



## **BROMSGROVE DISTRICT COUNCIL**

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

**TUESDAY, 20TH MAY 2008 AT 2.00 P.M.**

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

**MEMBERS:** Mrs. N. E. Trigg (Chairman - Independent Member), Councillors C. R. Scurrall, S. P. Shannon and E. C. Tibby, Mr. S. E. Allard (Independent Member), Mr. N. A. Burke (Independent Member) and Mr. J. Cypher (Parish Councils' Representative)

Observer: Mr. I. A. Hodgetts (Parish Councils' Representative)

### **AGENDA**

1. To receive apologies for absence
2. Declarations of Interest
3. Final Determination of Allegations of Failure to Follow the Code of Conduct (Pages 5 - 86)

[Note: the public will be formally excluded from the meeting at the point at which the Committee makes its deliberations on the above matter and the following resolution will be passed:

**"RESOLVED:** that under Section 100 I of the Local Government Act 1972, as amended, the public be excluded from the meeting during the Committee's deliberations on the grounds that they will involve the likely disclosure of exempt information as defined in Paragraph 7C of Part 1 of Schedule 12A to the Act, as amended, and that it is in the public interest to do so."]

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

The Council House  
Burcot Lane  
BROMSGROVE  
Worcestershire  
B60 1AA

7th May 2008

K. DICKS  
Chief Executive

## 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.

#### 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 formally exclude the public from its deliberations 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 formally exclude the public from its deliberations 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 formally exclude the public from its deliberations 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 set a penalty and what form any penalty 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 move to another room to consider whether or not to impose a penalty on the Subject Member and, if so, what the penalty 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 sets a penalty the public summary must say that the Subject Member failed to follow the Code of Conduct, outline what happened, explain what penalty has been set and give reasons for the decision made by the Committee.

**Appeal**

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

## BROMSGROVE DISTRICT COUNCIL

### STANDARDS COMMITTEE

20 MAY 2008

#### FINAL DETERMINATION OF ALLEGATIONS OF FAILURE TO FOLLOW THE CODE OF CONDUCT (SBE Ref: 20011.07)

Responsible Portfolio Holder	Councillor Roger Smith
Responsible Head of Service	Claire Felton, Monitoring Officer

#### 1. SUMMARY

- 1.1 An allegation that a Member of Bromsgrove District Council has breached the Code of Conduct in three respects was referred by the Standards Board for England ("SBE") to this Council for local determination (SBE Ref: 20011.07).
- 1.2 The Investigating Officer has made a finding of no failure to follow the Code of Conduct in respect of two of the allegations and a finding of failure to follow the Code of Conduct in respect of one of the allegations. Therefore the Standards Committee has two issues to determine:
- 1.2.1 the first issue to consider is in respect of the findings of **no failure to follow the Code of Conduct**, when the Committee will be asked to decide whether to accept the Investigating Officer's findings:
- (i) if the Committee does accept both of those findings, there will be no further action in respect of those findings and the Committee will then proceed to consider 1.2.2 below at its meeting on 20 May 2008;
  - (ii) if the Committee decides that there is a case to answer in respect of either or both of the findings of no failure to follow the Code of Conduct, the whole matter will be adjourned to 18 June 2008;
- 1.2.2 in respect of the one finding of a **failure to follow the Code of Conduct**, to determine the matter and decide whether or not there has been a failure to follow the Code of Conduct, and if so, what if any penalty should be imposed (unless the matter is adjourned to 18 June 2008 in which case the Committee will determine this issue on that day).
- 1.3 This report is therefore set out in two parts.

## **2. RECOMMENDATION**

**In respect of either or both of the findings of no failure to follow the Code of Conduct:**

- 2.1 Members are requested to consider the Investigating Officer's report at Appendix 1. The Committee may decide either:
  - 2.1.1 to accept the Investigating Officer's finding of no failure ("a finding of acceptance") in respect of either or both of the allegations; or
  - 2.1.2 that there is a case to answer in respect of either or both of the allegations and that the matter should be considered at a subsequent hearing of the Standards Committee.

**In respect of the finding of a failure to follow the Code of Conduct**

- 2.2 Members are requested to consider the Investigating Officer's report at Appendix 1. The Committee is requested to determine the matter and decide whether or not there has been a failure to follow the Code of Conduct, and if so, what if any penalty should be imposed (unless the matter is adjourned to 18 June 2008 in which case the Committee will determine this issue on that day).

## **3. BACKGROUND**

- 3.1 The SBE referred matter SBE: 20011.07 for local determination. The details of the allegation are contained within the Investigating Officer's report which is appended to this Report.
- 3.2 Members should note that this matter relates to an allegation arising from before the adoption of the current Code of Conduct. A copy of the former Code of Conduct, which should be applied by Members in this case, can be found at Appendix K of the Investigation Officer's report.
- 3.3 Members should also note that the new Standards Committee (England) Regulations 2008 do not apply as the allegation pre-dated their commencement and therefore this matter should be dealt with under the previous regulations.

## **4. Finding of No Failure to Follow the Code of Conduct**

- 4.1 The SBE referred matter SBE: 20011.07 for local determination. The details of the allegation are contained within the Investigating Officer's report at Appendix 1. In respect of the first two allegations, the Investigating Officer has made findings of no failure to comply with the Code of Conduct. These allegations are:

- that at a meeting of the Planning Committee on 16 July 2007 that meeting the Subject Member failed to declare a prejudicial interest in relation to application B/2007/0498; and
- that the Subject Member misused his official position and acted improperly to seek to secure an advantage for a friend.

4.2 The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 provide that the Standards Committee shall consider the Investigating Officer's report and that the Committee may make one of two findings, namely:

- to accept the Investigating Officer's findings of no failure ("a finding of acceptance"); or
- that there is a case to answer and that the matter should be considered at a hearing of the Standards Committee.

4.3 The SBE guidance states that at this stage the Committee should simply consider the report and should not seek to interview witnesses or take representations from the parties or the Investigating Officer. The Committee's role is to decide whether, based on the facts and information set out in the report, it agrees with the findings of the Investigating Officer or whether it believes there is a case to answer.

4.4 The Committee is therefore requested to consider the report at Appendix 1.

4.5 If the Committee makes a finding of acceptance, the Monitoring Officer will arrange for a notice to be published setting out the Committee's finding and reasons for it. The Subject Member is entitled to ask that the notice not be passed to local newspapers.

4.6 If the Committee decides in relation to either allegation that there is a case to answer, a date has been set on Wednesday 18 June 2008 at 10.30am for a separate hearing at which the Committee will be requested to make a final determination on whether the Code of Conduct was breached; a hearing on this date would determine:

- either or both of the two allegations in respect of which the Investigating Officer has made a finding of no failure to follow the Code but in relation to which the Committee decides there is a case to answer;

and

- the allegation in respect of which the Investigating Officer has made a finding of a failure to follow the Code of Conduct.

The usual procedures for a full hearing would then apply.

## **5. Finding of a Failure to Follow the Code of Conduct**

5.1 The Committee will only consider this allegation at its meeting on 20 May 2008 if it makes a finding of acceptance in respect of the two allegations in respect of which the Investigating Officer has found no failure to follow the Code of Conduct.

5.2 The Investigating Officer has made a finding that the Subject Member has failed to follow the Code in respect of one of the allegations referred for local investigation, namely:

- that at a meeting of the Planning Committee on 16 July 2007 the Subject Member failed to correctly declare a personal interest in relation to application B/2007/0498.

5.3 Therefore, in accordance with the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended this allegation has been referred to the Standards Committee for final determination.

### **Pre-Hearing Process**

5.4 In accordance with the SBE guidance a pre-hearing procedure has been followed which has identified that the Subject Member:

- a) does not dispute any findings of fact in the Investigating Officer's Report;
- b) does not wish to be represented at the hearing by a solicitor, barrister or other person;
- c) wishes to give evidence to the Committee in person;
- d) does not wish to call witnesses to give evidence;
- e) does not wish any part of the hearing to be held in private – the final determination will therefore be a public hearing;
- f) does not wish any part of the Investigating Officer's report or other relevant documents to be withheld from the public; and
- g) can attend the hearing.

### **Procedure for the Hearing**

5.5 The procedure for the hearing is set out in the agenda papers.

### **Penalties**

5.6 If the Committee finds that the Subject Member has failed to follow the Code of Conduct and that he should be penalised, it may do any one or a combination of the following:

- censure the Subject Member;
- restrict the Subject Member's access to the resources of the relevant authority for up to three months, which could include limiting his or her access to the premises of the relevant authority;
- suspend or partly suspend the Subject Member for up to three months; or
- suspend or partly suspend the Subject Member for up to three months on the condition that the suspension or partial suspension will end if the Subject Member apologises in writing, receives any training, or takes part in any conciliation that the Committee orders; conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the Committee.

5.7 Suspension or partial suspension will normally start immediately after the Committee has made its decision. However, if the Standards Committee chooses, the penalty may start at any time up to six months following its decision. This may be appropriate if the penalty would otherwise have little effect on the member, for example, in the case of a suspension or partial suspension, if there are no authority or Committee meetings which the Subject member would normally attend in the period following the conclusion of the hearing.

#### **Deciding a penalty**

5.8 When deciding a penalty, the Standards Committee should make sure that it is reasonable and in proportion to the Subject Member's behaviour. Before deciding what penalty to set, the SBE advises that the Standards Committee should consider the following questions, along with any other relevant circumstances:

- What was the Subject Member's intention? Did he or she know that he or she was failing to follow the Code of Conduct?
- Did the Subject Member get advice from officers before the incident? Was that advice acted on 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?
- How serious was the incident?

- Does the Subject Member accept he was 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?
- 5.9 Standards Board Guidance suggests that suspension may be appropriate for more serious cases, such as those involving:
- bullying officers;
  - trying to gain an advantage or disadvantage for themselves or others; or
  - dishonesty or breaches of trust.

Penalties involving restricting access to an authority's premises or equipment should not unnecessarily restrict a member's ability to carry out his or his responsibilities as an elected representative or co-opted member.

## **6. FINANCIAL IMPLICATIONS**

6.1 None

## **7. LEGAL IMPLICATIONS**

7.1 The Local Government Act 2000 ss60-67 provide the statutory framework for the investigation of complaints against Members. The Local Procedure (Code of Conduct) Regulations 2002, Local Authority (Code of Conduct) (Local Determination) Regulations 2003 and the Local Authority (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 govern the conduct of these proceedings.

## **8. COUNCIL OBJECTIVES**

Improvement and Sense of Community and Well Being – it is vital for the reputation and credibility of the Council that complaints against elected Members are seen to be robustly investigated.



**9. RISK MANAGEMENT**

The main risk associated with the details included in this report is loss of reputation. This risk is being managed as follows:

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

**10. CUSTOMER IMPLICATIONS**

None.

**11. EQUALITIES AND DIVERSITY IMPLICATIONS**

None.

**12. OTHER IMPLICATIONS**

Procurement Issues	None
Personnel Implications	None
Governance/Performance Management	Adherence to the Code of Conduct is a key element of sound governance
Community Safety including Section 17 of Crime and Disorder Act 1998	None
Policy	None
Environmental	None

**13. OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	No
Chief Executive	No
Corporate Director (Services)	No
Assistant Chief Executive	No
Head of Service	No
Head of Financial Services	No

Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	No
Corporate Procurement Team	No

**14. APPENDICES**

Appendix 1 Investigating Officer's Report

**15. BACKGROUND PAPERS**

Standards Board for England guidance on:

- Standards Committee Determinations
- Local Investigations

**CONTACT OFFICER**

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**INVESTIGATION SBE20011.07**

**FINAL REPORT**

**27<sup>th</sup> March 2008**

This draft report has been prepared in relation to an investigation conducted under Section 66 of the Local Government Act 2000 by Vanessa Brown, Litigation Solicitor, into an allegation concerning Councillor John Tidmarsh, Member of Bromsgrove District Council.

**CONTENTS:**

1. Summary of the allegation.
2. Relevant sections of the Code of Conduct.
3. The Investigation.
4. Findings of Fact.
5. The Issues.
6. Reasoning as to whether there has been a Breach of the Code.
7. Findings as to whether there has been a failure to comply with the Code of Conduct.

**APPENDICES:**

- A. Copy of the Agenda from the Planning Committee Meeting on 16<sup>th</sup> July 2007.
- B. Copy of the Minutes from the Planning Committee Meeting on 16<sup>th</sup> July 2007
- C. Copy of the handwritten notes taken during the Planning Committee on the 16<sup>th</sup> July 2007 by Mrs. D. Warren.
- D. Copy of the transcript recording of the relevant part of the Planning Committee Meeting on 16<sup>th</sup> July 2007.
- E. Copy of a statement prepared by Councillor John Tidmarsh dated 30<sup>th</sup> January 2008.
- F. Copy of an attendance note prepared by Vanessa Brown, prepared following a meeting with Councillor John Tidmarsh on 7<sup>th</sup> February 2008.
- G. Copy telephone attendance note taken on the 8<sup>th</sup> February 2008 detailing the conversation between Councillor Tidmarsh and Vanessa Brown.

- H. Copy of an attendance note prepared by Vanessa Brown following a meeting with Councillor John Tidmarsh on 15<sup>th</sup> February 2008.
- I. Copy of the emails between Vanessa Brown and Mr Narang, owner of Country Forge.
- J. Copy of a telephone attendance note taken on 27<sup>th</sup> February 2008 detailing a conversation between Vanessa Brown and Councillor David Hancox.
- K. Copy of the Code of Conduct. (Provided as it has been superseded by the Code of Conduct implemented by Bromsgrove District Council on 18<sup>th</sup> July 2007).
- L. Chronology.

## 1. SUMMARY OF THE ALLEGATION

It is alleged by Councillor Tibby that at a Planning Committee held on the 16<sup>th</sup> July 2007 that Councillor Tidmarsh failed to comply with the Council's Code of Conduct. The Code of Conduct relevant to this investigation is provided at (**Appendix K**) and is the old Code of Conduct which was in force until it was replaced on the 18<sup>th</sup> July 2008 by the current Code of Conduct.

