

INVESTIGATION SBE20011.07

FINAL REPORT

27th 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.

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- B. Copy of the Minutes from the Planning Committee Meeting on 16th July 2007
- C. Copy of the handwritten notes taken during the Planning Committee on the 16th July 2007 by Mrs. D. Warren.
- D. Copy of the transcript recording of the relevant part of the Planning Committee Meeting on 16th July 2007.
- E. Copy of a statement prepared by Councillor John Tidmarsh dated 30th January 2008.
- F. Copy of an attendance note prepared by Vanessa Brown, prepared following a meeting with Councillor John Tidmarsh on 7th February 2008.
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- H. Copy of an attendance note prepared by Vanessa Brown following a meeting with Councillor John Tidmarsh on 15th 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 27th 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 (Provided as it has been superseded by the Code of Conduct implemented by Bromsgrove District Council on 18th July 2007).
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1. SUMMARY OF THE ALLEGATION

It is alleged by Councillor Tibby that at a Planning Committee held on the 16th 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 18th July 2008 by the current Code of Conduct.

The allegation was reported to the Standards Board for England on the 7th September 2007 and was referred to the Monitoring Officer for local investigation and determination on 22nd 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 16th 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 18th 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 16th 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 16th 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 30th January 2008, has been considered. **Appendix E.**
- 3.6 A meeting was held with Councillor Tidmarsh on 7th 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 15th 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 27th 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 16th 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 16th 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 16th 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 16th 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 16th 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 16th 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 22nd 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 16th 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 16th 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 16th 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 16th 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 16th 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 16th 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 16th 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”.

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- 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.

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- 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 16th 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 16th 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.

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- 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 16th 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 16th 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 16th 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 16th 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 16th 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.

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