

IN THE MATTER OF THE LOCALISM ACT 2011 SS 27 & 28 AND OF EAST  
STAFFORDSHIRE BOROUGH COUNCIL'S CODE OF CONDUCT FOR  
COUNCILLORS AND ITS PLANNING CODE FOR COUNCILLORS

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FINAL REPORT

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1. I have been asked to report on allegations made against Councillor McGarry as set out in three complaints 2018-07, 2018-09 and 2018-12 made by three complainants.
2. In this report I have been asked to consider the complaints against the Code of Conduct, but also against whether the conduct of the councillor has demonstrated some other kind of unlawful conduct such as predetermination or a failure to declare a pecuniary interest.
3. I have been appointed to investigate the complaints pursuant to section 5 of the Standards Committee Complaints Procedures. In accordance with that procedure I have to decide whether or not there is evidence of a failure to comply with the Code in relation to each complaint.
4. I considered it was appropriate to interview the Councillor. That interview took place on Monday 9 September 2018. Where for the purposes of this report I have recorded findings of fact I have made those findings on the balance of probabilities.

**Summary of Report**

5. In my view each of the complaints made provides evidence of a breach of the Code of Conduct.

## **Discussion**

### Factual background

6. The complainants are Cllr Lynne Shelton, Mr Michael Jones and Cllr Phillip Hudson.
7. The gravamen of these complaints is the allegation that the Councillor has been lobbying with the Hazelwalls Impact Group (“HIG”), a protest group set up in opposition to the proposed development of land at Hazelwalls Farm, Uttoxeter. It is alleged she has associated herself with the production, publishing and distribution by HIG of a leaflet making inappropriate criticisms of the Council’s actions in relation to the Hazelwalls Farm development. The Councillor was, at material times, the relevant ward member.
8. In doing so, the suggestion is that the Councillor made a close association with a minority group so any decision made would have a greater effect to a greater extent than any for the majority of other Council tax payers.
9. It is further alleged that the Councillor has worked with and been part of the HIG. An allegation is made that as a member of Uttoxeter Town Council the Councillor has influenced that Council’s approach to the Hazelwalls Farm development.
10. The Hazelwalls application was a full application for the “*erection of 429 dwellings, public open space, landscaping, drainage, attenuation areas, access roads and associated works and the demolition of existing buildings*”.
11. I discussed this matter during interview with the Councillor. The following matters became apparent.

12. The structure of HIG is that it is a single issue campaigning group. Its membership was variously quoted as being between 100 – 400 individuals. At the meetings described below there would typically be 20-30 people in attendance. Naturally, as the Councillor accepted, they were individuals proposing to pursue objections to the planning application. The meetings were mainly organised and chaired by the two main co-ordinators of the campaign David Lynch and Cedric Bygrave. The purpose of each meeting was to seek to develop and articulate the case against granting planning permission in relation to the site, and by April 2018 seeking to resist any of the development which was outside the settlement boundary. Beyond that there was no particular hierarchy to the HIG and so, in my view, the presence of a speaking councillor at a sequence of private meetings of this kind would appear to an objective bystander to be likely to have given her a special significance and likely influence upon those attending.

13. When the Councillor attended meetings she spoke at them. She told me that the tenor of her approach was that, as the site was allocated, development would occur on the site. However, her approach at the meetings was to seek to ensure any final proposal was fully policy compliant. The Councillor did not consider the proposal before the committee was compliant due to a significant proportion of it being outside the settlement boundary. There are no notes of any of these meetings, so I cannot reach an accurate view about the overall nature of the discussions at those meetings, but I have set out their purpose as the Councillor understood them to be.

14. There were a number of meetings of the HIG between February 2017 and April 2018 to which the Councillor was invited. There were up to about 5 such meetings that she

attended. The meetings were called at every stage when something significant in the planning process had occurred.

15. Each meeting was private in the sense that private rooms were used and only members of the HIG or supporters were invited to these meetings. For example, the meeting of 3 February 2017 took place in a private conference room at a local supermarket.
16. The Councillor did not make any arrangements for officers to take any record of what was discussed at the meetings. She did not tell Sal Khan or the Planning Manager about them. She did not seek to have them arranged by Sal Khan or the Planning Manager. She did not report back to Sal Khan or the Planning Manager in relation to any of the meetings.
17. At the HIG meeting of March or April 2018 final versions of the two leaflets which were ultimately distributed by HIG were available for attendees to collect and distribute. The Councillor accepted she was consulted on the draft leaflets. She did not recall offering any comments on the drafts beyond ones relating to her contact details, but accepted that had she made comments they would have been considered as possible amendments by HIG.
18. Leaflet 1 is entitled "*Your local MP Andrew Griffiths persuades ESBC to 'call back in' the Hazelwalls Development*". It states that 19% of the proposed development lies outside the settlement boundary and calls on people to object. It contends that 68 houses would lie outside the settlement boundary amounting to a total development of 29 units greater than the proposed allocation. The headline point, in red ink, capitalised and in bold is "*Yet more profit for the developer and more revenue for ESBC*". The leaflet contains the following passages "*At no point did we think [the*