The allegation was reported to the Standards Board for England on the 7<sup>th</sup> September 2007 and was referred to the Monitoring Officer for local investigation and determination on 22<sup>nd</sup> November 2007, pursuant to Section 60(2)(b) of The Local Government Act 2000 and the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended.

There are three distinct parts to Councillor Tibby's allegation:

- (i) At the Planning Committee on the 16<sup>th</sup> July 2007, Councillor Tidmarsh declared a personal interest in relation to two of the planning applications that appeared on the agenda.

The first application B/2007/0498 related to Cross Roads Garage, Kidderminster Road, Woodcote Green and was a retrospective planning application. Councillor Tidmarsh declared a personal interest as **"The owner of the property the subject of the application is a friend."**

The second application to which a personal interest was declared was B/2007/0573, and related to the change of use from a dwelling to a home

for people with learning difficulties. Councillor Tidmarsh declared a personal interest as **“One of the objectors to the application is a friend, and is a member of the Local Conservative Association”**

Shortly after the Planning Committee Mr. Naveed, the applicant in relation to the first planning application (B/2007/0498) contacted the Council to clarify that he was not a friend of Councillor Tidmarsh as had been declared at the meeting. Mr. Naveed further stated that he believed that Councillor Tidmarsh was a friend of Mr. Narang who was one of the objectors, and whose business, Country Forge, was adjacent to the application site.

In light of this information it was surmised that Councillor Tidmarsh might have inadvertently declared an incorrect interest by simply confusing the two declarations. Ie that he should have declared that he was friend of the objector in relation to the first application (B2007/0498) and that he was a friend of the applicant in the second application (B2007/0573).

Thus, it is alleged that in relation to the first application, B/2007/0498, that Councillor Tidmarsh may have breached the Code of Conduct by failing to correctly declare his interest in the application.

- (ii) It is further alleged that Councillor Tidmarsh’s interest in the first application (B/2007/0498) may also have been prejudicial in nature, as it related to the business interests, and would have affected the financial position of the objector who was a friend of his. It is therefore alleged that Councillor Tidmarsh breached the Code of Conduct by failing to declare a prejudicial interest.
  
- (iii) At the time the Planning Committee considered Planning Application B/2007/0498 Councillor Tidmarsh stated that he did not support approving the application, but he suggested that the building should be allowed to stand if compensation was paid to the neighbouring businesses for their loss of amenity. The Head of Planning and Environmental Services advised that this was not possible; despite this advice Councillor Tidmarsh raised this same suggestion again later in the meeting.

It is therefore alleged that due to his friendship with Mr. Narang, an objector whose business lies adjacent to the application site, and who would thus have been one of the recipients of the suggested compensation, that Councillor Tidmarsh may have misused his official position to Mr. Narang’s advantage.

The breach of the Code of Conduct alleged is that Councillor Tidmarsh misused his official position, and acted improperly to seek to secure an advantage for a friend.

## 2. RELEVANT SECTIONS OF THE CODE OF CONDUCT

On 23rd January 2002 the Council adopted the Model Code of Conduct set out in the "Code". This Code of Conduct remained in force until 18<sup>th</sup> July 2007 when the Council adopted the new Code of Conduct.

**It is therefore the old Code of Conduct that is applicable to this investigation as provided at (Appendix K).**

The three parts to the allegation are covered by separate sections within the Code of Conduct as detailed below.

- (i) The allegation that the personal interest declared was inaccurate and that Councillor Tidmarsh was not a friend of the applicant as stated but was in fact a friend of one of the objectors

Part 2 of the Code - Interests at paragraphs 8, and 9, states:

### Personal Interests

8.(1) A member must regard himself as having a personal interest in any matter if ... a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area, the well being or financial position of himself, a relative or a friend or –

- (a) any employment or business carried on by such persons;
- (b) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors.

### Disclosure of Personal Interests

9.(1) A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the

existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

- (ii) The allegation that Councillor Tidmarsh should have declared a prejudicial Interest.

Part 2 of the Code of Conduct – Interests at paragraph 10 and 12 states,

Prejudicial Interests

10.(1) ... a member with a personal interest in a matter also has a prejudicial interest in that matter if 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 the member's judgement of the public interest.

Participation in Relation to Disclosed Interests

12. (1) Subject to paragraph (2) below, a member with a prejudicial interest in any matter must –

(a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from the authority's standards committee;

(b) not exercise executive functions in relation to that matter; and

(c) not seek improperly to influence a decision about that matter.

13. For the purposes of this Part, "meeting" means any meeting of –

(a) the authority;

(b) the executive of the authority; .....

- (iii) The allegation that Councillor Tidmarsh sought compensation for a friend who had a business which lies adjacent to the application site.

Part 1 of the Code of Conduct – General Provisions at paragraph 5 (a) states,

General Obligations

5 A member –

- (a) must not in his official capacity, or any other circumstances, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of the authority, -
  - (i) act in accordance with the authority's requirements and
  - (ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected.

**3. THE INVESTIGATION**

- 3.1 The relevant parts of the Agenda and Minutes of the Planning Committee held on the 16<sup>th</sup> July 2007 have been obtained and considered. **Appendix A. and Appendix B.**
- 3.2 The handwritten notes taken during the Planning Committee meeting have been reviewed. They are in note form and not designed to provide a contemporaneous record of events. **Appendix C.**
- 3.3 The tape recording of the Planning Committee Meeting held on 16<sup>th</sup> July 2007 has been obtained and the relevant part listened to and considered. The tape is in the possession of Vanessa Brown and can be made available.



- 3.4 The transcript of the relevant part of the Planning Committee obtained and considered. **Appendix D.**
- 3.5 A statement provided by Councillor Tidmarsh to Vanessa Brown, dated the 30<sup>th</sup> January 2008, has been considered. **Appendix E.**
- 3.6 A meeting was held with Councillor Tidmarsh on 7<sup>th</sup> February 2008 and a copy of the notes recording the discussions is provided at **Appendix F.**
- 3.7 A telephone conversation took place between Vanessa Brown and Councillor Tidmarsh on the 8th February 2008 in which Councillor Tidmarsh raised questions concerning Mr. Narang and his business. A copy of the note taken of that conversation is provided at **Appendix G.**
- 3.8 Following on from 3.7, Mr. Narang was invited to answer questions to deal with certain matters raised. A copy of the email correspondence is provided at **Appendix I.**
- 3.9 A further meeting took place in two stages on 15<sup>th</sup> February 2008 with Councillor Tidmarsh and a copy of the notes recording the discussions during that meeting is provided at **Appendix H.**
- 3.10 A telephone conversation took place between Councillor David Hancox and Vanessa Brown on 27<sup>th</sup> February 2008. A copy of a note taken of that conversation is provided at **Appendix J.**
- 3.11 A chronology of events is at **Appendix K.**

#### **4. FINDINGS OF FACT**

- 4.1 The allegation faced by Councillor Tidmarsh, centres around a planning application (B/2007/0498) made by Mr. Naveed, the owner of Cross Roads Garage Kidderminster Road, Woodcote Green. This was a retrospective application as a slightly smaller scheme had previously been granted permission by Members. The application before the Members on the 16<sup>th</sup> July 2007 was a retrospective application for the scheme as built as it exceeded the one approved. The amended scheme referred to the implementation of a greater first floor area, including raising the height of the roof and the formation of a first floor level.

- 4.2 The matter appeared on the Agenda (**Appendix A**) for the Planning Committee Meeting to be held on the 16<sup>th</sup> July 2007. The recommendation from the Planning Officer was that the application should be refused and that Members should authorise appropriate action to secure the removal of the unauthorised structure. In addition, it was recommended that Members should delegate authority to the Head of Planning and Environmental Services in consultation with the Head of Legal and Democratic Services, to proceed with the most appropriate course of enforcement action to remedy the breach of planning control.
- 4.3 The Minutes (**Appendix B**) show the details of a personal interest declared by Councillor Tidmarsh in relation to planning application B/2007/0498) and it was accurately recorded as “The owner of the property the subject of the application is a friend”.
- 4.4 Recorded in the same Minutes, Councillor Tidmarsh made a second personal declaration in relation to planning application (B/2007/0573). This declaration was correctly declared as “One of the objectors to the application is a friend and is a member of the Local Conservative Association”.
- 4.5 In advance of the Planning Committee Meeting on the 16<sup>th</sup> July 2007, Members were provided with the details of all of the matters to be considered. In relation to application B/2007/0498, a site visit took place a few days before the July meeting and Councillor Tidmarsh attended that site visit.
- 4.6 Although Councillor Tidmarsh was not a member of the Planning Committee he attended at the Planning Committee Meeting held on the 16<sup>th</sup> July 2007. Councillor Tidmarsh did not put himself forward to attend this meeting, he had been asked to substitute by Councillor David Hancox. (**Appendix J**).
- 4.7 When Planning Application B/2007/0498 was considered at the Planning Committee Meeting on the 16<sup>th</sup> July 2007 both the Applicant (Mr. Naveed) and the Objector (Mr. Narang) were represented by agents, who made comprehensible oral statements detailing their positions. Both agents stated the name of their clients and the name of their businesses.
- 4.8 Following the representations made by both the Applicant and the Objector, Members debated the matter. During the debate, Councillor Tidmarsh said inter alia:
- “I just wonder how the developer can interpret so freely, the planning approval that was given to him and I am not favouring approval for this. I am favouring the retention of the building as it is. Despite the fact it’s in the centre of the Green Belt, but with very, very substantial penalty and compensation to the other injured parties”.

The Head of Planning and Environmental Services replied:

“Don’t think you can do that, you’ve got to keep it in planning terms”.

Following representation from other Members, Councillor Tidmarsh said:

“.... Perhaps there are no facilities to enable some punishment to be levied on the developer. Could it be possible for the Head of Planning to act as a negotiator and, if it was possible for some agreed compensation acceptable to the Council and to the other injured party, if we could defer the decision that seems to me probably the most sensible solution. Thank you.”

The Chairman responded:

“I’m afraid you can’t do that Councillor Tidmarsh, it’s, they’ve contravened the Planning Approval that was originally given....”

- 4.9 The matter was resolved;
- i. That permission be refused....
  - ii. That the Head of Planning and Environmental Services, in consultation with the Head of Legal, Equalities and Democratic Services, be authorised to proceed with the most appropriate course of enforcement action to remedy the breach of planning control.
- 4.10 The Minutes (**Appendix B**) record the above decision and additionally, that under Section 4, paragraph 16.7 of the Council’s Constitution, a number of Councillors abstained from voting on this matter and Councillor Tidmarsh was one of those who abstained.
- 4.11 Following the Planning Committee Meeting on the 16<sup>th</sup> July 2007, a call was received from Mr. Naveed, the Applicant, in relation to Planning Application B/2007/0498. Mr. Naveed stated that he was not a friend of Councillor Tidmarsh as had been declared at the Planning Committee Meeting. Mr. Naveed further claimed that Councillor Tidmarsh was however a friend of Mr Narang, the owner of the neighbouring business (Country Forge) and the objector to the application.
- 4.12 In light of the information received Councillor Tibby referred the matter to the Standards Board for England in September 2007.

The Standards Board for England referred this matter to the Monitoring Officer for Local Investigation and determination of 22<sup>nd</sup> November 2007. The Decision Notice stated the allegation to be investigated as detailed in 1. above “Summary of the Allegation”.

- 4.13 The referral to the Standards Board for England included a supposition that Councillor Tidmarsh may have confused the declaration made in relation to Planning Application B/2007/0498 with a second personal interest declaration made at the same Planning Committee.
- 4.14 Councillor Tidmarsh provided a written statement (**Appendix E**), there have been two face to face meetings between Councillor Tidmarsh and Vanessa Brown and one telephone conversation (**Appendix F, G, H**). On each occasion Councillor Tidmarsh has confirmed that at the time he made the declaration in relation to Planning Application B/2007/0498 he believed it to be accurate.
- 4.15 Councillor Tidmarsh confirmed that he made the personal interest declaration in relation to Planning Application B/2007/0498 because of one business transaction approximately 15 years ago and two chance meetings approximately 10 years ago with a person who sold him a set of gates. At the time of making the declaration Councillor Tidmarsh believed that that person was Mr. Naveed (Applicant and owner of the Cross Roads Garage).
- 4.16 In the course of this investigation it has been established that it was Mr. Narang (objector and owner of Country Forge) that sold Councillor Tidmarsh a set of gates and posts over 12 years ago (**Appendix I**) and not Mr. Naveed the Applicant and owner of the Cross Roads Garage.
- 4.17 Following our discussions Councillor Tidmarsh accepted that he made a mistake and in fact he had had no business or social dealings with the Applicant Mr. Naveed, as had been declared at the Planning Committee Meeting on the 16<sup>th</sup> July 2007.
- 4.18 Having considered the allegation, Councillor Tidmarsh accepted that he had not had sufficient regard to the personalities involved in Planning Application B/2007/0498, and that he had been mistaken in making the personal interest declaration in the terms that he did. Councillor Tidmarsh accepts that he has inaccurately declared his interest in Planning Application B/2007/0498.
- 4.19 In light of the information now available I am satisfied that the supposition made that Councillor Tidmarsh had confused the two personal interest declarations made, is incorrect. Councillor Tidmarsh intended to make the declaration that was recorded.

