

18 July 2008

Our ref: Standards 29.7.08  
Contact: Ian Gourlay  
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To: The Chairman and Members of the Standards Committee of North Hertfordshire District Council

Mr N. Moss (Chairman), Mr P. Chapman (Vice-Chairman), District Councillors A. Bardett, S. Bloxham, Judi Billing, Lee Downie, David Kearns, Bernard Lovewell, M.R.M. Muir and L.W. Oliver, and Parish Councillors M. Goddard and R. Wornham. 2 Independent Member vacancies and 2 Parish Councillor vacancies.

You are invited to attend a

## **MEETING OF THE STANDARDS COMMITTEE**

To be held in the

**COUNCIL CHAMBER, COUNCIL OFFICES,  
GERNON ROAD, LETCHWORTH**

on

**TUESDAY, 29 JULY 2008 at 7.30p.m.**

Yours sincerely,



David Miley  
Democratic Services Manager

**AGENDA**  
**PART I**

<b>ITEM</b>	<b>PAGE</b>
<b>1. APOLOGIES FOR ABSENCE</b>	-
<b>2. MINUTES</b> To take as read and approve as a true record the Minutes of the meeting of the Standards Committee held on 19 June 2008.	-
<b>3. NOTIFICATION OF OTHER BUSINESS</b> Members should notify the Chairman of other business which they wish to be discussed by the Committee at the end of the business set out in the agenda. They must state the circumstances which they consider justify the business being considered as a matter of urgency.  The Chairman will decide whether the item(s) raised will be considered.	-
<b>4. CHAIRMAN'S ANNOUNCEMENTS</b> Members are reminded that any declarations of interest in respect of any business set out in the agenda, should be declared as either a prejudicial or personal interest and are required to notify the Chairman of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a prejudicial interest should leave the room and not seek to influence the decision during that particular item.	-
<b>5. HEARING FOLLOWING INVESTIGATION – PARISH COUNCILLOR BEAVIS (KINGS WALDEN PARISH COUNCIL)</b>	
Item 5(a) – Report of the Deputy Monitoring Officer (with attachments)	<b>1</b>
Item 5(b) - Report of the Investigating Officer (Monitoring Officer) (with attachments)	<b>17</b>
<b>[NOTE: The attachments relating to Item 5(b) above are numbered separately – Pages 1 – 51]</b>	

**Next Meeting of Standards Committee – 16 September 2008**

<b>STANDARDS COMMITTEE</b> <b>29 JULY 2008</b>
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<b>*PART 1 – PUBLIC DOCUMENT</b>	<b>AGENDA ITEM No.</b>  <b>5a</b>
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**TITLE OF REPORT: COMPLAINT OF BREACH OF THE KINGS WALDEN PARISH CODE OF CONDUCT**

REPORT OF THE DEPUTY MONITORING OFFICER

**1. SUMMARY**

This report concerns the investigation and hearing of a complaint made by Mr John Poulter of Woodview Darleyhall against the conduct of Councillor Joe Beavis. Councillor Beavis is alleged to have breached the code of conduct by failing to declare an interest at a meeting.

**2. FORWARD PLAN**

This matter does not have relevance to the Forward Plan

**3. BACKGROUND**

3.1 Mr John Poulter made a complaint to the Standards Board in April 2007 that Councillor Hilary John (Joe) Beavis had failed to declare an interest at a meeting of the Kings Walden Parish Council in February 2007. An item on the agenda for that meeting was consideration of an application for planning permission for 'Land between Oakwood and 1 Darleyhall Luton'. Councillor Beavis resides at 4 Darleyhall Luton.

3.2 The Standards Board referred the matter for local investigation on 24 May 2007. The investigation was undertaken by the Council's Monitoring Officer, Frances Bogie and concluded on 13 May 2008 when the final report was issued.

3.2 The investigative (final) report and enclosures are at agenda item 5(c).

3.3 In accordance with Standards Board Guidance I am required to write to Councillor Beavis to advise of the date of this hearing. I sent this letter on the 11 July 2008 enclosing various forms for Councillor Beavis to return outlining any objections to the investigation or its conclusions.

3.4 The Guidance also requires that I produce a Deputy Monitoring Officer's report which I attach as appendix 1 to this report.

**4. ISSUES**

4.1 The Standards Committee are required to make one of three findings:

- That there has been no breach of the Code of Conduct

- That the Code of Conduct has been breached but that no action should be taken, and
- That the Code of Conduct has been breached and a sanction must be applied.

4.2 The sanctions are

- To censure the member
- Restriction on access to the authority's premises and resources for up to 3 months
- Partial suspension for up to 3 months
- Suspension for up to 3 months
- To require a written apology from the member
- That the member undertake training
- Partial or full suspension for a period of up to 3 months or until a written apology is issued
- Partial or full suspension for a period of up to 3 months or until a written apology is issued

4.3 It is ordinarily the case that the investigating officer makes recommendations to the Committee on an appropriate sanction if the member is found to have breached the Code, however the investigating officer in this case is currently absent from work long term and will not be attending the hearing. I propose, therefore, to issue advice to the Committee if it should make a finding that the Code has been breached. A recommendation is given in the report at paragraph 9.2 for training of Town and Parish Clerks.