*Council] would completely disregard [the views of]<sup>1</sup> your local councillors, the town council, and most importantly you. . . .Take this opportunity to object by 25<sup>th</sup> April 2018 . . . This development will affect everyone in our town, therefore if you are over 18 and live in Uttoxeter cast your objection . . . Conservative Councillors Sue McGarry . . . are totally committed to bringing this development back in line with council policy. Policy which you voted in favour of. If you need any help of guidance then get in touch . . .”. The Councillor’s contact details follow immediately thereafter.*

19. Leaflet 2 is entitled “*The Hazelwalls Development Has been called in!*”. It appears to have been a single sheet leaflet. In its final form it did not provide contact details for the Councillor or refer to her. The headline point, in red ink, capitalised and in bold is “*Yet more profit for [the developer] and more income for ESBC*”. The leaflet contains the following passages “*Take a drive around Uttoxeter, houses shoehorned into the smallest of sites and see what you get for your money!! Do we need another development like this in our town?? . . . Take this opportunity to object by 25<sup>th</sup> April 2018 . . . This development will affect everyone in our town, therefore it you are over 18 your are entitled to object, we urge you to help stop an unwanted development that will take arable Greenfield land when we have so much arable Greenfield land when we have so much available Brownfield sites stood derelict*”.

20. After the production of the leaflets, the Councillor took no positive steps to dissociate herself from their contents.

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<sup>1</sup> I have inferred these words because on my copy of the leaflet this part is illegible.

21. At the committee meeting of 18 July 2017 the Councillor spoke as a ward member, and thus was accorded additional privileges in the debate above a member of the public including not being restricted by the “3 minute rule”.
22. In relation to the leaflets the Councillor’s main point to me was that nothing indicated she endorsed the messages in the leaflets.

### Discussion

#### *The Code*

23. The Code defines Ordinary Interests in section 6.
24. For the reasons set out below I consider the Councillor had an Ordinary Interest in HIG by reason a close association with that group. In my view the totality of the Councillor’s involvement with HIG suggests that she did have a close association with that group for the purposes of considering whether she had an Ordinary Interest in the business of the Council when it was deciding this planning application. Almost by definition, the decision in relation to Hazelwalls would reasonably be regarded as affecting the well-being or financial position of the members of HIG to a greater extent than it would affect the majority of others within the electoral ward.
25. Accordingly, by paragraph 9.1.2.2 the Councillor ought to have disclosed this Ordinary Interest and should not have participated in the meeting without first seeking a dispensation in accordance with section 11 of the Code.
26. In my view it is clear that this Ordinary 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 Councillor’s judgment of the public interest. I take the view

that the Councillor ought reasonably to have been aware that test was met having regard to the features of the case I mention below.

### *The Planning Code*

27. The Council also has a specific code to provide further detailed guidance to members in relation to planning matters entitled the Planning Code of Good Practice for Councillors (“the Planning Code”). In paragraph 2.4 the Planning Code sets out when it applies. It includes “[2.4] . . .when taking part in the decision-making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings . . . [2.5] If Councillors have any doubts about the application of this Code of Good Practice to their own circumstances, they should seek advice early, from the Monitoring Officer or one of their staff, and preferably well before any meeting takes place”. I am instructed that the Planning Code applies to all councillors, not just those sitting on the planning committee.<sup>2</sup>

28. Section 2 of the Planning Code sets out its aim, the key purpose of planning control and the role of a member of the planning authority (when making decisions). The aim is “To ensure that in the planning process there are no grounds for suggestion that a decision has been biased, partial or not well-founded in any way”. The role of the member is “To make planning decisions openly, impartially, with sound judgment and for justifiable reasons”.

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<sup>2</sup> The Councillor suggested to me during interview that the Planning Code might only apply to members of the planning committee. However, it is clear to me that my instructions are correct. The Planning Code confirms that it is based on the PAS Probity in Planning Guide of April 2013 which at various places provides guidance which applies (for example) to ward members. Similarly, there are references in the Planning Code itself which are only consistent with it applying more widely than simply to committee members (see, for example, paras 4.2, 5.5 and 5.7).