- 4.20 In light of the length of time since Councillor Tidmarsh had any contact with the objector to the application, Councillor Tidmarsh does not accept that the interest declared should have been a “prejudicial” one.
- 4.21 The tape recording of the relevant part of the Planning Committee Meeting held on the 16<sup>th</sup> July 2007 has been listened to and Councillor Tidmarsh accepts the comments made by him at that time. **(Appendix D).**
- 4.22 Councillor Tidmarsh accepts his comments made during the Planning Committee Meeting held on 16<sup>th</sup> July 2007, and he asserts that he did not make them to advantage any one party and that his intention was purely to try and resolve a very difficult situation.
- 4.23 I have visited the site.
- 4.24 A chronology of events is at **Appendix K.**

## **5. THE ISSUES.**

There are three distinct issues to be considered:

- (i) Whether the personal interest declared at the Planning Committee Meeting on the 16<sup>th</sup> July 2007 by Councillor Tidmarsh in relation to Planning Application B/2007/0498 was accurate.
- (ii) Whether that personal interest was also a prejudicial interest.
- (iii) Whether Councillor Tidmarsh sought to secure compensation for a friend by the suggestions and comments made by him during the Planning Committee Meeting held on the 16<sup>th</sup> July 2007.

## **6. RESONINGS AS TO WHETHER THERE HAS BEEN A BREACH OF THE CODE**

There are three distinct issues to be considered and I have dealt with them separately:

(i) Whether the personal interest declared by Councillor Tidmarsh was accurately made.

- 6.1 Councillor Tidmarsh declared a personal interest in relation to Planning Application B/2007/0498. The interest declared was that “The owner of the property the subject of the application was a “friend”. It is this declaration that has been the subject of the local investigation.
- 6.2 For completeness, it is helpful to know that at the same Planning Committee Meeting on the 16<sup>th</sup> July 2007 that Councillor Tidmarsh made a second declaration in relation to Planning Application B/2007/0573. The declaration was “one of the objectors to the application is a friend and is a member of the Local Conservative Association”. I have considered whether Councillor Tidmarsh could have confused the two applications when making his declarations as had been surmised in the referral to the Standards Board for England.
- 6.3 The details in relation to the disputed declaration centre on Planning Application (B/2007/0498). The Applicant, Mr. Naveed, the owner of the Cross Roads Garage Kidderminster Road, Wood Cote, sought retrospective permission as previously granted planning application had been exceeded. The extent of the unauthorised works resulted in the property benefiting from a greater first floor area, including an increase in the height of the roof and the formation of a first floor level. In the agenda, **(Appendix A)** full details can be seen as to the extent of the works undertaken in excess of the previous permission granted.
- 6.4 The owner of the neighbouring business, Mr. Narang, opposed the application. His business “Country Forge” is situated on the same site as the application site, Cross Roads Garage. There are no other notable businesses on the site.
- 6.5 Prior to the Planning Committee meeting on the 16<sup>th</sup> July 2007, Councillor Tidmarsh (and other Members) received the details of the matters to be considered. This included details of the application and a plan/map of the site. In addition a site visit took place and Councillor Tidmarsh attended and viewed the site.
- 6.6 The declaration made by Councillor Tidmarsh in relation to Planning Application B/2007/0498 was that “The owner of the property the subject of the application is a friend”.

- 6.7 Thus the first issue is whether Councillor Tidmarsh had a personal interest in the Planning Application by virtue of the fact he knew the applicant, Mr. Naveed.
- 6.8 The relevant test to be applied is in paragraph 8(1) of the Code of Conduct and is set out in paragraph 2(i) above ie whether the decision by the Planning Committee on the Planning Application might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area, the well being or financial position of Mr. Naveed, Councillor Tidmarsh's friend.
- 6.9 In discussion with Councillor Tidmarsh it became apparent that he had made a mistake in the personal interest declaration made as he believed that the person who was making the application was the owner of the gate company, Country Forge. He further believed that both the gate business (Country Forge) and the garage business (Cross Roads Garage) were owned by the same person and therefore he made the application in the terms recorded.
- 6.10 Councillor Tidmarsh stated that he had purchased a set of gates approximately 12 – 15 years ago from a gentleman who had a business in Blackwell. Councillor Tidmarsh recalls the transaction because of the level of hospitality afforded to him and his wife.
- Some years later Councillor Tidmarsh noticed that the gate business (now called Country Forge) had relocated to its present location on the Kidderminster Road. As this road is used regularly by Councillor Tidmarsh he noted its position although did attend or visit the premises.
- 6.11 I have been able to establish from Mr. Narang the owner of Country Forge, that the business relocated in May 1998 and further that his records show a business transaction with Mr. J Tidmarsh, in excess of 12 years ago. **(Appendix I).**
- 6.12 From my meetings and discussions with Councillor Tidmarsh **(Appendix F,G,H)** and the statement provided in advance of that meeting **(Appendix E)**, it is apparent that in addition to the one business transaction, that Councillor Tidmarsh had only a further two chance meetings with Mr. Narang, one at a garden centre and another at a Conservative Party social event. The last of which was approximately 10 years ago and possibly prior to Councillor Tidmarsh becoming a Councillor.
- 6.13 I am satisfied that other than the one business transaction and the two social meetings with Mr. Narang that Councillor Tidmarsh has had no other dealings with Mr. Narang or his business.

- 6.14 That being said I am equally satisfied that Councillor Tidmarsh has had no dealing, business or social with Mr. Naveed, the Applicant. This is based on the fact that it was Mr. Naveed who contacted the Council to state that he was at the Planning Committee Meeting on the 16<sup>th</sup> July 2007, he heard the declaration made and refuted any suggestion that he knew Councillor Tidmarsh. He further stated that he believed that Councillor Tidmarsh knew the objector Mr. Narang the owner of Country Forge.
- 6.15 It was Mr. Naveed's comments that lead to the matter being referred to the Standards Board for England.
- 6.16 I have considered why it was that Councillor Tidmarsh made such a mistake when making the personal interest declaration in relation to Planning Application B/2007/0498. The information in relation to this comes from my discussions with him as detailed in the meeting notes at **Appendix F, G, H.**
- 6.17 Councillor Tidmarsh believed that the two business premises were one and the same. He thought from the site visit that the two properties were the same entity, from that his thought process was that the gate business (Country Forge and the garage business (Cross Roads Garage) were part of the same enterprise/business. This was founded on the fact that the two businesses were on the same site.
- 6.18 It was put to Councillor Tidmarsh that if the two businesses were one and the same, who would be objecting to the application? The location of the businesses is set some way from any other residential or business premises but clearly someone was raising objection.
- 6.19 Whilst suggesting that it may have been the café situated between the two businesses, it was clear that Councillor Tidmarsh had neither given appropriate thought to the parties involved at the time of making his declaration nor when considering the subsequent planning application.
- 6.20 I am satisfied that the identity of the parties and relevant information was made available in advance of, and during the Planning Committee Meeting. In addition to the site visit, where I believe the position would have been clear, plans and details of the application were made available with sufficient information to enable any Member to consider whether they should make a declaration.
- 6.21 Significantly, in this matter, both the Applicant and the Objector had agents to speak on their behalf at the Planning Committee Meeting on the 16<sup>th</sup> July 2007. I have considered the recording of the meeting and both agents' clearly state their client's details; specifically Mr. Vicks addressed the Planning Committee on behalf of the Objector Mr. Narang and he refers to the Country Forge premises.



- 6.22 I am therefore satisfied that Councillor Tidmarsh had every opportunity to identify the parties in this matter and that he failed to do so.
- 6.23 Councillor Tidmarsh accepts that he had given insufficient regard to the personalities involved in this particular application. He concedes that he had been considering the overall picture and his mind had been preoccupied with trying to find an amicable solution. The consequence of this oversight resulted in an incorrect declaration being made.
- 6.24 I conclude from all of the relevant factors that the declaration made was incorrect.
- 6.25 I am satisfied that the supposition made at the point of referral to the Standards Board for England that Councillor Tidmarsh may have confused the two declarations made at the meeting, is wrong. I find that Councillor Tidmarsh made the declaration believing it to be correct at the time and further that having now addressed his mind to the personalities involved in the planning application he also accepts that the declaration was inaccurate.
- 6.26 I am satisfied that the declaration made was incorrect and should have related to Mr. Narang the objector rather than Mr. Naveed the applicant. It must therefore follow that Councillor Tidmarsh has breached the Code of Conduct in making an incorrect declaration.

(ii) Whether the interest declared should have been a prejudicial interest.

- 6.27 The second part of the allegation is whether Councillor Tidmarsh' personal interest was also a prejudicial interest. The test to be applied is to be found at paragraph 10 (1) of the Code of Conduct set out fully at paragraph 2(ii) above. Namely that the personal interest was one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it was likely to prejudice Councillor Tidmarsh's judgement of the public interest.
- 6.28 In order to apply this test I have firstly considered the aspects of the personal interest test. There is a simple chain of reasoning to follow, in that a prejudicial interest must always be a personal interest. There cannot be a prejudicial interest unless a personal interest has first been established.
- 6.29 The relevant part of the Code of Conduct is to be found at paragraph 8 (1) of the Code of Conduct. Thus the first issue is whether Councillor Tidmarsh had

a personal interest in the Planning Application by virtue of the fact he knew the Applicant. The relevant test to be applied is that in paragraph 8(1) of the Code of Conduct set out in paragraph 2(i) above ie whether the decision by the Planning Committee on the Planning Application might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area, the well being or financial position of himself, a relative or a friend.

6.30 In light of my reasoning and findings at 6 (i) of this report, to fully explore the allegation I find it necessary to apply the test at 8(1) and 10 (1) to both the declaration actually made and secondly to the declaration that should have been made.

(i) The declaration actually made.

6.31 The test to be applied is whether the decision by the Planning Committee on the Planning Application might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayer, or inhabitants of the authority's area, the well being or financial position of Mr. Naveed (Applicant and owner of Cross Roads Garage).

6.32 The declaration actually made refers to Mr. Naveed as a "friend" thus, would his well being or financial position have been affected to a greater extent than other council taxpayers.

6.33 The starting point must be whether Mr. Naveed could be classed as a friend.

6.34 In light of my finding that Councillor Tidmarsh mistakenly named Mr. Naveed in the declaration and my findings at paragraph 6(i) that I am satisfied that Councillor Tidmarsh has not had any dealings business or otherwise I conclude that that no such relationship existed between the two parties. This must be a correct assertion having regard to Mr. Naveed's contact with the Council to state that he did not know Councillor Tidmarsh.

6.35 Thus Mr. Naveed's well being or financial position could not be affected as he did not have a relationship that amounted to a friendship.

(ii) The declaration that Councillor Tidmarsh intended to make.

6.36 The same test is applicable in relation to Mr. Narang. It had been Councillor Tidmarsh's intention to make a declaration in relation to the person he had purchased his gates from. This clearly is Mr. Narang the objector to the planning application and owner of Country Forge.

- 6.37 Again I start with assessing the relationship between Councillor Tidmarsh and Mr. Narang.
- 6.38 I am satisfied that there have only been a total of three occasions when the two parties have met. The first, a business transaction, and the remaining two chance meetings.
- 6.39 I have had regard to the length of time since there has been any contact between the two parties. From both my meeting with Councillor Tidmarsh and the limited information provided by Mr. Narang, **(see Appendix E,F,G,H and I)** I am satisfied that the first contact was between 12 – 15 years ago and the most recent contact approximately 10 years ago.
- 6.40 I am mindful of the fact that Councillor Tidmarsh became a Councillor about 10 years ago and as such certainly the first contact he had with Mr. Narang would have been prior to this and it is likely that the last contact was also prior to him becoming a Councillor.
- 6.41 There is no definition of “friend” provided within the Code, and clearly each case must be considered upon its own merits.
- 6.42 I have sort guidance from the Case Review number one volume one, which specifically deals with “what is a friend”. It states “a friend can be defined as someone well known to another and regarded with liking, affection, and loyalty.” Specifically, “a closer relationship is implied here rather than mere acquaintance”.
- 6.43 The friendship should be established by the actual relationship existing between two people. Thus, I repeat that each case must be determined upon its own merits.
- 6.44 Some further guidance is provided within the Case Review and it is suggested that questions to be considered when establishing if a friendship exists are:
- How many times do the two people meet?
  - Where do they meet?
  - Do they regularly attend the same social events?
  - Do they know each other’s families?
  - Do they visit one another’s homes?
  - Are they close or connected in other ways?
- 6.45 I have applied these general principles to the specific facts of this investigation, ie that there have only ever been three meetings and the most recent of which was ten years ago.

- 6.46 I am satisfied that these meetings were of such an insignificant nature and so long ago that for the purposes of this investigation no such “friendship” exists.
- 6.47 However, to follow the allegation through to its logical conclusion, I have considered what my findings would have been if I had found a friendship did exist.
- 6.48 I have applied the test as detailed at paragraph 10 (1) of the Code of Conduct that a prejudicial interest exists if “a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest”.
- 6.49 The relevant facts that need to be considered relate to the information available following the collation of evidence from this investigation. Of significance is the relationship between Councillor Tidmarsh and Mr. Narang, as dealt with above, and also the comments made at the Planning Committee Meeting on 16<sup>th</sup> July 2007, which are now in context following the meetings held with Councillor Tidmarsh.
- 6.50 Dealing with those comments briefly, it was suggested by Councillor Tidmarsh that the building should be allowed to stand but that the Applicant pay compensation to those who would suffer a loss of amenity.
- 6.51 In Councillor Tidmarsh’s mind such a suggestion was made simply to resolve an otherwise impossible situation. The idea put before the committee, (and clearly and properly rejected) would have been of advantage to Mr. Naveed, the Applicant, because his building would remain untouched, and an advantage to all other parties who would be compensated for any loss of amenity.
- 6.52 Therefore, I conclude that even if a friendship was established between Councillor Tidmarsh and Mr. Naveed, upon the evidence provided I do not believe that a member of the public, seized of all of the relevant facts, would view Councillor Tidmarsh’s personal interest as being so significant that it is likely to prejudice his judgement of the public interest.
- (iii) The allegation that Councillor Tidmarsh sought compensation for a friend who had a business which lies adjacent to the application site.
- 6.53 The final part of the allegation is whether Councillor Tidmarsh sought compensation for a friend who had a business which lies adjacent to the application site.