## 5. LEGAL IMPLICATIONS

5.1 This procedure is conducted in accordance with the Local Authorities (Code of Conduct)(Local Determinations) Regulations and Standards Board Guidance on Standards Committee Determinations.

5.2 The Regulations require the Standards Committee to carry out the hearing in accordance primarily with the Standards Board Guidance. The process is reflected in the Council's own protocol for hearing these matters which is attached at appendix 2 to this report.

5.3 The principle obligations of the Standards Committee are to ensure

- that the member is given the right to attend or make written representations to the Committee. Alternatively he may choose to be represented at the hearing
- If the member seeks to call witnesses, the Standards Committee does have the right to restrict the number of witnesses it hears from if believes the number of witnesses is unreasonable
- If the member fails to attend the hearing the Standards Committee may either hear the matter in his absence or adjourn the hearing

## 6. APPENDICES

Appendix 1 – Deputy Monitoring Officers report on pre-hearing process

Appendix 2 – Procedure for Local Standards Hearings

**7. CONTACT OFFICERS**

Kim Sawyer Deputy Monitoring Officer x4561

**8. BACKGROUND PAPERS**

Local Authorities (Code of Conduct)(Local Determinations) Regulations  
Standards Board Guidance on Standards Committee Determinations

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**AGENDA ITEM 5(b)****SUMMARY OF CASE: STANDARDS COMMITTEE HEARING****COMPLAINT NO. SBE 18472.07****HEARING DATE: 29 July 2008**

<i>Name of the Authority</i>	North Herts District Council
<i>The name of the member who the allegation has been made about</i>	Councillor Hilary John (Joe) Beavis of Kings Walden Parish Council
<i>The name of the person who made the original allegation (or state reasons to keep identity confidential)</i>	Mr John Poulter
<i>The name of the Standards Committee Chair</i>	Mr Nicholas Moss
<i>The name of the Monitoring Officer</i>	Ms Frances Bogie (Mrs Kim Sawyer, Deputy Monitoring Officer for the hearing)
<i>The name of the ESO who referred the matter</i>	Mr Steven Kingston
<i>The name of the Clerk of the hearing</i>	Mr Ian Gourlay
<i>The date the pre-hearing process summary was produced</i>	11 July 2008

**APPENDIX 1**

<i>The date, time and place of the hearing</i>	29 July 2008 at 7.30pm Council Chamber, Council Offices, Gernon Road, Letchworth Garden City, Hertfordshire, SG6 3JF
Summary of the allegation	Mr John Poulter alleges that Councillor Joe Beavis breached the Code of Conduct by failing to declare an interest in a planning application for land between Oakview and 1 Darleyhall when the matter came before the Kings Walden Parish Council on 28 February 2007.
<i>The relevant section or sections of the Code of Conduct</i>	<p>Members must, under paragraph 1 of the Parish Councils (Model Code of Conduct) Order 2001, observe the Code wherever they are conducting the business of the authority.</p> <p>Paragraph 5 states that a member must not use his position as a member improperly to confer on or secure for himself an advantage or disadvantage.</p> <p>Paragraphs 8 &amp; 9 concern the duty of the member to make declarations of personal and prejudicial interests.</p> <p>Paragraph 10 states that a member with a prejudicial interest must withdraw from the room or chamber where a meeting is being held and he must not seek to improperly influence a decision about that matter.</p>
<i>The finding of fact of the Investigating Officer that are agreed</i>	None indicated to date although Councillor Beavis may choose to refer to findings of fact in agreement at the hearing.
<i>The finding of fact in the ESO report that are not agreed/or the finding of facts of the Investigating Officer that are not agreed</i>	None indicated to date although Councillor Beavis may choose to refer to findings of fact in disagreement at the hearing.
<i>Whether or not the member or the ESO/Investigating Officer will attend or be represented</i>	<p>The investigating officer, Ms Frances Bogie is absent and will not be attending the hearing.</p> <p>Councillor Beavis has not yet indicated whether he will be attending the hearing.</p>

**APPENDIX 1**

<i>The names of any witnesses who will be asked to give evidence if matter goes to a final hearing</i>	None
<i>An outline of the proposed procedure for the hearing</i>	The procedure for the hearing is contained in the Councils Procedure for Local Standards Committee Hearings which has previously been sent to Councillor Joe Beavis and is attached to the report of the Deputy Monitoring Officer at Agenda item 5(a).

## **Standards Committee Procedure for Local Standards Hearings**

### **1. Interpretation**

- (a) 'Member' means the member of the authority who is the subject of the allegation being considered by the Committee, unless stated otherwise. It also includes the member's nominated representative.
- (b) 'Investigator' means the Ethical Standards officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the Investigator mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).
- (c) 'The Matter' is the subject matter of the Investigator's report.
- (d) 'The Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- (e) 'The Committee Support Officer' means an officer of the authority responsible for supporting the Committee's discharge of its functions and recording the decisions of the Committee.
- (f) 'Legal Advisor' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
- (g) 'The Chairman' refers to the person presiding at the hearing.

### **2. Modification of Procedure**

The Chairman may agree to vary this procedure in any particular instance where s/he is of the opinion that such a variation is necessary in the interests of fairness.