29. The definition of Private Interest within the Planning Code includes Ordinary Interests as defined in the Code where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgment of the public interest: see para 1.2 of the Planning Code.
30. In my view, by failing to adhere to those requirements the Councillor compromised the aim of the Planning Code and her role as a member of the Council in light of her overriding duty to the whole community.
31. In my view there is evidence of a failure to comply with the Code and the Planning Code. The breaches of the Planning Code, in my view, provide evidence of failures to uphold the general principles of the Code relating to Selflessness, Objectivity and Openness. These are issues which will, in my view, tend to bring the Council into disrepute.
32. As set out above, the code applies to councillors generally in dealing with planning matters, and not simply to members of the planning committee.
33. In my view the Councillor's conduct provides evidence of a sustained breach of this code. Section 6 of the Planning Code deals specifically with contact with applicants, developers and objectors.
34. The code requires that councillors should not agree to private meetings with (amongst others) groups of objectors where they can reasonably be avoided. In my view, the private meetings could reasonably have been avoided in this case. The Councillor did not set out any good reason why that could not have been done.



35. The code requires that any such meeting should never be arranged by the councillor themselves but should request Sal Khan or the Planning Manager to organise it. That was not done. The reasons for ensuring such protection are spelt out in paragraph 6.2 of the code.
36. Paragraph 6.3 requires councillors to report to Sal Khan or the Planning Manager any significant contact with parties interested in a planning application, explaining the nature and purpose of the contacts and their involvement with them, so that it can be properly recorded. The Councillor has not disclosed any notes made at these meetings. It does not appear that she considered the application of paragraph 6.3.3 of the code.
37. Lobbying by councillors is dealt with in sections 7 and 8 of the Planning Code. By paragraph 7.2 councillors are reminded that the overriding duty is to the whole community not just the people in their ward and, taking into account the need to make decisions impartially, that they should not appear to improperly favour any group or locality. By paragraph 7.4 lobbying correspondence received by a councillor must be passed on to Sal Khan or the Planning Manager at the earliest opportunity. By paragraph 8.1 councillors should not lead or represent an organisation whose primary purpose is to lobby to promote or opposed planning proposals. Within paragraphs 8.1 and 8.2 a clear distinction is drawn between single issue protest groups and general interest groups.
38. In my view the sequence of events I have described above provides evidence of failure to comply with paragraphs 4.2.1, 5.7, 6.2, 6.3.2 and 6.3.3, 7.2, 7.4 and 8.1 of the Planning Code.

39. In relation to paragraphs 7.2 and 8.1 I bear in mind the facts that would be taken to be known by the reasonable observer judging this matter. In particular that the Councillor attended a sequence of private HIG meetings as a councillor, that she spoke on each occasion, that drafts of the leaflets were provided to her, that she did not seek to dissociate herself from either of the leaflets, and that her contact details were attached to Leaflet 1 in a way that, in my view, would have given the reasonable observer to think that the Councillor supported the statements made in that leaflet. In my view the Councillor is wrong to think that a reasonable observer would not have taken the presence of her details in context as implicitly describing her support for opposition to the proposal. The reasonable observer would be taken to be aware of the contents of the Planning Code.

40. I take the view that the headline message in Leaflet 1 (which was, to my mind, materially the same as that in Leaflet 2) was therefore one which a reasonable observer would have taken to be supported by the Councillor. In my view that headline did convey the message that the further revenue (or income) for ESBC might be inappropriately influencing the judgment of the Council upon the planning application. Such an allegation has an obvious risk of bringing the Council's decision making into disrepute.

#### The Councillor's comments on my draft report

41. The text above represents the draft report sent to the Councillor with minor typographical and factual corrections. By email dated 18 October 2018 the Councillor suggested some 27 corrections or matters for consideration on my draft report. I have provided with this document a numbered version of those suggestions so that my comments below can more readily be followed.