- 6.54 In considering whether Councillor Tidmarsh used his position as a member improperly I have referred to the Code of Conduct – General Obligations paragraph 5 (a) (see paragraph 2 (iii) above) which states that “a member must not in his official capacity or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person an advantage or disadvantage”.
- 6.55 The circumstances that lead to this part of the allegation specifically relate to comments made by Councillor Tidmarsh at the Planning Committee Meeting on the 16<sup>th</sup> July 2007 when Planning Application B/2007/0498 was being considered.
- 6.56 Both the Applicant and the Objector had agents orally set out their points of view and it remained the task of the Members to debate the arguments.
- 6.57 Councillor Tidmarsh made the following comments at the meeting.

“I just wonder how the developer can interpret so freely, the planning approval given to him and I am not favouring approval for this, I am favouring the retention of the building as it is. Despite the fact it’s in the centre of the Green Belt, but with a very very substantial penalty and compensation to the other injured parties.”

The Head of Planning immediately responded:

“Don’t think you can do that, you’ve got to keep it in planning terms”.

Despite this clear advice Councillor Tidmarsh a little time later again made the suggestion that

“Perhaps there are no facilities to enable some punishment to be levied on the developer. Could it be possible for the Head of Planning to act as a negotiator and if it was possible for some agreed compensation acceptable to the Council and to the other injured party, if we could defer the decision that seems to me probably the most sensible solution.”

Following Councillor Tidmarsh’s comments he was again told that what he was suggesting was inappropriate, this time it was the Chairman of the meeting who commented that

“I’m afraid you can’t do that Councillor Tidmarsh, it’s, they’ve contravened the Planning Approval that was originally given...”

- 6.58 The test to be applied is whether when making his comments Councillor Tidmarsh acted improperly.

- 6.59 The term “improperly” is not defined within the Code of Conduct, although there is some assistance provided by Standards Board for England Case Review number 1 which states “a member’s conduct would be improper if he or she were to use their public position in order to further the private interests, either of themselves or friends...to the detriment of the public interest”.
- 6.60 I have taken careful note of Councillor Tidmarsh’s intentions as described to me during the meetings and discussions we had and which are documented at **Appendix F, G, H**.
- 6.61 I have also considered carefully the recording of the meeting and actual comments made by the relevant parties. (**Appendix D**).
- 6.62 It is now clear to me following my discussions with Councillor Tidmarsh that he was suggesting that the disputed application should not be resolved there and then, but the matter be put off to another Planning committee and in the meantime be placed in the hands of the Head of Planning.
- 6.63 Councillor Tidmarsh’s intention was that a round table discussion, mediated by the Head of Planning, could take place between the aggrieved parties to see if some common ground could be found. Thereafter Councillor Tidmarsh thought that the building should be allowed to remain but that the Applicant pay compensation to all those parties who suffered loss of amenity this would include Mr. Narang the owner of Country Forge. Councillor Tidmarsh felt that there was a chance that the parties could walk away from the situation satisfied with the outcome and as “friends rather than enemies”.
- 6.64 The advantage, as Councillor Tidmarsh saw it, was that an appeal could be avoided as he felt that the Council’s chances of success were slight, as he believed that the planning breach would be seen to be a minor one. He felt that all an appeal would achieve was time and expense for all parties including the Council.
- 6.65 I accept Councillor Tidmarsh’s intentions as he detailed them to me, although I do not think that he made his position as clear at the Planning Committee Meeting on the 16<sup>th</sup> July 2007. I understand the intervention of both the Chairman of the meeting and the Head of Planning who could quite properly interpret Councillor Tidmarsh’s comments as outside the powers available to the Members.
- 6.66 As I have already found at paragraph 6(i) I am entirely satisfied that the initial declaration was incorrect. In an attempt to fully investigate this matter I will consider this part of the allegation in two parts. Firstly, in relation to the declaration actually given and secondly in relation to the declaration that Councillor Tidmarsh intended to give.

(i) The declaration given ie that Councillor Tidmarsh knew the Applicant Mr. Naveed.

- 6.67 For a breach to have occurred Mr. Naveed's would have needed to have gained some advantage from Councillor Tidmarsh's suggestion. In applying the test, as set out at paragraph 6.59 above Councillor Tidmarsh's conduct would be "improper" if it resulted in Mr. Naveed gaining an advantage or Mr Narang a disadvantage.
- 6.68 It is fair to say that Councillor Tidmarsh's conduct would have been of an advantage to Mr. Naveed as the suggestion was that the building remains. This would be of a financial advantage to Mr. Naveed as he would not only avoid construction costs in removal of the offending part of the building but also the valuation of the building would increase because of the increased size of the structure.
- 6.69 The converse of this rational is that to secure the retention of the building Councillor Tidmarsh required compensation to be paid to "the other injured parties". This of course would have included Mr. Narang who strongly objected to the buildings increased size and who therefore would need to have been significantly compensated. Councillor Tidmarsh also intended the Council to have an advantage in that costs of a Planning Inquiry would be avoided if an amicable solution could be found.
- 6.70 I therefore see a balance of advantages and disadvantages for Mr. Naveed in the suggestion made by Councillor Tidmarsh, and as such do not see that Councillor Tidmarsh used his position to further the private interest of Mr. Naveed. Thus I do not find that his conduct was "improper" nor that there was a detriment of public interest

(ii) The declaration that should have been given ie that Councillor Tidmarsh knew the Objector Mr. Narang.

- 6.71 The same considerations apply in this scenario as above. Councillor Tidmarsh's intentions are previously outlined and I now apply the test to consider whether Mr. Narang the objector gained any advantage or Mr. Naveed any disadvantage, from the suggestion made by Councillor Tidmarsh.
- 6.72 Specifically when making his comments at the meeting Councillor Tidmarsh referred to "...with a very very substantial penalty and compensation to the other injured parties".

- 6.73 Mr. Narang clearly had a very strong objection to the Planning Application, as indicated by the fact that he had an agent attend and speak very eloquently on his behalf. This in itself indicates the level of objection raised. Thus, do the comments made by Councillor Tidmarsh provide Mr. Narang with an advantage or disadvantage?
- 6.74 Applying the test as considered in Standards Board for England Case Review number one, does Councillor Tidmarsh use his position to further the private interest of Mr. Narang to the detriment of the public interest.
- 6.75 The principle is much as it is for Mr. Naveed. The disadvantage to Mr. Narang in the suggestions made is that the building remains although its existence may not have a detrimental effect upon the overall value of Mr. Narang's business. The advantage to him is, to use Councillor Tidmarsh's words "...very very substantial penalty and compensation..."
- 6.76 Whilst I do not see the advantages and disadvantages for Mr. Narang balanced quite as equally as for Mr. Naveed I do not find that the private interests of Mr. Narang were furthered to the detriment of the public interest. Thus I do not find Councillor Tidmarsh's conduct improper.
- 6.77 I would conclude that the comments of Councillor Tidmarsh were clearly misconceived as what he suggested was ultra vires, as pointed out by the Head of Planning, the Members decisions must remain within "planning terms".
- 6.78 I am satisfied that Councillor Tidmarsh failed to make his thoughts and ideas as clear as they should have been and his comments whilst inappropriate and misconceived do not in my opinion amount to "improper conduct".

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

- 7.1 With regard to the first part of the allegation that Councillor Tidmarsh failed to correctly declare a personal interest in relation to Planning Application B/2007/0498 a matter considered at the Planning Committee Meeting held on 16th July 2007, I find as follows:
- 7.2 Councillor Tidmarsh has admitted in his meetings with me that he failed to correctly declare an interest. He further accepts that this amounts to a breach of the Code of Conduct as he failed to comply with paragraph 8(1) of the Code.



- 7.3 For the reasons set out in paragraph 6(i) above I find that Councillor Tidmarsh failed to comply with paragraph 8(1) of the Code and therefore I find a breach of the Code of Conduct.
- 7.4 With regard to the second part of the allegation should Councillor Tidmarsh have declared a prejudicial interest in relation to Planning Application B2007/0498 I find as follows:
- 7.5 For the reasons set out in paragraphs 6(ii) above I do not find that Councillor Tidmarsh breached the Code of Conduct in failing to declare a prejudicial interest.
- 7.6 In light of the evidence I have collated in the course of this investigation not only am I satisfied that there was no need for Councillor Tidmarsh to make a prejudicial interest declaration, I am satisfied that in light of the very limited contact he had with Mr. Narang (objector) and the fact that he had never had any contact with Mr. Naveed (applicant) that there was no need for him to have made any declaration.
- 7.7 With regard to the third and final part of the allegation, that Councillor Tidmarsh acted improperly at the Planning Committee Meeting on 16<sup>th</sup> July 2007 in seeking compensation for a friend. I find as follows:
- 7.8 For the reasons set out at paragraph 6 (iii) and also having regard to my observation at paragraph 6(i) I am satisfied that Councillor Tidmarsh's comments made at the Planning Committee Meeting on the 16<sup>th</sup> July 2007, whilst meant with good intentions, were misguided and inappropriate. Clearly what was suggested by Councillor Tidmarsh was outside the remit of the Members.
- 7.9 Whilst the comments were misguided I do not find that Councillor Tidmarsh acted improperly. I do not find sufficient evidence to support that a breach of the Code of Conduct occurred.

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

**This the final report prepared by Vanessa Brown which represents the findings and conclusions of the investigation into an allegation made against Councillor John Tidmarsh. This final report will be presented to the Standards Committee.**

**[ORIGINAL DOCUMENT SIGNED BY VANESSA BROWN ON 27TH MARCH 2008]**

**Signed**

**Dated**

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**BROMSGROVE DISTRICT COUNCIL**

**MEETING OF THE PLANNING COMMITTEE**

**MONDAY, 16TH JULY, 2007, AT 2.00 PM**

**COUNCIL CHAMBER, THE COUNCIL HOUSE, BURCOT LANE, BROMSGROVE**

MEMBERS: Councillors E. C. Tibby (Chairman), G. N. Denaro (Vice-Chairman), Mrs. J. M. Boswell, S. R. Colella, Mrs. J. Dyer M.B.E., D. Hancox, B. Lewis F.CMI, Mrs. J. D. Luck, E. J. Murray, S. R. Peters, C. R. Scurrall, P. J. Whittaker and C. J. K. Wilson

(NOTE: Updates to the Reports of the Head of Planning and Environment Services will be available in the Council Chamber one hour prior to Meeting. You are advised to arrive in advance of the start of the Meeting to allow yourself sufficient time to read the updates.)

**AGENDA**

1. Apologies for absence and notification of substitutes
2. To confirm the accuracy of the Minutes of last Meeting (Pages 1 - 6)
3. Declaration of Interests
4. B/2007/0263-LDO - Kitchen extension, garage conversion to utility/WC, bedroom/en-suite extension (re-submission of B/2006/1094) - 5 Sandhills Lane, Barnt Green - Mr. K. Neale (Pages 7 - 10)
5. B/2007/0356-DMB - Industrial and warehouse units with use classes B1(a) and (c), B2 and B8 with associated access, parking, service yards and landscaping: outline - Part Cofton Centre, Groveley Lane, Cofton Hackett - Redman Heenan Properties Limited (Pages 11 - 20)

6. B/2007/0392-DMB - Single storey laboratory classroom - Bromsgrove School, Worcester Road, Bromsgrove - Bromsgrove School (Pages 21 - 24)
7. B/2007/0411-DMB - Erection of six no. commercial units for B1/B2/B8 use - Plot 8, Saxon Business Park, Hanbury Road, Stoke Prior - Mongoose Limited (Pages 25 - 28)
8. B/2007/0433-HLP - Erection of three storey building comprising retail use in ground floor and 22 apartments above and associated works - At Land at junction of new Road/Beverley Road, Rubery - Rubery Development Limited (Pages 29 - 46)
9. B/2007/0454-SW - Proposed redevelopment to provide 12 x 1 bedroom apartments (resubmission of B/2006/1405) - 34 and adjoining land, Rock Hill, Bromsgrove - Elmsvyne Homes Ltd. (Pages 47 - 52)
10. B/2007/0456-SW - Erection of 3 Stables, feed store and 1 tack room Pool House Farm, Hockley Brook Lane, Belbroughton - Mr. and Mrs. Halls (Pages 53 - 58)
11. B/2007/0466-DMB - Demolition of existing structures and erection of 51 apartments with associated access and car-parking provision: resubmission of B/2006/1048 - Land at School Drive, Bromsgrove - Persimmon Homes (South Midlands) Limited (Pages 59 - 84)
12. B/2007/0496-DMB - Change of use to residential care home (Class C2), extensions and erection of replacement structure - The Lodge, West Hills House, West Hills Lane, Alvechurch - Castlebeck Care (Teesdale) Limited (Pages 85 - 92)
13. B/2007/0498-DI - Cross Roads Garage, Kidderminster Road, Woodcote Green - Amended application - Proposed car showroom and shop - R. D. Skidmore (Pages 93 - 96)
14. B/2007/0573-LDO - Change of use from dwelling to home for people with learning difficulties - 47 Wellington Road, Bromsgrove - Mr. K. Thakqar (Pages 97 - 108)
15. Tree Preservation Order (No.1) 2007 - 47 Wildmoor Lane, Catshill, Bromsgrove (Pages 109 - 118)
16. Tree Preservation Order (No. 2) 2007 - 18 and 16a Littleheath Lane, Lickey End, Bromsgrove (Pages 119 - 122)
17. Appeal Decisions (Pages 123 - 124)

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

K. DICKS  
Chief Executive

The Council House  
Burcot Lane  
BROMSGROVE  
Worcestershire  
B60 1AA

16th July 2007



Speakers

Agenda Item 11



Name of Applicant  
Type of Certificate

Proposal

Map/Plan Policy  
Plan. Ref Expiry Date

Mr. N. Naveed 'A'	Cross Roads Garage, Kidderminster Road, Woodcote Green - Amended application - Proposed car showroom and shop (as amended by plans received on: 02/07/2007)	Green Belt	B/2007/0498 25/07/2007
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RECOMMENDATION:

- (i) that permission be REFUSED and;
- (ii) Members should authorise appropriate action to secure the removal of the unauthorised structures and delegate authority to the Head of Planning and Environmental Services in consultation with the Head of Legal and Democratic Services to select the most appropriate course of action.