### **3. Representation**

The member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

### **4. Legal Advice**

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 shared with the member and the Investigator if they are present.

### **5. Setting the Scene**

At the start of the hearing, the Chairman shall ensure that each of the members of the Committee, the member (if present), the Investigator (if present) and any other officers present are introduced, and shall then explain the procedure which the Committee will follow in the conduct of the hearing.

**6. Preliminary procedural issues**

The Committee shall then deal with the following preliminary procedural matters in the following order:

(a) Disclosures of interest

The Chairman shall ask members of the Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

(b) Quorum

The Chairman shall confirm that the meeting is quorate.

(c) Hearing procedure

The Chairman shall confirm that all present know the procedure which the Committee will follow in determining the matter.

(d) Proceeding in the absence of the member

If the member is not present at the start of the hearing:

(i) the Chairman shall ask the Monitoring Officer whether the member has indicated his/her intention not to attend the hearing;

(ii) the Committee shall then consider any reasons which the member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;

(iii) if the Committee is satisfied with such reasons, it shall adjourn the hearing to another date;

(iv) if the Committee is not satisfied with such reasons, or if the member has not given any such reasons, the Committee shall decide whether to consider the matter and make a determination in the absence of the member or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

The Committee may exclude the press and public from its consideration of a matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

The Chairman shall ask the member, the Investigator and the legal advisor to the Committee whether they wish to ask the Committee to exclude the press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Committee shall then determine whether to exclude the press and public from all or any part of the hearing. The advisor may be asked for advice on these requests.

Where the Committee does not resolve to exclude the press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

**7. Making findings of fact**

The Committee will then address the issue of whether or not there are any significant disagreements about the facts contained in the Investigator's report so that it can accept any facts in the Investigator's report agreed by the Member and make findings with regard to those facts not agreed.

- (a) The Chairman shall ask the member to confirm that s/he maintains the position on any finding of fact in the Investigator's report as set out during the pre-hearing process. If there is:
  - (i) No disagreement about any facts, the Committee can move on to the next stage of the hearing, to consider whether there has been a failure to comply with the Code of Conduct under 8 below.
  - (ii) Disagreement about the facts, the Committee will consider the position set out in the Pre-Hearing Process Summary.
- (b) Pre-Hearing Process Summary
  - (i) The Chairman will ask the legal advisor or the Committee Support Officer to present his/her report, highlighting any points of difference identified in the Pre-Hearing Process Summary in respect of which the member has stated that s/he disagrees with any finding of fact in the Investigator's report. The Chairman will then ask the member to confirm that this is an accurate summary of the issues and ask the member to identify any additional points upon which s/he disagrees with any finding of fact in the Investigator's report.
  - (ii) If the member identifies additional finding(s) of fact in the Investigator's report with which s/he disagrees, the Chairman shall ask the member to explain why s/he did not identify these points as part of the pre-hearing process. The Chairman shall then ask the Investigator (if present) whether s/he is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Committee is not satisfied with the member's reason for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the member to challenge the veracity of those findings of fact in the Investigator's report which the member did not identify a point of difference in the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigator and/or any additional witnesses to attend the hearing.
- (c) Presenting the Investigator's report
  - (i) If the Investigator is present, the Chairman will then ask the Investigator to present his/her report, having particular regard to any relevant points of difference in the facts identified by the member and why the Investigator reached his/her findings of fact. The Investigator may call witnesses as necessary to address any points of difference. Where ever possible, the Investigator should be present.

## APPENDIX 2

- (ii) If the Investigator is not present, the Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any relevant points of difference can be satisfactorily resolved in the absence of the Investigator. In the absence of the Investigator, the Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses' attention to any relevant section of the Investigator's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
  - (iii) Cross-examination shall be permitted, at the conclusion of the Investigator's report and/or of the evidence of each witness, following which the Chairman will ask Members of the Committee whether they have any questions of the Investigator or witness as appropriate.
- (d) The member's response
  - (i) The Chairman shall then invite the member to respond and to present his/her version of the facts in the Investigator's report and to and to call any witnesses as necessary to address any points of difference.
  - (ii) Cross-examination shall be permitted, at the conclusion of the member's evidence and/or of the evidence of each witness, following which the Chairman will ask Members of the Committee whether they have any questions of the member or witness as appropriate.
- (e) Witnesses
  - (i) The Committee shall be entitled to refuse to hear evidence from the Investigator, the member or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine the findings as to the relevant facts within the Investigator's report.
  - (ii) Any member of the Committee may address questions to the Investigator, to the member or to any witness.
- (f) Additional Evidence

At the conclusion of the evidence, the Chairman shall check with the members of the Committee that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.
- (g) If the Committee at any stage prior to determining the findings of fact as set out in the Investigator's report are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Committee may (on not more than one occasion) adjourn the hearing and make a request to seek and provide such additional evidence and to undertake further investigation on any point specified by the Committee.
- (h) Determination as to finding(s) of fact
  - (i) At the conclusion of the member's response, the Chairman shall ensure that each member of the Committee is satisfied that s/he has sufficient information to enable him/her to determine findings of fact.

