position of family members is likely to be affected by the business of your authority more than it would affect the inhabitants of the ward affected by the decision.
- 8.5 The Standards for England (Guide for Members – May 2007) explains that the term "wellbeing" can be described as a condition of contentedness and happiness. "Anything that could affect your quality of life, either positively or negatively is likely to affect your wellbeing or the wellbeing or financial position of a family member or close personal associate to a greater extent than it would affect the inhabitants of the ward affected by the decision".
- 8.6 The wording of paragraph 8 is couched in terms of "*relate to or is likely to affect*". The test as to whether a personal or prejudicial interest arises was considered by the High Court in *Scriven v Ethical Standards Officer* [2005] EWHC 529 and determined to be an objective test. Mr Justice Stanley Burnton said:-

"Whether a member has a personal or prejudicial interest is a question to be determined objectively. The mistaken but reasonable view of the member that he has no such interest is irrelevant. The test for a failure to comply with the Code by failing to comply with [the paragraphs dealing with personal and prejudicial interests] is similarly objective".

8.7 I take the view that applying the objective test, the proximity of the recreation land to No 15 and the basis of the proposals for the disposal of the recreation land, including the advantages for the area of possible use in the future for housing as set out in the report to the Cabinet is such that the proposals would be viewed by an objective bystander as being "likely to affect" Number 15 Housman Close and also would affect Councillor Booth's well-being to a greater extent than other council tax payers in the Charford Ward. This gives Councillor Del Booth a personal interest in respect of his ownership of Number 15 Housman Close.

8.8 The second limb of paragraph 8 applies where the decision might reasonably be regarded as affecting the wellbeing or financial position of a family member or a person with whom the member has a close association (which clearly includes a person's partner).

8.9 Although there is no obligation in the Code upon Councillor Del Booth to register in the register of interests, the interest of his partner in 15 Housman Close, his partner is a relevant person whose interest must be considered. In my view the proposals in the report affected those properties immediately surrounding the recreation land (including Number 15 Housman Close) to a greater extent than other inhabitants in the Charford Ward and applying the objective test, the proposals in the report affect the wellbeing of Councillor Del Booth's partner which give rise to a personal interest within the meaning of paragraph 8.

8.10 On the basis that Councillor Del Booth had a personal interest in agenda item 10 of the Cabinet meeting held on 5th October 2011, he had an obligation under paragraph 9 of the Code to declare that interest and its nature at the commencement of the meeting. His failure to so declare amounts to a breach of the Code.

8.11 A member who has a personal interest is permitted by the Code to remain in the meeting and participate in it provided the interest is not prejudicial.

8.12 Where a member has a personal interest, the question arises as to whether that interest constitutes a prejudicial interest. Paragraph 10(2) of the code provides that a member does not have a prejudicial interest where it does not affect his financial position (or the financial position of his partner). In addition, a prejudicial interest does not arise where it does not relate to the determining of any approval, consent licence, permission or registration in relation to the member (or in this case his partner).

8.13 I have found that the financial position of the owners of Number 15 is not affected by the decision and the provisions of paragraph 10(2) in my view exclude a prejudicial interest in this case.

8.14 Even where the member's financial position is affected, the member, in deciding whether he has a prejudicial interest has to determine whether the test applies as set out in paragraph 10(1) of the code which provides that the interest is prejudicial where it 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". The test is not whether the value of Councillor Del Booth's house will or will not increase but whether any change in his financial position which might result would affect his judgement in decision making.

8.15 In this case, the basis of the Cabinet's discussion was whether proposal for a nil value transfer of the recreation land was acceptable in the circumstances. Councillor Del Booth spoke to that issue and it is difficult to see, looking at the issue objectively, that in doing so the public interest was in any way harmed. Indeed he was clearly protecting the public interest and any financial interest he may have had in the value of his own property could not in my view be objectively viewed as "so significant" that it could affect his judgement on that issue.

8.16 I have concluded that Councillor Del Booth did not have a prejudicial interest and his participation in the meeting for agenda item 10 was not a breach of paragraph 12 of the Code.

8.17 There is no evidence that Councillor Booth's failure to declare a personal interest involved a deliberate action to mislead and there is no question of any motive to gain financially or otherwise.