Consultations

Dodford PC  
V.C (HP)  
ENG  
FC  
CEHO  
LP

Consulted on: 01/06/2007. No objection: 15/06/2007.  
 Consulted 01/06/2007. No response to date.  
 Consulted 01/06/2007. No objection received on: 21/06/2007 subject to the satisfactory approval by the Local Planning Authority for the disposal of storm water.  
 Consulted 01/06/2007. No response to date.  
 Consulted 01/06/2007. No objection: 20/06/2007.  
 Consulted 01/06/2007. Objection received on: 14/06/2007 summarised as follows: -

The proposal would be inappropriate development in the Green Belt.  
 The proposal would be in an unsustainable location.  
 Consulted on: 05/07/2007. No response to date.  
 2 letters posted on: 01/06/2007 (expires on: 22/06/2007).  
 Site notice posted on: 08/06/2007 (expires on: 09/06/2007).  
 Objection received on: 20/06/2007, summarised as follows:

- Concerned about the position of the new window which would be approximately 4.5 metres from our showroom window.
- The stair case opens into our yard.
- My roof had to be down sized before permission was granted.
- 11 car parking spaces as opposed to 6 on the previous permission will greatly restrict movement of traffic for the site which serves 3 business premises.
- The first application was refused.
- The second application was recommended for refusal, then approved.
- I have objected to all applications and note that this has not been recognised for the approval of the second application.
- The proposal would result in a loss of light and air.

### The site and its surroundings

The application site lies on the north side of the Kidderminster Road at the junction with Fockbury Road, Dodford and lies within the designated Green Belt.

### Proposal

This is a retrospective application for an amended application ref. B/2004/0890 for a proposed car showroom and village shop which was granted permission by Members. This amended scheme refers to the implementation of a greater first floor area, including raising the height of the roof and the formation of a first floor level.

### Relevant Policies

WMSS QE3  
WCSP SD.2, SD.3, SD.4, DS.5, SD.6, SD.7, SD.8, SD.9, D.28, D.35, D.38, D.39, T.1  
BDLP DS1, DS2, DS3, DS6, DS13, TR8  
Others PPS1, PPG2, PPS6, PPS7, PPS13

### Relevant Planning History

B/2004/0890 Car showroom and village shop - resubmission of B/2003/0932. Granted: 14.10.2004.  
B/2003/0932 Proposed car showroom, work shop and village shop. Refused: 17/11/2003.  
B/2002/0812 Alternative showroom and workshop with workshop. Granted: 03/10/2002.  
B/2002/0386 Alternative showroom and workshop with toilets. Withdrawn: 08/05/2002.  
/2000/0189 Projecting icons and shop sign. Advertisement Consent Granted: 19/04/2002.

### Notes and Green Belt Policy

The main issue to take into consideration is whether the impact of the amended scheme would entail any additional or significant harm to the openness/ visual amenity of the Green Belt in relation to the previous approved scheme which would be a 'fall-back' position for the applicant. If it is considered that greater harm would be caused then the proposal would, by definition constitute inappropriate development in the Green Belt and as such, it would be necessary to establish whether any 'very special circumstances' exist to clearly outweigh the harm caused.

### Fundamental differences between the two applications

For the purpose of assessing the impact between the previous approved scheme B/2004/0890 and this amended scheme B/2007/0498, I consider that a table format distinguishing the differences between the two should be used: -



Existing permission B/2004/0890	Proposed amendments B/2007/0498
<p>Height</p> <p>Front elevation taken from central position to highest part of roof 7.5 metres.</p> <p>Rear elevation taken from central position to highest part of roof 7.5 metres.</p>	<p>Height</p> <p>Front elevation taken from central position to highest part of roof 8.3 metres.</p> <p>Rear elevation taken from central position to highest part of roof 8.3 metres.</p>
<p>Side elevation (East) small pitched roof suitable for the housing of the mezzanine floor.</p>	<p>Side elevation (East) This elevation would involve the continuation of the existing roof line to cater for the proposed first floor provision.</p>
<p>Approximate floor space area of mezzanine floor: 109m<sup>2</sup></p>	<p>Total proposed first floor: 256m<sup>2</sup>.</p> <p>Therefore if the floor space of the mezzanine floor is deducted, a total additional floor space area of approximately 151m<sup>2</sup> would be created.</p>

### Summary

The previous building which was granted permission B/2004/0890 was predominantly a single storey building with a comparatively small, first floor mezzanine floor. This current scheme would involve infilling the existing space at ground floor level to create a significantly larger overall building and first floor level. Therefore I consider that the proposal would result in a building which would be of a greater, size, scale and bulky appearance which would be exacerbated further by its highly prominent corner position in the street scene and by definition the proposal would constitute an inappropriate development in the Green Belt. No 'very special circumstances' have been put forward to outweigh the harm caused and for the following reasons I recommend that permission be refused.

**RECOMMENDATION:** that permission be **REFUSED**:-

- (i) The retrospective scheme would result in a building which would be of a greater, size, scale and bulky appearance which would be exacerbated further by its highly prominent corner position in the street scene. Therefore by definition the proposal would constitute an inappropriate form of development which would unduly harm the openness and visual amenity of the Green Belt. No 'very special circumstances' have been put forward to outweigh the harm caused and for the following reasons the proposal would contravene policy QE3 of the West Midlands Spatial Strategy, policies D.38, D.39 of the Worcestershire County Structure Plan, policies DS1, DS2, DS3, DS6 and DS13 of the Bromsgrove District Local Plan and the general provisions of PPG2 - Green Belts.
- (ii) Members should authorise appropriate action to secure the removal of the unauthorised structures and delegate authority to the Head of Planning and Environmental Services in consultation with the Head of Legal and Democratic Services to select the most appropriate course of action.



Bromsgrove District Council  
 Planning Committee

Committee Updates  
 16 July 2007

Application Ref No	Update
B/2007/0263/LD	<p>Applicant has written directly to Members setting out his views.</p> <ul style="list-style-type: none"> <li>• A 2m gap is not practical due to the relationship of the dwelling to the neighbour. SPG1 states that greater distances than 1m are required for larger plots and this is not the case with the application site.</li> <li>• We have amended the scheme and a 1m gap will be retained. SPG1 refers to gaps and not to overhanging eaves etc.</li> <li>• The resubmission has no greater set back or set down as SPG1 does not state what distance is required but refers to subordination. The set back matches my neighbours.</li> <li>• Do not appreciate 'spirit' of policy; applicant used SPG1 as a guide. Suggests that spirit is to enable occupiers to meet their changing needs.</li> <li>• Considers street scene to be 'eclectic' and proposal will not be harmful. Concerns over delays already encountered with proposal.</li> </ul>
B/2007/0356/DMB	<p>Birmingham City Council – additional views received 06.07.07:                      Reinforcement of previous views</p> <p>AWM – views received 09.07.07:</p> <ul style="list-style-type: none"> <li>• This is an iconic site with a politically sensitive history which should be subject to high standards of design throughout when new development is proposed</li> <li>• Advantage West Midlands offers it support to the principle of development on this site</li> </ul> <p>WCC(HP) – views received 13.07.07:</p> <ul style="list-style-type: none"> <li>• The comments have now been received from the Traffic Assessment (TA) Officer. This Officer has concluded that the application is acceptable.</li> </ul>

	<p>the LAAP to have a material weight when deciding the Cofton Centre proposals.</p> <p>Although not directly consulted the HA is aware of this application and considers the application does not adhere to some of the key principles within the emerging LAAP. Attention to Principle 2 and principle 13.</p> <p>The HA want to ensure that the development at Longbridge is assessed holistically at this key site in the West Midlands. Circular 2/2007 advises that where multiple development proposals will have a combined impact on the Strategic Highway network then proportional investment may be required. The HA raises objections to the scheme which may be considered with wider discussions to ensure that transport implications are fully assessed.</p> <p>Given the above</p> <p>Minded to Refuse (based on HA direction TR110)</p> <p>Recommendation the determination of the application be <b>DELEGATED</b> to the Head of Head and Environment Services upon the expiry of the publicity period of 19<sup>th</sup> July 2007</p>
B/2007/0411/DB	<p>Clarification that the views of WCCHP have been received and are as reported in the consultation section.</p> <p>Conservation Officers verbal comments 16.07.07. – Concern over quality of design being proposed. But considers enhanced landscaping will off set any harm to setting of Conservation Area.</p>
B/2007/0454/SW	<p><b>RECOMMENDATION</b> should read as follows:  Subject to the applicants entering into a suitable legal mechanism covering contributions towards the off site provision of play space and the revocation of application B2003/1004 that the determination of the application be <b>DELEGATED</b> to the head of Planning and Environment Services</p> <p>Under other issues Please also note:  Members will note the reference to the previous extant</p>

	<p>per annum) can be met through 'Intermediate Housing' which includes shared ownership.</p> <p>Amended Water Vole survey received 06.07.07:</p> <ul style="list-style-type: none"> <li>• Following discussions with the WWT and the Council's Natural Environment, the depths of the proposed pools have been changed from 30cm to 40cm. This is reflected in the amended report.</li> </ul> <p>Amend description to: (as amended by Water Vole Survey received 06.07.07)</p>
B/2007/0496/DMB	<p>Amended plans received 06.07.07 further reducing the scale of the proposed activity room</p> <p>The revised structure has an open porch aspect with glazing to the front elevation and dimensions 5.3 metres by 6.6 and a height of 5.7 metres, with a resultant floor area of 34.98 square metres (previously 35 square metres)</p> <p>Amend description to: (as amended by plans received 06.07.07)</p> <p>Email received from applicant's Agent 09.07.07: Confirmation that notwithstanding the notation on the submitted floor plans, Ref: 06D22b, the activity room is to be connected to the existing Lodge by a path only. The reference to a corridor is an error.</p>
B/2007/0498/DI	<p>EDO comment received on: 05/70/2007 strongly supporting this application.</p> <p>EHO comment received on: 27/06/2007, recommends that conditions should be attached to any planning permission granted as the site historically comprised a petrol filling station and the proposal involves disturbance of the ground which is potentially contaminated.</p> <p>WCC (HP) comment received: 11/07/2007 Recommends that the permission be refused as the applicant proposes to introduce a soakaway system in the Public Highway. However the matter of drainage could be addressed through the use of an appropriate condition.</p>
B/2007/0573/LD	<p>Two additional neighbour objection letters received largely reflecting other residents' concerns, as stated in the Committee report.</p>



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Minutes - obtained from Intranet.  
(Full set).

Appendix B

**BROMSGROVE DISTRICT COUNCIL**

**MEETING OF THE PLANNING COMMITTEE**

**MONDAY, 16TH JULY 2007**

**PRESENT:** Councillors E. C. Tibby (Chairman), G. N. Denaro (Vice-Chairman), Mrs. J. M. Boswell, Mrs. M. Bunker, Mrs. J. Dyer M.B.E., B. Lewis F.C.M.I, E. J. Murray, S. R. Peters, C. R. Scurrell, C. J. Tidmarsh (Substitute), P. J. Whittaker and C. J. K. Wilson

**Observers:** Councillor Mrs. C. J. Spencer

**Officers:** Mr. D. Hammond, Mrs. D. Warren, Mr. M. Dunphy, Mrs. H. L. Plant, Mrs. S. Willetts, Mr. R. Sumner and Mr. A. C. Stephens

**32/07 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors D. Hancox and Mrs. J. D. Luck.

**33/07 MINUTES**

The minutes of the meeting of the Planning Committee held on 18th June 2007 were submitted.

**RESOLVED** that the minutes be approved as a correct record.

**34/07 DECLARATION OF INTERESTS**

The following interests were declared in respect of matters to be considered by the Committee:-

<b><u>Member</u></b>	<b><u>Application</u></b>	<b><u>Nature of Interest</u></b>
Councillor Mrs. J. M. Boswell	B/2007/0573	Personal. Knows the vendor of the property which is the subject of the application.
Councillor E. J. Murray	B/2007/0456	Prejudicial. His daughter is in the process of purchasing an area of land adjacent to, or part of the area of land including, the application site. During consideration of the application, Councillor Murray left the room.

<u>Member</u>	<u>Application</u>	<u>Nature of Interest</u>
Councillor C. R. Scurrall	B/2007/0456	Personal. Is a member of Belbroughton Parish Council's Planning Committee which had previously considered the matter.
Councillor C. J. Tidmarsh	B/2007/0498	Personal. The owner of the property the subject of the application is a friend.
Councillor C. J. Tidmarsh	B/2007/0573	Personal. One of the objectors to the application is a friend, and is a member of the local Conservative Association.

35/07 **B/2007/0263-LDO - KITCHEN EXTENSION, GARAGE CONVERSION TO UTILITY/WC, BEDROOM/EN-SUITE EXTENSION (RE-SUBMISSION OF B/2006/1094) - 5 SANDHILLS LANE, BARNT GREEN - MR. K. NEALE**

The Head of Planning and Environment Services reported that the applicant had written to Members of the Committee in support of the scheme. At the invitation of the Chairman, Mr. T. Neale addressed to Committee and spoke in favour of the application.

**RESOLVED** that permission be refused for the reasons referred to on page 9 of the report.

36/07 **B/2007/0356-DMB - INDUSTRIAL AND WAREHOUSE UNITS WITH USE CLASSES B1(A) AND (C), B2 AND B8 WITH ASSOCIATED ACCESS, PARKING, SERVICE YARDS AND LANDSCAPING: OUTLINE - PART COFTON CENTRE, GROVELEY LANE, COFTON HACKETT - REDMAN HEENAN PROPERTIES LIMITED**

The Head of Planning and Environment Services reported the receipt of comments from Birmingham City Council, Advantage West Midlands, Worcestershire County Council's Highways Partnership (Bromsgrove) and the Highways Agency.