- (ii) The Committee shall then retire to another room to consider in private its findings as to the facts as set out in the Investigator's report.
- (iii) The Committee shall take its decision on its findings as to the facts on the balance of probability based on the evidence it has received at the hearing.
- (iv) In carrying out its function to make a finding on the facts, the Committee may at any time, return to the main hearing room in order to seek additional evidence from the Investigator, the member or a witness, or to seek the legal advice from its legal advisor. If it requires any further information, it may adjourn and instruct an officer or request the member to produce such further evidence to the Committee.
- (v) The Committee shall then return to the main hearing room and the Chairman will state the Committee's principal findings with regard to the facts as set out in the Investigator's report.

### **8. Whether the member has failed to follow the Code of Conduct?**

The Committee will then address the issue of whether or not, on the basis of the facts it has established, the member has failed to follow the Code of Conduct in the manner set out in the Investigator's report:

- (a) The Chairman will invite the Member to give relevant reasons why the Committee should not decide that the Member has failed to follow the Code of Conduct.
- (b) The Chairman will then invite the investigator if present to respond and to give relevant reasons why the Committee should decide that the Member has failed to follow the Code of Conduct.
- (c) The Committee may, at any time, question anyone involved on any point they have raised in their representations.
- (d) The Chairman will then invite the Member to make any final relevant points for the Committee to consider in making its determination on whether the Member has failed to follow the Code of Conduct.
- (e) The Chairman will then ensure that each member of the Committee is satisfied that s/he has sufficient information to enable him/her to take an informed decision on whether or not, on the basis of the facts it has established, the member has failed to follow the Code of Conduct in the manner set out in the Investigator's report.
- (f) The Committee will then retire to another room to consider in private the representations and determine its findings on the balance of probability whether the Member has failed to follow the Code of Conduct. The Committee may, at any time, return to the main hearing room in order to seek additional representations from the investigator, the member or a witness, or to seek legal advice from its legal advisor.
- (g) At the conclusion of the Committee's consideration, the Committee shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among members.

- (h) The Committee shall then return to the main hearing room and the Chairman will state the Committee's principal findings of fact and their determination as to whether the member failed to comply with the Code of Conduct as set out in the investigator's report.

### **9. If the member has not failed to follow the Code of Conduct**

If the Committee determines that the member has not failed to follow the Code of Conduct in the manner set out in the investigator's report:

- (a) If the Committee apprehends, from the evidence which they have received during the hearing, that a member has failed to comply with the Code of Conduct (other than the matter which the Committee has just determined), the Chairman shall outline the Committee's concerns and state that the Committee has referred this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- (b) The Chairman should then set out any recommendations which the Committee is minded to make to the authority with a view to promoting high standards of conduct among members and seek the views of the member, the investigator and the legal advisor before the Committee finalises any such recommendations.
- (c) Finally, the Chairman should ask the member whether s/he wishes the authority not to publish a statement of its findings in a local newspaper.

### **10. Action consequent upon a failure to comply with the Code of Conduct**

- (a) The Chairman shall ask the investigator (if present, or otherwise the legal advisor) whether, in his/her opinion the member's failure to comply with the Code of Conduct is such that the Committee should impose a sanction and, if so, what would be the appropriate sanction.
- (b) The Chairman will then ask the member to respond to the investigator's advice.
- (c) The Chairman will then ensure that each member of the Committee is satisfied that s/he has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- (d) Any member of the Committee may address questions to the investigator or to the member as necessary to enable him/her to take such an informed decision.
- (e) The Chairman should then set out any recommendations the Committee is minded to make to the authority with a view to promoting high standards of conduct among members and seek the views of the member, the investigator and the legal advisor.
- (f) The Committee shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations the Committee will make to the authority.

- (g) At the completion of their consideration, the Committee shall return to the main hearing room and the Chairman shall state the Committee's decisions as to whether to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Committee will make to the authority.

### **10. Reference back to the Ethical Standards Officer**

If at any time before the Committee has determined upon any appropriate sanction, the Committee considers that the nature of the failure to comply with the Code of Conduct for Members is such that the appropriate sanction would exceed the powers of the Committee, the Committee may instruct the Monitoring Officer to resume responsibility for the conduct of the matter, and may adjourn the hearing until the Monitoring Officer advises the Committee of the Ethical Standards Officer's response to such a request.

### **11. The close of the hearing**

- (a) The Committee will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the member as soon as practicable after the close of the hearing;
- (b) The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing.
- (c) Following the close of the hearing, the Committee Support Officer will agree a formal written notice of the Committee's determination and shall arrange for the distribution and publication of that notice (or a summary of that notice, where required) in accordance with Regulation 8 of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003.

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**\*PART 1 – PUBLIC DOCUMENT**

**AGENDA ITEM No.**

**5b**

**TITLE OF REPORT: HEARING FOLLOWING INVESTIGATION – PARISH COUNCILLOR  
BEAVIS (KINGS WALDEN PARISH TOWN COUNCIL) – INVESTIGATING OFFICER'S  
REPORT**

REPORT OF THE INVESTIGATING OFFICER (MONITORING OFFICER)

Report attached.