42. Where the matters raised were typographical or factual corrections and I have accepted them I have not mentioned them below. Equally, some of the comments had (not surprisingly) a degree of overlap or related to matters which I did not consider important to my preliminary findings. In those cases I have not dealt specifically with individual comments, but I have considered them all.
43. I am clear that the number and structure of HIG meetings was discussed at my meeting with the Councillor [4]. The comments at [5] and [20] do not dissuade me from my view that these were indeed private meetings in the relevant sense of that word. I have not been provided with a copy of the notice the Councillor refers to or told the wording of what it said. I note that was not something the Councillor relied upon during our meeting. The substance of her responses is recorded above. The comment at [6] does not amount to compliance with the requirements of the Planning Code I identified within the discussion of my advice. It is clearly a different thing to communicate concerns a campaigning group may have on an application; and to attend private meetings of that group where the compliance requirements of the Council are not being met.
44. During our meeting the Councillor accepted that both draft leaflets were probably emailed to her [7]. Further, it is clear that both leaflets were available for distribution at the April 2018 meeting and the Councillor raised no point about their contents at that stage. In any event, it is my finding on the balance of probabilities that the Councillor was shown both Leaflets before their publication. At [11] the Councillor sets out a counter argument to my reasoning in relation to whether she had an Ordinary Interest. I do not accept the propositions in that response and refer back to my original reasoning above. The *raison d'être* of HIG was to protest against

development on a particular parcel of land. The suggestion its members did not, by and large, stand to be affected to a greater extent than the majority of Uttoxeter residents needs to be seen in that light.

45. It is a feature of the Councillor's observations that she seeks to justify or explain her lack of compliance with the code (as I find) by reference to the actions of others. For the purposes of this report, I am investigating only the complaints made against the Councillor. Comment [11] provides an example of that, but there are others.
46. It appears from [13] that the Councillor now accepts that the Planning Code applies to all councillors. Contrary to [14] this was a matter raised during my meeting with the Councillor. The Councillor has a different view as to what the code *should* say; but that does not justify a failure to follow what the code *does* say. The part of the discussion noted at [15] is to illustrate certain passages of the Planning Code and how it hangs together. I do not understand why the Councillor asserts she is not a member of the planning authority. It may be that the reference was intended to be to the planning committee.
47. As to [18] the advantages to HIG of it having supportive local members who are giving the appearance of backing the campaign, and its central messages, is obvious. So too, is the advantage clear from the idea that those with points they wish to raise can contact the identified members, who can then (on the publicised literature) be assumed to be supportive in those conversations of the position taken by HIG on the planning application. As to Openness, the use of private meetings without complying with express written council procedures for protecting the reputation of councillors and the Council itself clearly provides evidence of a failure to comply with that principle. The Objectivity that needs not just to exist, but to be seen to exist, in all

councillors, is compromised by the appearance of a close association with a group campaigning for a particular outcome in a substantial planning application. In my view that is what the Councillor allowed to happen in this case.

48. As to [21] it plainly cannot matter for the application of the Planning Code and the Code whether or not the first suggestion of private meeting comes from the relevant councillor or from the campaign group. The point of the code provisions is to prevent members making arrangements to attend such meetings. If such meetings are going to happen at all, it is the function of officers to ensure that the requisite protections are in place. The rest of comment [21] does not contain adequate particulars for me to comment specifically; but it does in general perhaps indicate the caution officers took to this matter.

49. At [22] the Councillor suggests that according to paragraph 6.3 of the Planning Code 6.3.3 does not apply to meetings with residents or groups of objectors. I disagree. It is plain reading section 6 as a whole that the “*other parties*” referred to in 6.3.3 is intended to cover parties such as those specifically identified in the paragraph before (6.2). Nor do I agree with the Councillor’s restrictive interpretation of provisions 7.2, 7.4 or 8.1 [23].

50. As to [24] and [27], as my draft report pointed out, I have described the sequence of events which in my view led to the various breaches identified. Without taking away from the detail of my draft report above, I would make the following points. It is the presence of the Private Interest, arising for the reasons I have described, which leads to the breach of paragraphs 4.2.1 and 5.7. As to paragraphs 6.2 and 6.3.3 that relates to the private meetings held by HIG at which, on my findings, the Councillor attended and spoke at, without complying with the procedural requirements (and the meetings

were, in my view, reasonably capable of being avoided in any event). As to 7.2 and 7.4 it is clear that in her association with HIG the Councillor received lobbying material including the draft Leaflets. The failure to follow paragraph 8.1 arises from the close association with HIG and the production and distribution of the Leaflets.

### **Conclusion**

51. In my view there is evidence of a failure to comply with the Code and the Planning Code. The breaches of the Planning Code, in my view, provide evidence of failures to uphold the general principles of the Code relating to Selflessness, Objectivity and Openness. These are issues which will, in my view, tend to bring the Council into disrepute.
52. The Councillor's observations on my draft report have not caused me to change my preliminary conclusions in those respects, for the summary reasons I have set out above.
53. In my view the provisions of paragraph 3.10 of the Code do not materially add to the conclusions I have reached above.

WAYNE BEGLAN

CORNERSTONE BARRISTERS

3 DECEMBER 2018