He specifically referred to the TR110 Direction issued by the Highways Agency, requesting that the application not be granted for a period of at least six months to allow resolution of highway issues.

At the invitation of the Chairman, Mr. J. Tate, representing the applicant, addressed the Committee and spoke in favour of the proposals.

**RESOLVED** that, upon the expiry of the publicity period on 19th July 2007, the Head of Planning and Environment Services be authorised to refuse the application unless the TR110 Direction is withdrawn by the Highways Agency by 2nd August 2007.

(NOTE: Under section 4, paragraph 16.7 of the Council's Constitution, Councillor S. R. Peters requested that it be recorded that he had abstained from voting on this matter.)



37/07 B/2007/0392-DMB - SINGLE STOREY LABORATORY CLASSROOM - BROMSGROVE SCHOOL, WORCESTER ROAD, BROMSGROVE - BROMSGROVE SCHOOL

RESOLVED that permission be granted subject to the conditions and notes set out or referred to on pages 22 and 23 of the report.

38/07 B/2007/0411-DMB - ERECTION OF SIX NO. COMMERCIAL UNITS FOR B1/B2/B8 USE - PLOT 8, SAXON BUSINESS PARK, HANBURY ROAD, STOKE PRIOR - MONGOOSE LIMITED

The Head of Planning and Environment Services clarified the comments received from Worcestershire County Council's Highways Partnership (Bromsgrove), reported on page 25 of the report, relating to parking spaces, and he also reported the receipt of comments from the Conservation Officer.

RESOLVED that permission be granted subject to the conditions and notes set out or referred to on page 28 of the report.

39/07 B/2007/0433-HLP - ERECTION OF THREE STOREY BUILDING COMPRISING RETAIL USE IN GROUND FLOOR AND 22 APARTMENTS ABOVE AND ASSOCIATED WORKS - AT LAND AT JUNCTION OF NEW ROAD/BEVERLEY ROAD, RUBERY - RUBERY DEVELOPMENT LIMITED

RESOLVED that the Head of Planning and Environment Services be authorised to approve the application subject to the applicant entering into an appropriate legal agreement under Section 106 of the Town and Country Planning Act 1990 to cover financial contributions for the provision of educational and off-site play space facilities, as referred to in the report.

40/07 B/2007/0454-SW - PROPOSED REDEVELOPMENT TO PROVIDE 12 X 1 BEDROOM APARTMENTS (RESUBMISSION OF B/2006/1405) - 34 AND ADJOINING LAND, ROCK HILL, BROMSGROVE - ELMSVYNE HOMES LTD.

The Head of Planning and Environment Services drew Members' attention to a previous outline planning permission relating to the site, under Plan Ref. B/2003/1004, which was required to be revoked in order for the scheme the subject of this application to be approved. He also clarified matters under the 'Other Issues' heading on page 51 of the report.

RESOLVED:

- (a) that, subject to the applicant and/or any other appropriate person(s) undertaking not to claim compensation to which they may be entitled, an Order be made under Section 97 of the Town and Country Planning Act 1990 revoking planning permission ref. B/2003/1004, and
- (b) that the power to approve the application (B/2007/0454) be delegated to the Head of Planning and Environment Services on the taking effect of the Revocation Order, subject to the applicant entering into an appropriate legal agreement under Section 106 of the Town and

Country Planning Act 1990 to cover financial contributions towards the provision of off-site play space, as referred to in the report.

41/07 **B/2007/0456-SW - ERECTION OF 3 STABLES, FEED STORE AND 1 TACK ROOM POOL HOUSE FARM, HOCKLEY BROOK LANE, BELBROUGHTON - MR. AND MRS. HALLS**

The Head of Planning and Environment Services reported the receipt of a letter of objection in respect of the wider development of plots, together with the receipt of comments from the Drainage Engineer.

**RESOLVED** that permission be granted subject to the conditions and notes set out or referred to on pages 56 and 57 of the report, together with the following additional condition:-

4. The disposal of water shall be by means approved by the Local Planning Authority. The approved systems shall be operational before building works commence. Soakaways and land drains are to be provided for the stable block. No direct outfall to any ditch or stream is permissible. Soakaways should also be provided for any hard surfacing / wash-down areas with an additional catch pit system.

42/07 **B/2007/0466-DMB - DEMOLITION OF EXISTING STRUCTURES AND ERECTION OF 51 APARTMENTS WITH ASSOCIATED ACCESS AND CAR-PARKING PROVISION: RESUBMISSION OF B/2006/1048 - LAND AT SCHOOL DRIVE, BROMSGROVE - PERSIMMON HOMES (SOUTH MIDLANDS) LIMITED**

The Head of Planning and Environment Services reported the receipt of correspondence from the applicant, together with the receipt of comments from the Strategic Housing Officer, and the findings of the Water Vole Survey.

**RESOLVED** that, subject to the applicant entering into an appropriate legal mechanism under Section 106 of the Town and Country Planning Act 1990 relating to monetary contributions in respect of:-

- (a) off-site play space provision;
- (b) education provision; and
- (c) highway improvement works and the securing of 29 affordable housing units -

the Director of Planning Services be authorised to approve the application subject to the conditions and notes set out or referred to on pages 77 to 83 of the report.



43/07 B/2007/0496-DMB - CHANGE OF USE TO RESIDENTIAL CARE HOME (CLASS C2), EXTENSIONS AND ERECTION OF REPLACEMENT STRUCTURE - THE LODGE, WAST HILLS HOUSE, WAST HILLS LANE, ALVECHURCH - CASTLEBECK CARE (TEESDALE) LIMITED

The Head of Planning and Environment Services reported that amended plans had been received showing a reduction to the proposed activity room as referred to in the report, together with correspondence from the applicant's agent.

**RESOLVED** that the Head of Planning and Environment Services be authorised to approve the application upon the expiry of the publicity period on 19th July 2007, and subject to any appropriate conditions and/or notes which are considered necessary.

44/07 B/2007/0498-DI - CROSS ROADS GARAGE, KIDDERMINSTER ROAD, WOODCOTE GREEN - AMENDED APPLICATION - PROPOSED CAR SHOWROOM AND SHOP - MR. N. NAVEED

The Head of Planning and Environment Services reported the receipt of comments from the Economic Development Officer, the Environmental Health Officer and Worcestershire County Council's Highways Partnership (Bromsgrove).

At the invitation of the Chairman, Mr. S. Vick addressed the Committee and spoke in opposition to the proposals on behalf of an objector, whilst Mr. R. D. Skidmore spoke in favour, on behalf of the applicant.

**RESOLVED:**

- (a) that permission be refused for the reason referred to on page 95 of the report; and
- (b) that the Head of Planning and Environment Services, in consultation with the Head of Legal, Equalities and Democratic Services, be authorised to proceed with the most appropriate course of enforcement action to remedy the breach of planning control.

(NOTE: Under section 4, paragraph 16.7 of the Council's Constitution, Councillors B. Lewis F.CMI, S. R. Peters and C. J. Tidmarsh requested that it be recorded that they had abstained from voting on this matter.)

45/07 B/2007/0573-LDO - CHANGE OF USE FROM DWELLING TO HOME FOR PEOPLE WITH LEARNING DIFFICULTIES - 47 WELLINGTON ROAD, BROMSGROVE - MR. K. THAKQAR

The Head of Planning and Environment Services reported the receipt of a letter of support, and two additional letters of objection, together with the receipt of comments from the Environmental Health Officer, Worcestershire County Council's Highways Partnership (Bromsgrove) and local ward Member, Councillor G. G. Selway.

At the invitation of the Chairman, Councillor Mrs. C. J. Spencer addressed the Committee and spoke on behalf of local residents against the application, whilst Mrs. P. Earles, agent for the applicant, spoke in favour.

**RESOLVED** that permission be granted subject to the conditions and notes set out or referred to on pages 100 and 101 of the report.

(NOTE: Under section 4, paragraph 16.7 of the Council's Constitution, Councillor Mrs. J. M. Boswell requested that it be recorded that she had abstained from voting on this matter.)

46/07 **TREE PRESERVATION ORDER (NO.1) 2007 - 47 WILDMOOR LANE, CATSHILL, BROMSGROVE**

Consideration was given to a report relating to a temporary Tree Preservation Order which had been made in respect of a number of trees on land at 47 Wildmoor Lane, Catshill, Bromsgrove.

**RESOLVED** that the Bromsgrove District Council Tree Preservation Order (No. 1) 2007 be confirmed without modification.

47/07 **TREE PRESERVATION ORDER (NO. 2) 2007 - 18 AND 16A LITTLEHEATH LANE, LICKEY END, BROMSGROVE**

Consideration was given to a report relating to a temporary Tree Preservation Order which had been made in respect of a number of trees on land at 18 and 16a Littleheath Lane, Lickey End, Bromsgrove.

**RESOLVED** that the Bromsgrove District Council Tree Preservation Order (No. 2) 2007 be confirmed without modification.

48/07 **APPEAL DECISIONS**

The Committee considered a report which detailed the outcome of several planning appeals which had been determined since the last meeting of the Committee.

**RESOLVED** that the contents of the report be noted.

49/07 **PI/2007/00134 - FIELD NO. 3424, LEA END LANE, HOPWOOD, ALVECHURCH**

(The Chairman agreed to the consideration of this item as a matter of urgency because a decision was required thereon before the next meeting of the Committee).

The Head of Planning and Environment Services reported that a breach of planning control had occurred on land located to the south side of Lea End Lane, Hopwood. He stated that the breach consisted of the tipping of soil on to the land for the purposes of creating a moto-cross racing track, changing the use from that of agriculture to a mixed use.

Authority to undertake formal enforcement action was therefore sought in order to seek to remedy the breach of planning control.

**RESOLVED** that the Head of Planning and Environment Services, in consultation with the Head of Legal, Equalities and Democratic Services, be authorised to proceed with the most appropriate course of enforcement action to remedy the breach of planning control.

The meeting closed at 4.15 pm

Chairman

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- Peters - all had ltrs from Crossroads. Garage - clearly shows height has increased. Appearance of bldg not appreciably diff' + has enhanced the finished appearance. Narrative longer but footprint not appreciably larger.
- Scurrell - is in C.B + presumpt' against + have to use. We pushed boundaries when approved prev... applic'. This goes signif further. No uses put forward to spot increase ~~the~~ Agree off rec.
- Jye - When this appl' came last time voted against as was unauthorised entrance to B'gate 2 miles from boundary of town. On St became aware of bulk on RTH side which increases with... ..
- Wilson - Despite disagree re size + measurements, is a big one in town space. Agent said was a compromise in terms height but is bigger. The appl' should have applied to pp. Support off rec.
- Lewis - Was bldg control aware of diversions? Yes..
- Tiamush - ~~How~~ How did this sit arise? How can we interpret so freely pp. Not favouring approval but retaining bldg but strong compass. DTI - cart.
- Lewis - How did bldg get to this stage?
- Tiamush - Can we compensate?
- Scurrell - Can't compensate for loss of the C.B.

Officer rec: 8  
 Against Abstain. 3.

Appendix D

Transcript of the Planning Committee Meeting  
16<sup>th</sup> July 2007

The transcription attached relates to the comments made by Councillor Tidmarsh at the Planning Committee Meeting in relation to Planning Application B/2007/0498.

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Representatives for the Applicant and the Objector made oral statements.

Mr. Naveed was the Applicant and owner of Cross Roads Garage. His representative was Mr. Skidmore.

Mr. Narang was the Objector and the owner of Country Forge. His representative was Mr. Vick,

*Cllr. Tidmarsh*  
I just wonder how the developer can interpret so freely, the planning approval that was given to him and I am not favouring approval for this. I am favouring the retention of the building as it is. Despite the fact it's in the centre of the Green Belt, but with a very, very substantial penalty and compensation to the other injured parties

**Someone speaking but can't make out what is being said**

*Head of Planning*  
Don't think you can do that, you've got to keep it in planning terms

**Someone speaking but can't make out what is being said**

Yes, yes

Can you put your mike on so the public can hear ?

I was quite impressed when I saw the front of this building, it's got the makings of a prestigious building

**Someone speaking but can't make out what is being said**

Maybe, but I'm just talking about the building. The, I cannot for the life of me understand how, as Councillor Tidmarsh said, it got to the stage that it got, without someone flagging up the problems or the diversions which are taking place. It's beyond the wit of man to let something go to that extent without someone saying there's a problem. Now what happened ? There's a lot of money, obviously, been thrown at this property and now, because of someone's fault it's all going to have to come down, possibly.

I'd like to go back to some years ago when it was the original Cross Ways Garage, which was to say the least, was an eyesore, and this property I think has enhanced the area and the fact that it's just **bulking** up on the one elevation I don't think is justification for knocking it down

Councillor Tidmarsh, do you want to comment ?

*Cllr. Tidmarsh*  
...The opportunity to speak again. Perhaps there are no facilities to enable some punishment to be levied on the developer. Could it be possible for the Head of Planning to act as a negotiator and, if it was possible for some agreed compensation acceptable to the Council and to the other injured party, if we could defer the decision, that seems to me probably the most sensible solution. Thank you

*Chairman*  
I'm afraid you can't do that Councillor Tidmarsh, it's, they've contravened the Planning Approval that was originally given. Councillor Scurrall you...

Mr Chairman I...

Even if it was possible to compensate the guy who lives next door, what about me as a citizen, this is my Green Belt, how am I, how shall I be compensated



for over development in the Green Belt, which clearly this is ? It goes way beyond the Planning permission and the brief granted three years ago. The question of compensation as far as I'm concerned doesn't arise

It doesn't, it's not it's not a Planning consideration

Thank you ?????

**Someone speaking but can't make out what is being said**

Yes, ...so Councillor Lewis and Councillor Peters...

I refrain

You refrain

Councillor Lewis

**Someone speaking but can't make out what is being said**

Thank you, any other comments ?