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**FINAL REPORT - CONFIDENTIAL**

**NORTH HERTFORDSHIRE DISTRICT COUNCIL  
STANDARDS COMMITTEE**

**REPORT IN TO AN ALLEGATION AGAINST A KINGS WALDEN  
PARISH COUNCILLOR – COUNCILLOR JOE BEAVIS**

**SBE 18472.07**

**REPORT OF THE MONITORING OFFICER**  
**SBE REF:- 18472.07**

**1. The allegation**

- 1.1 The allegation is made by Mr J Poulter, resident of "Woodview", Darleyhall, Hertfordshire. The allegation is that Councillor Beavis failed to declare an interest and failed to withdraw from a meeting of Kings Walden Parish Council on 28 February 2007, when a planning application relating to Darleyhall was considered.
- 1.2 Mr Poulter refers in his complaint<sup>1</sup> to the minutes<sup>2</sup> of the meeting of 28 February 2007, a letter of objection from Councillor Beavis<sup>3</sup> to the Planning department of North Hertfordshire District Council and a letter of objection dated 9 March 2007 sent on behalf of the Parish Council<sup>4</sup>.
- 1.3 Councillor Beavis is alleged to be a neighbour of Mr Poulter. The complaint alleges that Councillor Beavis advised the Parish Council of his objection. Mr Poulter's allegations were made to the Standards Board for England on 17 April 2007.

**2. The Legislation**

- 2.1 Section 58 of the LGA 2000 places the Standards Board under a duty to consider written allegations made under 58(1) in respect of alleged failures of members of relevant authorities to comply with the authority's adopted Code of Conduct. For the purpose of 58(1) LGA 2000 a member of a relevant authority includes members of parish councils.
- 2.2 Written allegations which the Standards Board consider should be investigated must be referred to an Ethical Standards Officer (ESO). An ESO may make a finding that the matters, which are the subject of an allegation, should be referred to the Monitoring Officer (MO) of the relevant authority concerned for local investigation. Where such a finding is made the ESO must refer the matters to the MO under section 64(2)(b) LGA 2000.
- 2.3 When an investigation is referred to the MO of the relevant authority, the MO is required to conduct an investigation into the allegation and, following investigation, prepare a written report on the investigation and the findings. The MO's written report is required to be submitted to the Standards Committee of the relevant authority, as the body responsible for monitoring the operation of the authority's Code of Conduct.
- 2.4 On receiving a written report from the MO, or from a person nominated by the MO under section 64(2) LGA 2000, the Standards Committee of the relevant authority must consider the report. If the report concludes that there has been no failure to

<sup>1</sup> Mr Poulter's Complaint Form and accompanying documents

Pages 1-11

<sup>2</sup> Kings Walden Parish Council - Minutes of meeting 28<sup>th</sup> February 2007

Pages 5-7

<sup>3</sup> Letter of objection from Councillor Beavis dated 24 February 2007

Pages 3

<sup>4</sup> Letter of objection sent on behalf of Kings Walden Parish Council

Pages 4

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observe the Code of Conduct the Standards Committee may accept the finding without a Committee hearing. In all other cases the Standards Committee must consider the reports findings at a hearing.

- 2.5 Following a hearing, the Standards Committee must make a finding as to whether the person subject to an allegation has failed to comply with the Code of Conduct. Where a Standards Committee finds that a breach of the Code of Conduct has occurred various sanctions can be imposed on the member subject to the finding.

### **3. The Code of Conduct**

- 3.1 Section 50(1) and (2) of the LGA 2000 provides for a Code of Conduct governing the ethical behaviour of members of relevant authorities to be issued by the Secretary of State.
- 3.2 Under section 51(1) and 83(1) of the LGA 2000 relevant authorities are required to pass a resolution adopting the Code of Conduct within 6 months of its issue. Furthermore, all members of a relevant authority must give the authority a written undertaking that they will observe the authority's Code of Conduct.
- 3.3 The Parish Councils (Model Code of Conduct) Order 2001 (SI No. 2001/3576) was issued by the Secretary of State and came into force on 27 November 2001. This Code of Conduct was in force at the time of the alleged behaviour which is the subject of the complaint. Councillor Beavis had undertaken to abide by this Code.<sup>5</sup>

### **4. Alleged breaches**

- 4.1 The allegation shows the following potential breaches of the Code of Conduct:-
1. a failure to declare a prejudicial interest;
  2. a failure to withdraw from the meeting;
  3. improperly seeking to influence the outcome of a decision;
  4. seeking to improperly use his position to confer an advantage or disadvantage on any person.