9 Responses to the draft report

9.1 Before submitting this final report I have given an opportunity to both Councillor Shannon as the complainant and Councillor Del Booth to comment on a draft of this report. A copy was sent to each of them by post on 14th February 2012 and comments were requested within 14 days.

9.2 Councillor Del Booth has responded to say he has no comments.

9.3 Councillor Shannon has submitted comments and these are set out in full in **Document 15**.

9.4 Councillor Shannon raises a number points to which I set out my comments below:-

(a) (Point 1) There is a lot of information in the Zoopla search (**Document 12**) which I have extracted in full for the sake of completeness. I accept that some information in it is not relevant to the specific issues. I do not think the Zoopla report is actually suggesting that property prices will rise by 10%. The "Zoopla Poll" on page 63 of the Appendix seems to have 10% as a default position where the visitor to the website is being asked to make a suggestion.

The Zoopla poll itself is not relevant to the conclusions reached in my report. The purpose of including the Zoopla report was to

show some current information about existing prices and past trends rather than a forecast of future prices.

The particular relevance of the Zoopla report is that in my view it supports my conclusion that property prices are influenced by a number of different factors.

I have already set out my reasons for not instructing a valuer as the issue in my view is not the effect of any development of the play area site but rather the effect of the decision of the Cabinet which is directed towards the valuation basis.

(b) (Points 2 and 3) Councillor Shannon draws attention to Councillor Booth's statement that Councillor Booth "considers that the sale of this land for 2-3 retirement bungalows would he believes have no financial impact on his property". He points out that the Cabinet report suggests the development of four or six bungalows, the site plan indicating seven bungalows and eight parking spaces. Although I agree there is a difference, I have interpreted the thrust of Councillor Del Booth's statement as being simply that he does not consider that there would be a financial impact on his property. I have set out in my report why I conclude there is no financial impact (see paragraph 7.7).

(c) Point 4) On the issue as to whether or not Councillor Booth's neighbours have expressed any issues with the recreation land, I have not reverted to Councillor Del Booth on this point. Even if there was evidence that neighbours had approached him, I do not accept that changes my finding in paragraph 7.7.

On the overlooking issue, I consider that the response made by Councillor Del Booth as set out in **Document 13** page 65 (see Sections 14 and 15) together with the photograph at **Document 14** fairly set out the overlooking position which I have verified from my site visit (see paragraph 5.1(k) above).

- 9.5 I thank Councillor Shannon for this response to the draft report. Overall I do not believe the points raised provide a basis for altering my findings and conclusions now expressed in this final report.

10 Finding

- 10.1 In accordance with paragraph 14(8)(a)(i) of the Standards Committee (England) Regulations 2008 I find that in respect of the matters which are the subject of this investigation Councillor Del Booth failed to comply with the code of conduct of Bromsgrove District Council by failing to declare a personal interest as required by paragraph 9 of the Code.
- 10.2 I further find that the personal interest did not amount to a prejudicial interest and he was not in breach of paragraph 12 of the code.



Signed:

Date: 29th February 2012

Appendix

Schedule of Documents

Case Reference: 1/2011

Doc No	Description	Pages
1	Allegation of breach of the code	2- 4
2	Assessment Sub-Committee Report and decision)	5 - 13
3	Bromsgrove District Council – Code of Conduct	14 - 23
4	Note of meeting (Councillor S Shannon)	24 - 25
5	Article – Bromsgrove Advertiser	26 - 27
6	Report to Cabinet 5 th October 2011	28 - 37
7	Minutes of Cabinet Meeting 5 th October 2011	38 - 43
8	Land Registry Office Copy and files plan – 15 Housman Close	44 - 46
9	Plan of recreation land (appended to Cabinet report)	47
10	Report to Cabinet - December 2006 and minute	48 - 54
11	Plan – extent of Charford area for purpose of crime statistics	55
12	Zoopla search (house prices)	56 - 63
13	Answers to Questionnaire (Councillor D Booth)	64 - 66
14	Photo. No. 1 and Photo. No. 2	67
15	Response to draft report (Councillor Shannon)	68