Right so the recommendation is that permission be refused and appropriate action so secure the removal of the unauthorised structure, and the Authority be delegated to the Head of Planning and Environmental Services to select the appropriate course of action. All those in favour of that recommendation please show... ..thank you

**Someone speaking but can't make out what is being said**

...the builder, that's up to the Developer whether he ought to chance his arm, but

**Someone speaking but can't make out what is being said**

That's up to him but the recommendation, the Officers recommendation is carried. Thank you

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*From: John Tidmarsh  
Date: 30<sup>th</sup> January, 2008.*

*To Mrs Vanessa Brown (Litigation Solicitor)  
Copy: Kevin Dicks (Chief Executive)*

*Re: Standards Board – Referral of an Allegation for Local Investigation  
Planning Committee 16<sup>th</sup> July, 2007.*

*I am now in receipt of your letter dated 25<sup>th</sup> January, post marked 29<sup>th</sup> January, which is just to hand.*

*Enclosed please find my written comments regarding the matter.*

*In view of the delay I would welcome Ch. Executive's presence at any Meeting, and would further appreciate guidance as to how appropriately I could suggest that some form of penalty could be imposed for any breach of planning conditions, where enforcement is not an attractive alternative. My thoughts are, whilst acting as a deterrent, it could save considerable time and costs of going to Appeal, and where an Appeal is upheld, involves us in considerable costs.*

*I believe that I have acted honourably throughout this matter, and am saddened by the procedures invoked, and welcome your involvement.*

*Standards Board*

*Planning Meeting. Ref SBE 20011.07*

*Some 15 years ago, wishing to replace my front gates, I responded to a local advertisement. The result was that my wife and I were courteously received and enjoyed tea and cakes whilst the deal was completed.*

*I was extremely satisfied with the deal and its conclusion, which resulted in my declaration of friendship with Mr. Naveed and his wife.*

*Some 10 years ago, we had a chance meeting at a garden centre, where we were both customers, And about the same time at a Conservative Party social event at the home of Cllr. Rita Taylor Attended by Cllr Tibby and myself, we both talked with Mr & Mrs Naveed, and I was left with the Impression that Cllr. Tibby knew them prior to that time.*

*I have had no further contact with Mr. Naveed, and am unlikely to, unless it is purely a chance Meeting.*

*In the circumstances, and in an endeavour to conform to protocol, I declared a personal interest, due solely to this association which I believed then, and still do, to be correct. I believed Mr Naveed was heavily involved in the application, and my personal interest was declared accordingly it now appears that although involved he was not in fact the Applicant; it rather suggests that I had really no interest to declare!*

*My comments were not based on anything other than the impartial view of the application.*

*Having been on the site visit prior to the Meeting, I made my own assessment as to the breach of Planning conditions*

*During the debate I found the enforcement difficult to accept, and enquired whether in appropriate cases, it might be possible to levy a punitive fine (with compensation to any aggrieved party) as an alternative; I was grateful for the guidance given by David Hammond relating to this.*

*I may have commented again on this as I believed that this would have been a more equitable alternative, finding the enforcement proposed to be somewhat draconian, which I suspected might well go to Appeal ... costly for all.*

*No-one has taken any steps to ask why I declared an interest; in English law usually an investigation takes place to see if there is any prima facie case to answer!*

*I am puzzled why my actions are being investigated, as I have endeavoured to reserve judgement until at the Planning Meeting. I regularly attend Stoke Prior Parish Council Meetings, carefully avoiding their Planning Meetings. However I find regularly at BDC Planning Meetings members of Parish Councils, and who are members of their Parish Council Planning Committee, when these matters have been discussed, make a declaration of personal interests which is accepted by the Chair: this contrasts strongly with my case.*

*Chairman The Standards Board logo carries a statement 'Confidence in local democracy' The problem arose out of a planning Meeting on 16<sup>th</sup> July, 2007 ... some half a year ago! Perhaps if the Chairman had made enquiries the matter could have been dealt with more expeditiously.*



**Meeting Notes**

Reference: Local Investigation no. SBE20011.07

Date of meeting 7<sup>th</sup> February 2008  
(At the Council House, Burcot Lane, Bromsgrove)

Attendees: Councillor John Tidmarsh and Vanessa Brown (Investigating Officer)

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Purpose: to establish whether Councillor Tidmarsh knew the applicant and/or objector.

A letter briefly outlining the allegation being made had previously been provided to Councillor Tidmarsh.

A statement prepared by Councillor Tidmarsh has already been made available within which Councillor Tidmarsh states that he **did** know the applicant Mr. Naveed as he had purchased some gates from him approximately 15 years ago.

Meeting notes recorded by Vanessa Brown

The following matters were discussed:-

1. The details of the allegations were confirmed with Councillor Tidmarsh in that:
  - (a) at the Planning Committee that took place on the 16<sup>th</sup> July 2007 Councillor Tidmarsh made a declaration of a "Personal Interest" in relation to the planning application for the Cross Roads Garage (B/2007/0498). The declaration made was that "the owner of the property the subject of the application is a friend of his".
  - (b) That the interest declared should have been prejudicial.
  - (c) That in the course of the Planning Committee meeting Councillor Tidmarsh sought compensation for the parties involved and that included an objector who was a friend of his

Councillor Tidmarsh enquired how the allegations came about and Vanessa Brown confirmed that the allegations are based on the fact that Mr. Naveed, the applicant (owner of Cross Roads Garage) contacted the Council following the meeting to say that Councillor Tidmarsh was not a friend of his but was in fact a friend of someone who was objecting to the application, Mr Narang.

2. Councillor Tidmarsh confirmed that he had made that declaration in the terms accurately recorded and that he had done so in good faith. Councillor Tidmarsh confirmed that whilst he knew Mr Naveed he had not had contact with him for many years.
3. Councillor Tidmarsh confirmed the details in his statement that, approximately 15 years ago he purchased some gates from Mr Naveed who ran a gate business in Blackwell. He recalls a pleasant visit with his wife to the premises to make their purchase. In addition Councillor Tidmarsh recalled a further meeting with Mr Naveed at a Conservative Party social gathering.
4. Some years later Councillor Tidmarsh noticed that the business had moved from its location in Blackwell to its present location on the same plot as the Cross Roads Garage. Councillor Tidmarsh genuinely believed it was the same business because of the signage and assumed he it continued to be run by Mr Naveed.
5. Councillor Tidmarsh confirmed that he had attended the site visit prior to the Planning Committee meeting held on 16<sup>th</sup> July 2007, and he assumed that the gate company and the garage were all **one** business, He felt it would therefore be appropriate to make the personal interest declaration even though it had been approximately 10 years since he had last seen Mr Naveed.
6. Vanessa Brown confirmed that the relevant part of the recording of the Planning Committee meeting of the 16<sup>th</sup> July 2007 had been transcribed and that a copy would be made available for Councillor Tidmarsh. The transcript was briefly considered. Councillor Tidmarsh agreed that he had made the comments recorded and that he had made them as a way to try and solve the planning issue.
7. Councillor Tidmarsh and Vanessa Brown discussed the fact that the person who in fact ran the gate business was separate to the person who ran the garage. Also that the person who ran the gate business was Mr Narang who was the objector and that Mr. Naveed owned the garage and was the applicant in the matter.
8. Councillor Tidmarsh confirmed that the assumption he had made was that both the gate business and the garage were one unit and thus he would have dealt with Mr Naveed when he purchased the gates. Following on from that assumption, Councillor Tidmarsh made the declaration believing that he knew the applicant.

9. Councillor Tidmarsh confirmed that it had been such a long time since he had seen Mr Naveed that if he walked in the room with a dozen people he would not be able to pick him out. Further he confirmed that he did not see/recognise Mr Naveed (or Mr Narang) at the Planning Committee on 16<sup>th</sup> July 2007.
  
10. Councillor Tidmarsh and Vanessa Brown discussed the comment made in the statement provided by Councillor Tidmarsh "...it now appears that although involved he (Mr Naveed) was not in fact the Applicant:" Vanessa Brown confirmed that Mr Naveed was the applicant although an agent spoke on his behalf at the Planning Committee meeting.

Councillor Tidmarsh was quite visibly astounded by the full extent of the allegations being made once he realised that he had made a mistake with regard to the declaration. Vanessa Brown felt it appropriate to end the meeting to allow Councillor Tidmarsh the opportunity to fully absorb the details and that a further meeting should be arranged in the near future. Councillor Tidmarsh showed very genuine concern at his mistake and stressed that his intentions were entirely honest and honourable

---

I Councillor Tidmarsh confirm that I have read the above and agree its content and I have been given the opportunity to amend, delete and/or add any additional comments.

.....  
Councillor Tidmarsh

.....  
Vanessa Brown (Investigating Officer)

Signed as an accurate record of discussions between Councillor Tidmarsh and Vanessa Brown on 7<sup>th</sup> February 2008.

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TIDMARSH AND VANESSA BROWN]

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**Telephone Attendance Note**

Reference: Local Investigation no. SBE20011.07

Date 8th February 2008

Telephone conversation between Councillor John Tidmarsh and Vanessa Brown (Investigating Officer)

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Councillor Tidmarsh and Vanessa Brown spoke on the telephone following on from the meeting held at the Council House the previous day.

Vanessa Brown was able to confirm that the tape recording had been again considered and that Mr. Vicks had acted as agent for Mr Narang (gate business/objector) and he had spoken at the meeting and had stated that he appeared on behalf of Mr Narang who owned the Country Forge Gate Company.

Councillor Tidmarsh agreed that this confirmed his fears that he had mistakenly believed that the businesses were one and the same. Further he confirmed again that he had made a genuine mistake.

As a result of our discussions a number of enquiries were to be made in relation to Mr. Narang's business. They were as follows:

How long had the business been at its present location.

Had the business been purchased from the Cross Roads Garage or had Mr. Narang always been the proprietor.

Did Mr. Narang have any recollection of his dealings with Councillor Tidmarsh.

Concluded that we would meet again in the next few days to deal with all aspects of the allegation.

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I, Councillor Tidmarsh confirm that I have read the above and agree its content and I have been given the opportunity to amend, delete and/or add any additional comments.

.....  
Councillor Tidmarsh

.....  
Vanessa Brown (Investigating Officer)

Signed as an accurate record of discussions between Councillor Tidmarsh and Vanessa Brown on 8<sup>th</sup> February 2008.

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TIDMARSH AND VANESSA BROWN]

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**Meeting Notes**

Reference: Local Investigation no. SBE20011.07

Date of meeting 15th February 2008  
(At the Council House, Burcot Lane, Bromsgrove)

Attendees: Councillor John Tidmarsh and Vanessa Brown (Investigating Officer)

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Purpose: to establish Councillor Tidmarsh's account of the allegations made.

Meeting notes recorded by Vanessa Brown

The following points were discussed:

**Background Information**

By way of background information Councillor Tidmarsh confirmed that he has been a councillor for in excess of 10 years. During that time he had attended many Council's meeting including Planning Committees Meetings. However, Councillor Tidmarsh confirmed that he had had a break of approximately two years from attending Planning Committee and that his attendance on the 16<sup>th</sup> July 2007 was during this break. He had only attended this meeting at the request of another Councillor who had been unable to attend and had requested that Councillor Tidmarsh substitute.

**Planning Committee – Monday 16<sup>th</sup> July 2007**

**The Site Visit**

As indicated above there had been a 2-year break in Councillor Tidmarsh's attendance upon the Planning Committees and the meeting on the 16<sup>th</sup> July 2007 was during that break.

Councillor Tidmarsh confirmed that he had been asked to substitute for Councillor David Hancock.

Councillor Tidmarsh recalls the site visit that took place in advance of the Planning Committee meeting and believes it was the Thursday prior to the meeting. Councillor Tidmarsh and the other Councillors attended the site at Cross Roads Garage Kidderminster Road, Woodcote Green. Councillor Tidmarsh recalls that the dispute concerning the site related to the height and "bulk" of the building.

Councillor Tidmarsh confirms that none of the parties involved in the application were on site.

### **The Declaration made in relation to the Planning Application**

Councillor Tidmarsh is shown the agenda/minutes for the Planning Committee and confirms the two declarations made by him were, to the best of his knowledge and belief, accurate at the time they were made.

The application made in relation to the Cross Roads Garage application (B2007/0498) was looked at and Councillor Tidmarsh confirmed that he made a personal interest declaration because "the owner of the property the subject of the application was a friend of his". Councillor Tidmarsh confirms that the declaration made was accurately recorded and his belief at the time it was made was that it was entirely correct.

The reason Councillor Tidmarsh made the declaration was because of one business transaction he had many years ago with the owner of the company selling gates. He recalls that about 15 years ago he wished to replace the gates at the front of his property and having seen a local advert he made contact with the company and purchased his gates. The business transaction stuck in his mind because of the courtesy afforded to him and his wife by the company owner. Councillor Tidmarsh was unable to recall the name of the company at that time.

Councillor Tidmarsh confirms that he then had a chance meeting with the owner of the gate company some years later at a garden center and at about the same time he saw the same gentleman at a Conservative Party social event. These events occurred approximately 10 years ago.

Since that time Councillor Tidmarsh confirms he has no business or social dealings with the owner of the company. In fact he has no contact with him at all.

It was some considerable time after the last meeting with the owner of the gate company, that Councillor Tidmarsh noticed that the gate business had moved to its present location next to the Cross Roads Garage, it is a road that he uses frequently and the business signage is prominent. Vanessa Brown was able to confirm that the owner had answered questions raised with him and he confirmed that the business moved to the location in May 1998. He also confirmed that he had sold a pair of gates and a pair of posts to Mr J Tidmarsh over 12 years ago.



Councillor Tidmarsh confirms that he made the declaration because he believed that both the Cross Roads Garage and the gate company were all one business. He therefore made the assumption that Mr Naveed who made the planning application in relation to the Cross-Roads Garage must have been the person who sold him the gates. Councillor Tidmarsh accepted that his assumption was wrong and he that the two businesses were not only different entities but also opposing sides of the planning application.