### **5. The investigation**

- 5.1 On 8 May 2007, officers of the Standards Board for England determined the case should be referred to an Ethical Standards Officer. On 24 May 2007, the Ethical Standards Officer referred the matter for local investigation under s.60(2) of the Local Government Act 2000.
- 5.2 The investigation has been carried out by the Monitoring Officer for North Hertfordshire District Council, Frances Bogie.
- 5.3 In the course of this investigation the following evidence was considered:-

Mr Poulter's complaint form dated 17 April 2007;<sup>6</sup>  
Kings Walden Parish Council Code of Conduct;<sup>7</sup>  
Councillor Beavis' Declaration of Acceptance of Office;<sup>8</sup>  
Councillor Beavis' Register of Financial Interests;<sup>9</sup>

<sup>5</sup> Councillor Beavis' Declaration of Acceptance of Office

<sup>6</sup> Mr Poulter's complaint form dated 17 April 2007

<sup>7</sup> Kings Walden Parish Council's Code of Conduct

<sup>8</sup> Councillor Beavis' Declaration of Acceptance of Office

## FINAL REPORT - CONFIDENTIAL

Minutes of Kings Walden Parish Council Meeting of 28 February 2007;<sup>10</sup>  
Minutes of Kings Walden Parish Council Meeting of 28 March 2007;<sup>11</sup>  
Minutes of Kings Walden Parish Council Meeting of 25 April 2007;<sup>12</sup>  
Letter of Councillor Beavis dated 4 June 2007;<sup>13</sup>  
Letter of Kings Walden Parish Council to North Hertfordshire District Council dated 9 March 2007;<sup>14</sup>  
Plan of the application site showing 4 Darleyhall;<sup>15</sup>  
Interview with Mrs J Ashby (Clerk to Kings Walden Parish Council);<sup>16</sup>  
Interview with Councillor J Beavis.<sup>17</sup>  
Letter from Councillor Beavis dated 4 April 2008.<sup>18</sup>

- 5.4 The investigation is only conducted into the alleged breaches of the Code of Conduct. Allegations relating to the evidence considered by the Parish Council is not within the jurisdiction of the Standards Committee and is not considered in this investigation.

### **6. Background**

- 6.1 Kings Walden Parish Council are a statutory consultee on planning applications within their area. North Hertfordshire District Council are the planning authority who decide an application.
- 6.2 Councillor Beavis' Register of Financial Interest, shows he is the owner of 4 Darleyhall.<sup>19</sup>
- 6.3 From consideration of Councillor Beavis' letter of objection, dated 24 February 2007, it is clear that he is a neighbour of Mr Poulter and that he considers his property to be potentially affected by the application.<sup>20</sup>
- 6.4 Councillor Beavis' letter to the Monitoring Officer of 4 June 2007, states that he informed the Parish Council of his objection to the application and that he intended to withdraw from the meeting.<sup>21</sup> In interview, Councillor Beavis stated that he told the Council meeting that he "was objecting in a personal capacity and therefore felt [he] should withdraw". He went on to state that the Chairman of the Parish Council requested that he remain in the meeting as he "had read the complete document" and "was the one who knew the layout of things at Darleyhall". He went

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<sup>9</sup> Councillor Beavis' Register of Financial Interests	Pages 23-25
<sup>10</sup> Confirmed minutes of Kings Walden Parish Council Meeting of 28 February 2007 and shorthand notes of Clerk	Pages 26-27
<sup>11</sup> Confirmed minutes of Kings Walden Parish Council Meeting of 28 March 2007	Pages 28-30
<sup>12</sup> Confirmed minutes of Kings Walden Parish Council Meeting of 25 April 2007	Pages 31-32
<sup>13</sup> Letter of Councillor Beavis dated 4 June 2007	Page 33
<sup>14</sup> Letter of Kings Walden Parish Council to North Hertfordshire District Council dated 9 March 2007	Page 4
<sup>15</sup> Plan of the application site showing 4 Darleyhall	Pages 34-35
<sup>16</sup> Interview transcript with Mrs J Ashby (Clerk to Kings Walden Parish Council)	Pages 36-43
<sup>17</sup> Interview transcript with Councillor J Beavis	Pages 44-51
<sup>18</sup> Letter from Councillor Beavis dated 4 April 2008	Page 52
<sup>19</sup> Councillor Beavis' Register of Financial Interests	Pages 23-25
<sup>20</sup> Letter of objection from Councillor Beavis dated 24 February 2007	Page 3
<sup>21</sup> Letter of Councillor Beavis dated 4 June 2007	Page 33

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on to say he “was there to provide any information which the Councillor’s wanted as local information”.<sup>22</sup>

- 6.5 The minutes of the meeting of 28 February 2007, do not contain any reference to Councillor Beavis’ interest in the item, merely noting that “Councillor Beavis reported on the problems ....”<sup>23</sup>
- 6.6 Mrs Ashby stated in interview that Councillor Beavis had said “should he speak at the meeting and that Members had agreed and I forgot to put that on the minutes”<sup>24</sup>. She went on to say that she “ did not believe that Mr Beavis has a financial interest due to the fact that he only lives there and that [she] advised the Council of this”.<sup>25</sup>
- 6.7 From the minutes, Councillor Beavis’ letter of 4 June 2007 and the interviews, there is agreement that Councillor Beavis remained in the room throughout consideration of this item. There is also agreement that Councillor Beavis voiced his objections to the application.
- 6.8 In interview Mrs Ashby<sup>26</sup>, and Councillor Beavis<sup>27</sup> stated that he voted on the proposal to object to the planning application. Subsequent to the final draft of this report having been sent to Councillor Beavis he objected. His letter of objection received by the Monitoring Officer on the 7 April 2008 were considered and this report reflects those considerations.
- 6.9 On 4 February 2008, Councillor Beavis was sent a copy of the draft Investigation Report. In the covering letter he was asked for his comments to be sent in writing to the Monitoring Officer by 11 February 2008. No response was received.
- 6.10 Having contacted the Council via the Customer Service Centre, on 7 April 2008, Councillor Beavis hand delivered a letter to the Monitoring Officer, a copy of which is attached.<sup>28</sup>
- 6.11 Councillor Beavis’ letter of 4 April 2008 states that he considers paragraphs 6.8 and 7.5 of the final report to be “totally untrue”. Whilst he acknowledges that he does not know the evidence given by Mrs Ashby, he states that he said in interview that he did not vote. Having re-considered Councillor Beavis’ specific reference to his interview, I am satisfied that he said “other than providing information as the discussion went on local knowledge, I took no other part in the discussion and I certainly didn’t vote”.
- 6.12 Further questioning regarding the formality of the vote and the possible perception of a member of the public who may have attended the meeting as to how the vote was taken elicited the following responses from Councillor Beavis:-