Discussions took place to ascertain who it was that Councillor Tidmarsh thought was the objector if he believed that the two neighbouring businesses were one company. Councillor Tidmarsh thought that it may have been the Café located at the same site but accepted that he had not given due consideration to the individual parties as he was looking at the overall picture and trying to find a common sense approach to resolving the difficulties to everyone's satisfaction.

Councillor Tidmarsh conceded that he had not had sufficient regard to the status of the individuals and, accepted that he had further overlooked this fact when the statements of the opposing sides were read out at the Planning Committee. In addition Councillor Tidmarsh accepted that he had failed to acknowledge that the agent for the objector had stated that he was acting on behalf of Mr. Narang who was the owner of Country Forge the neighbouring company selling gates. Councillor Tidmarsh stated that he had listened carefully to the content of the oral statements given, but who the individuals were had had no impact upon him. He had looked at the overall picture rather than the individual personalities.

Councillor Tidmarsh again reiterates that his mistake was entirely genuine and his intentions were always honourable.

Councillor Tidmarsh further accepted that he had been wrong to make the declaration in the terms that he did and he accepted that he had breached the Code of Conduct in failing to accurately declare his interest..

### **Personal or Prejudicial Interest**

Consideration was given to the type of interest that should have been given. It was again confirmed that the second allegation made against Councillor Tidmarsh was that he should have made a prejudicial interest declaration rather than a personal interest one.

Councillor Tidmarsh does not accept that a prejudicial interest should have been declared having regard to the relationship between himself and Mr. Narang, In hindsight, Councillor Tidmarsh questions whether any interest should have been at all having regard to the length of time since he had contact with Mr. Narang.

Councillor Tidmarsh states that the last time any contact was made with Mr. Narang was at least 10 years ago and it may have even been before he became a Councillor. Further that he would not recognise Mr. Narang and did not do so at the Planning Committee meeting in July 2007.

In these circumstances Councillor Tidmarsh does not accept any breach of the Code of Conduct on this point.

### **Comments made during the Planning Committee Meeting 16<sup>th</sup> July 2007**

Councillor Tidmarsh and Vanessa Brown go through the comments made during the discussions relating to Mr. Naveed's planning application. The transcript of the relevant part of the meeting are reiterated and Councillor Tidmarsh accepts that the comments made by him as transcribed are an accurate record.

The allegation is discussed and Councillor Tidmarsh explains what his intention was when making the suggestion and comments that he did.

Councillor Tidmarsh sought to find an amicable solution to what was clearly an emotive situation. He stated that he wanted a common sense approach to be taken and the matter resolved to the mutual satisfaction of all parties.

Councillor Tidmarsh, further felt that should the application be refused the matter would undoubtedly result in an appeal within which all parties incur considerable time and expense. He felt that the applicant would be likely to succeed at appeal as the planning breach would be classed as a "minor one". Thus if an alternative solution could be found then such a possibility should be explored. Specifically, Councillor Tidmarsh felt that a "round table" discussion might help the parties to understand each other's problems whereas an appeal results in "enemies".

Councillor Tidmarsh advises that there can be occasions when matters are not finalised at Planning Committee and they can delegated powers to the Head of Planning to deal with specific issues. Councillor Tidmarsh states that his intention in this case was to delegate powers to the Head of Planning for him to act as a negotiator/mediator to try and see if the parties could reach some common ground.

In suggesting compensation be paid Councillor Tidmarsh maintains that he was trying to find a solution to a problem and he most certainly does not accept that he was seeking to secure compensation for a "friend". Councillor Tidmarsh points out that it would not matter who received compensation as long as the matter reached an amicable conclusion. He felt that all parties would benefit from the suggested intervention of the Head of Planning including the Council as the costs of a Planning Inquiry may be avoided.

Councillor Tidmarsh say his suggestion as a way in which all parties, including the Council, could have matters resolved to a satisfactory conclusion.

Councillor Tidmarsh does not accept the alleged breach of the Code of Conduct and strongly refutes the suggestion that anyone could perceive his actions as improper.

---

I Councillor Tidmarsh confirm that I have read the above and agree its content and I have been given the opportunity to amend, delete and/or add any additional comments.

.....  
Councillor ~~Tidmarsh~~

~~Vanessa Brown~~ (Investigating Officer)

Signed as an accurate record of discussions between Councillor Tidmarsh and Vanessa Brown on 15th February 2008.

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TIDMARSH AND VANESSA BROWN]



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**Vanessa Brown**

**From:** paul narang [p.narang@zen.co.uk]  
**Sent:** 13 February 2008 10:27  
**To:** Vanessa Brown  
**Subject:** Re: Re Standards Board for England

Appendix 1.

Dear Vanessa Brown,

Thank you for you e mail of 11th February 08. Reply to your question is as follows.

1. Owner of Metal Art Products until 6th of January 2005. Managing Director Metal Art ltd from 7th of January 2005.
2. Since May 1998
3. Sold a pair of gates and a pair of posts to Mr. J. Tidmarsh over 12 years ago. We keep all records up to 7 years as required by statute of limitations and no more.

If you require any further information please contact me via above e mail.

Yours Sincerely P.S. Narang

----- Original Message -----

**From:** Vanessa Brown  
**To:** p.narang@zen.co.uk  
**Sent:** Monday, February 11, 2008 2:40 PM  
**Subject:** Re Standards Board for England

Dear Mr Narang,

I have been instructed to investigate a matter that has been referred to the Standards Board for England and I understand you have liased with Councillor Tibby in relation to this matter and I have had sight of your most recent email. I appreciate from your comments that you are aware of the Standards Board's involvement although you will appreciate that whilst the investigation is ongoing I am unable to disclose to you the nature or details of the investigation or how it is progressing.

I can advise you that once the Standard Board Committee has made its decision details of that decision will be made available to the public.

In the meantime it would greatly assist me if you could answer a few questions that would help in my investigation.

(1) Have you always been the owner of the business?

(2) How long has the business been at its present location.?

(3) Do you have any record of selling gates to John Tidmarsh, this would have been approximately 10 - 15 years ago when the business was located at premises in Blackwell?

I am away from the office until Thursday the 14th February although I access my emails daily so please feel free to contact me should I be able to clarify the position further.

In the meantime I would appreciate it if you could treat my enquires in a confidential manner as details of the Investigation are not yet in the public domain.

Your assistance in this regard would be very much appreciated.

Yours sincerely

Vanessa Brown  
Litigation Solicitor  
Legal Equalities and Democratic Services Department  
Bromsgrove District Council  
The Council House  
Burcot Lane  
Bromsgrove  
Worcestershire  
B60 1AA  
01527 881724

\*\*\*\*\*

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**Telephone Attendance Note**

Reference: Local Investigation no. SBE20011.07

Date 27<sup>th</sup> February 2008

Telephone conversation between Councillor David Hancox and Vanessa Brown (Investigating Officer).

The purpose of the call was to establish whether Councillor Tidmarsh had put himself forward for the Planning Committee Meeting on the 16<sup>th</sup> July 2007, or whether he had been asked to substitute.

---

Vanessa Brown asked Councillor Hancox if he recalled asking Councillor Tidmarsh to substitute for him at a Planning Committee Meeting July 2007.

Councillor Hancox confirmed that he had asked Councillor Tidmarsh to act as substitute for him last July. He further recalls that he may have asked him on one other occasion also.

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**BROMSGROVE DISTRICT COUNCIL**

**MEMBERS' CODE OF CONDUCT**

**PART 1**

**GENERAL PROVISIONS**

*Scope*

1. (1) A member must observe the authority's code of conduct whenever he -
  - (a) conducts the business of the authority;
  - (b) conducts the business of the office to which he has been elected or appointed; or
  - (c) acts as a representative of the authority,and references to a member's official capacity shall be construed accordingly.
- (2) An authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.
- (3) Where a member acts as a representative of the authority -
  - (a) on another relevant authority, he must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, he 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.
- (4) In this code, "member" includes a co-opted member of an authority.

*General Obligations*

2. A member must -
  - (a) promote equality by not discriminating unlawfully against any person;
  - (b) treat others with respect; and
  - (c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.
3. A member must not -
  - (a) disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; nor
  - (b) prevent another person from gaining access to information to which that person is entitled by law.

4. A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.
5. A member –
  - (a) must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage; and
  - (b) must, when using or authorising the use by others of the resources of the authority, -
    - (i) act in accordance with the authority's requirements; and
    - (ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.
6. (1) A member must when reaching decisions –
  - (a) have regard to any relevant advice provided to him by –
    - (i) the authority's chief finance officer acting in pursuance of his duties under section 114 of the Local Government Finance Act 1988; and
    - (ii) the authority's monitoring officer acting in pursuance of his duties under section 5(2) of the Local Government and Housing Act 1989; and
  - (b) give the reasons for those decisions in accordance with the authority's and any statutory requirements in relation to the taking of an executive decision.

(2) In sub-paragraph (1)(b) above and in paragraph 9(2) below, "executive decision" is to be constructed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.
7. A member must, if he becomes aware of any conduct by another member which he reasonably believes involves a failure to comply with the authority's code of conduct, make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him to do so.

## PART 2

### INTERESTS

#### *Personal Interests*

8. (1) A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend or –
  - (a) any employment or business carried on by such persons;



- (b) any person 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 corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5000; or
  - (d) any body listed in sub-paragraphs (a) to (e) of paragraph 15 below in which such persons hold a position of general control or management.
- (2) In this paragraph –
- (a) “relative” means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
  - (b) “partner” in sub-paragraph (2)(a) above means a member of a couple who live together.

#### *Disclosure of Personal Interests*

9. (1) A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered 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) Subject to paragraph 12(1)(b) below, a member with a personal interest in any matter who has made an executive decision in relation to that matter must ensure that any written statement of that decision records the existence and nature of that interest.

#### *Prejudicial Interests*

10. (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if 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 the member’s judgement of the public interest.
- (2) A member may regard himself as not having a prejudicial interest in a matter if that matter relates to –
- (a) another relevant authority of which he is a member;
  - (b) another public authority in which he holds a position of general control or management;
  - (c) a body to which he has been appointed or nominated by the authority as its representative;
  - (d) the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member’s tenancy or lease;
  - (e) the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;

- (f) the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and
- (g) the functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.

#### *Overview and Scrutiny Committees*

11. (1) For the purpose of this Part, a member must if he is involved in the consideration of a matter at a meeting of an overview and scrutiny committee of the authority or a sub-committee of such a committee, regard himself as having a personal and a prejudicial interest if that consideration relates to a decision made, or action taken, by another of the authority's –
- (a) committees or sub-committees; or
  - (b) joint committees or joint sub-committees,
- of which he may also be a member.
- (2) But sub-paragraph (1) above shall not apply if that member attends that meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action.

#### *Participation in Relation to Disclosed Interests*

12. (1) Subject to paragraph (2) below, a member with a prejudicial interest in any matter must –
- (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from the authority's standards committee;
  - (b) not exercise executive functions in relation to that matter; and
  - (c) not seek improperly to influence a decision about that matter.
- (2) A member with a prejudicial interest may, unless that interest is of a financial nature, and unless it is an interest of the type described in paragraph 11 above, participate in a meeting of the authority's –
- (a) overview and scrutiny committees; and
  - (b) joint or area committees,
- to the extent that such committees are not exercising functions of the authority or its executive.
13. For the purpose of this Part, "meeting" means any meeting of –
- (a) the authority;
  - (b) the executive of the authority; or

- (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees.

### PART 3

## THE REGISTER OF MEMBERS' INTERESTS

### *Registration of Financial and Other Interests*

14. Within 28 days of the provisions of an authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his financial interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of –
- (a) any employment or business carried on by him;
  - (b) the name of the person who employs or has appointed him, the name of any firm in which he is a partner, and the name of any company for which he is a remunerated director;
  - (c) the name of any person, other than a relevant authority, who has made a payment to him in respect of his election or any expenses incurred by him in carrying out his duties;
  - (d) the name of any corporate body which has a place of business or land in the authority's area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
  - (e) a description of any contract for goods, services or works made between the authority and himself or a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above;
  - (f) the address or other description (sufficient to identify the location) of any land in which he has a beneficial interest and which is in the area of the authority;
  - (g) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above; and
  - (h) the address or other description (sufficient to identify the location) of any land in the authority's area in which he has a licence (alone or jointly with others) to occupy for 28 days or longer.
15. Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his other interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of his membership of or position of general control or management in any –
- (a) body to which he has been appointed or nominated by the authority as its representative;
  - (b) public authority or body exercising functions of a public nature;



- (c) company, industrial and provident society, charity, or body directed to charitable purposes;
  - (d) body whose principal purposes include the influence of public opinion or policy; and
  - (e) trade union or professional association.
16. A member must within 28 days of becoming aware of any change to the interests specified under paragraphs 14 and 15 above, provide written notification to the authority's monitoring officer of that change.

***Registration of Gifts and Hospitality***

17. A member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's monitoring officer of the existence and nature of that gift or hospitality.

**Local Investigation Reference: SBE 20011.07**

**CHRONOLOGY**

<b><u>Date</u></b>	<b><u>Description</u></b>
16 <sup>th</sup> July 2007	Planning Committee Meeting Councillor Tidmarsh made a personal interest declaration in relation to Planning Application B/2007/0498.
16 <sup>th</sup> - 18 <sup>th</sup> July 2007	Telephone call from Mr. Naveed the Applicant in relation to Planning Application B/2007/0498. He states that the declaration made at the Planning Committee Meeting held on 16/07/07 in relation to his application, was wrong.
7 <sup>th</sup> -14 <sup>th</sup> September 2007	Councillor Tibby refers the matter to the Standards Board for England. Additional information was requested and full details of the allegation were provided under cover of a letter dated 7 <sup>th</sup> September 2007.
22 <sup>nd</sup> November 2007	The matter was referred to the Monitoring Officer for local investigation and determination.

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