“it is a small informal Council you know it is not very often that a [*sic*] military showing of hands”.

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<sup>22</sup> Interview transcript with Councillor J Beavis Page 45  
<sup>23</sup> Kings Walden Parish Council – Minutes of meeting 28<sup>th</sup> February 2007 Pages 6  
<sup>24</sup> Interview transcript with Mrs J Ashby (Clerk to Kings Walden Parish Council) Page 39  
<sup>25</sup> Interview transcript with Mrs J Ashby (Clerk to Kings Walden Parish Council) Page 39  
<sup>26</sup> Interview transcript with Mrs J Ashby (Clerk to Kings Walden Parish Council) Page 41  
<sup>27</sup> Interview transcript with Councillor J Beavis Page 47  
<sup>28</sup> Letter from Councillor Beavis dated 4 April 2008 Page 52

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“generally it is a sense of the meeting”.

“I would have taken that my absence or my silence would have indicated that that was me finished”. Councillor Beavis amended this transcription to read “I would have taken it that my silence would have indicated that that was me finished”.

“I would have said that there was no doubt about it at all, that the mood of the meeting was that this letter should be written”.

“Oh well, I was just sitting there, with a few members who proposed and seconded it were obviously involved and the other members who were there, from there sense and body language and facial expressions”.

6.13 In view of the lack of clarity around who voted and how this was ascertained, I am of the opinion that the item was not disposed of following a formal vote, but that the “mood of the meeting”, was taken to be a consensus and hence the matter considered resolved. Whilst I have not seen or considered the Standing Orders of Kings Walden Parish Council’s constitution it is acceptable practice in non-regulatory or administrative decision-making for the “mood of the meeting” to be judged by the Chair and recorded as the decision of the Council. The minutes of the meeting read “Land adjacent to No. 1 Darley Hall – Re-submission of Outline Planning Application for one new dwelling: The occupant at No.1 had written against this development. Mr Beavis reported upon the problems the development may cause regarding sewerage/waste water, access and also stated that the speed tests were carried out at the wrong position. It was proposed by Mr Bretherton, Seconded by Mr Galliers and Agreed that the Clerk should write objecting to the new proposals”.<sup>29</sup>

6.14 In stating that it was untrue that he said that he voted on the matter Councillor Beavis is correct and I therefore amend this sentence to read:-

Having considered the responses of Councillor Beavis and Mrs Ashby in full, I have applied an objective test of openness and transparency as to how a member of the public would be likely to perceive the presence and involvement of Councillor Beavis’ in the vote on this item. I am satisfied that a member of the public would not have been able to tell whether, let alone how, Councillor Beavis voted. The “mood of the meeting” seems to have been a unanimous one for which Councillor Beavis was present. In being present whilst having an undeclared prejudicial interest, Councillor Beavis is in breach of the requirements of the Code of Conduct. Whether or how Councillor Beavis voted is in my opinion irrelevant to the determination of whether or not he was in breach of the Code. This is the only issue on which the Monitoring Officer or the Standards Committee has jurisdiction to reach a finding.

6.15 In conclusion, whilst Councillor Beavis did not respond to the draft or final report, and his submissions should have been addressed to the Deputy Monitoring Officer who was handling taking the final report to the Standards Committee, I have considered his representations and re-considered my findings, he is correct to highlight the factual statement that he said he did not vote, and hence I have amended this in my report. Considering the materiality and accuracy of this objection, does not in my opinion merit any further or substantial amendment to my final report. The further conclusion that I would draw from this response, is that Councillor Beavis’ presence in the room when the “mood of the meeting” was

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<sup>29</sup> Kings Walden Parish Council - Minutes of meeting 28<sup>th</sup> February 2007

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taken, exacerbated the factual breach of his very presence and that his lack of vocal involvement at the stage of the item being disposed of, does not mitigate the fact of the breach or the purpose for which the Code of Conduct made this explicit provision. In conclusion, I consider this to be supportive of the need for members to understand the public law principles on which the Code is based and the need for open, transparent and accountable public decision making.

- 6.16 Mrs Ashby was responsible for drafting the letter of objection on behalf of the Parish Council. In interview she confirmed that she wrote this letter and stated that she did so based on the comments from the Parish Council's consideration of the planning application and that Councillor Beavis made the report to the Council.<sup>30</sup>

### **7. Findings**

- 7.1 Councillor Beavis had a personal interest in the planning application. The fact that his property is included in his Register and this is adjacent to Darleyhall, means that Councillor Beavis had a personal interest in the planning application of Mr Poulter.<sup>31</sup>
- 7.2 From the minutes of the meeting it is clear that there was a failure to declare and record the existence and nature of Councillor Beavis' interest, either as a personal or a prejudicial interest. It is the personal responsibility of the Member to ensure that the existence and nature of an interest are declared in the minutes.
- 7.3 In deciding whether this personal interest was also a prejudicial interest the test to be applied is whether a reasonable person with knowledge of all the relevant facts would consider it so significant that it was likely that Councillor Beavis' judgement of the public interest was prejudiced. Councillor Beavis did not consider this test.
- 7.4 In my opinion it is clear that Councillor Beavis had a prejudicial interest in this matter. In interview he acknowledged this and indicated that he now would apply this test.<sup>32</sup> Where a prejudicial interest exists the Code of Conduct requires that the Member declare the existence and nature of the interest and that he then withdraw from the meeting and not seek to improperly influence the decision.
- 7.5 All the evidence supports the finding that Councillor Beavis failed to declare his interest, either as personal or prejudicial. Although he referred to his interest, he did not ensure that this was recorded in the minutes as is required and he did not declare whether the interest was personal or prejudicial. The evidence also supports a finding that Councillor Beavis failed to withdraw from the meeting. He admits that he remained, spoke and voted.
- 7.6 Although the evidence of Mrs Ashby supports Councillor Beavis' assertion that he was asked to remain in the meeting and to speak on the item, it is his personal duty to observe the requirements of the Code and thus it is not a relevant consideration in determining whether or not a breach has been proven.
- 7.7 In considering whether the objections put by Councillor Beavis were an attempt to influence the decision of the Council, in my opinion it is reasonable to consider that this was the case. Mrs Ashby stated in interview that the minutes of this February meeting were agreed and approved at the March meeting, without comment on the

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<sup>30</sup> Interview transcript with Mrs J Ashby (Clerk to Kings Walden Parish Council)

Page 41

<sup>31</sup> Councillor Beavis' Register of Financial Interests

Pages 23-25

<sup>32</sup> Interview transcript with Councillor J Beavis

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issue of interests being declared or recorded. She stated that Councillor Beavis was as that meeting. She also stated that subsequent to this Mr Poulter contacted her and she discussed the interest issue with him. She then reported this back to the Parish Council at their meeting in April. She stated that Councillor Beavis queried whether he should have been present for discussion on the item. She stated that the Chairman told him he should not have left as "he needed to stay as a resident"<sup>33</sup>. Without imputing any ill-intent this must be found to be an improper influence on the decision of the Council, due to the fact the Code required any member with a prejudicial interest to withdraw from the meeting. Councillor Beavis' own evidence confirms that his submissions in relation to the application were the primary considerations of the Parish Council.

- 7.8 It is relevant background to this finding that Mr Poulter's application was a second application. In the year prior to this the Parish Council had considered the first application and had no objection to this.
- 7.9 The remaining question is whether or not Councillor Beavis sought to use his position to improperly confer an advantage or disadvantage on himself or any other person. In my opinion the outcome of the planning application was clearly one which would have an impact on Councillor Beavis' enjoyment of his property. The objections that he raised at the Parish Council meeting were those contained in his letter to the Planning department dated 24 February 2007<sup>34</sup>. The refusal of the application was then likely to be of an advantage to Councillor Beavis and by necessary implication a disadvantage to Mr Poulter. In the circumstances I find that the Code has further been breached by this use of Councillor Beavis' position as a Parish Councillor to seek to confer an advantage on himself.

### **8. Considerations**

- 8.1 It is notable that Councillor Beavis has received no training on the 2001 Code of Conduct in force at the time and its implications. It is also notable that none of the other Parish Councillors have received such training. Whilst this is not a defence to the finding of breach of the provisions of the Code, the Committee may wish to take this into consideration when considering the sanction to be imposed and in considering their wider remit of providing advice and guidance to town and parish councils in the District.

This is my final report having considered all the available evidence. Councillor Beavis was given the opportunity to comment on my draft report and made no representations to me but I have considered his subsequent representations and amended my report accordingly.

### **9. Recommendations**

- 9.1 That the Standards Committee note the content of the report and reach a finding of breaches of the following provisions of the Code:-
1. a failure to declare a prejudicial interest;
  2. a failure to withdraw from the meeting;
  3. improperly seeking to influence the outcome of a decision;
  4. seeking to improperly use his position to confer an advantage or disadvantage on any person.

<sup>33</sup> Interview transcript with Mrs J Ashby (Clerk to Kings Walden Parish Council) Page 42

<sup>34</sup> Letter of objection from Councillor Beavis dated 24 February 2007 Page 3

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- 9.2 That the Standards Committee consider the appropriate sanction against Councillor Beavis.
- 9.3 That the Standards Committee recommend to all Town and Parish Clerks that they ensure that clerks and all members have a training programme in place to ensure members understand the application of the current (2007) Code and their personal responsibilities in complying with it.