

**STANDARDS COMMITTEE
16TH JUNE 2008**

LOCAL INVESTIGATION & DETERMINATION HEARING

**REFERENCE SBE 17755.07 - FORMER CLLR EDWARD BARHAM
OF ROLVENDEN PARISH COUNCIL**

REPORT OF THE MONITORING OFFICER

Introduction

1. This case was referred to me for local investigation by the Standards Board's Ethical Standards Officer on 26th April 2007, pursuant to s.60(2) of the Local Government Act 2000. The investigation was undertaken on my behalf by an external solicitor with specialist local government experience. Her report and the documents referred to therein are contained within the attached bundle together with other relevant documents. Hearings by Standards Committee must be held within 3 months of receipt of the final Investigator's report and this means that this case must be heard and determined by 16th July 2008.
2. The Committee has adopted its own detailed procedure for determination hearings and a copy of this is attached within the Bundle. Members should read this carefully before the hearing.
3. The purpose of the Standards Committee hearing is to consider the Investigator's report and all other relevant information and representations and determine whether breaches of the Parish Council's Code of Conduct have occurred and if so what sanction (if any) should be applied in the circumstances. The procedure note sets out the options which would be available to members in the event the Committee finds a breach or breaches of the Code.

Pre-Hearing Summary

4. In accordance with the procedure adopted by the Committee, I have carried out the pre-hearing procedure in writing. It requires me to undertake enquiries of the parties in order to establish the likely extent of disagreement between them and facilitate the proper conduct of the hearing. The documentation on the pre-hearing procedure is also contained in the attached Bundle of documents.
5. The procedure requires me to summarise certain matters and I do so below under the relevant hearings.

(a) The complaint

The complainant has alleged that ex-Cllr Edward Barham failed to declare an interest at and withdraw from a meeting of the Parish Council on 20 February 2007 and otherwise sought improperly to influence the outcome of decisions in breach of the Council's adopted Code of Conduct. The allegation centres around discussions and decisions at Parish Council meetings in relation to the complainant's planning application for a new site for his sausage factory on land east of Redwood, Tenterden Road, Rolvenden.

(b) The Investigator's report and findings

The Investigator's report concludes that ex-Cllr Barham failed to comply with paragraph 8 of the Code (declaration of personal interests) and paragraph 10(a) of the Code (withdrawal from room for prejudicial interests) at a meeting of the Parish Council on 20 February 2007 and also on one occasion failed to comply with paragraph 10(b) of the Code (not seek to improperly influence decisions) in relation to the outcome of the meeting on 16 January 2007..

(c) The pre-hearing enquiries

Ex-Cllr. Barham's letter of 26 May 2008 and accompanying Forms A to E are included in the attached Bundle. It can be seen from these that all are blank, save for Form D in which Mr Barham confirms he does not intend to attend the hearing for reasons explained in the covering letter, although he says he may change his mind. He confirmed to me on the telephone that he does not object to the 16 June hearing date and agrees to the matter being dealt with in his absence. Under paragraph 7(d) of the adopted procedure the Committee can proceed in the absence of Mr Barham and in the circumstances my advice is that it is proper and reasonable to do so. In any event the matter must be heard and determined before 16 July 2008. Mr Barham has not indicated any disagreement or dispute as to the facts as such, although he says he "does not concur with the outcome."

(d) Key issues

It appears to me that the key issues to be determined are

- Establishing the facts (which are not in dispute)
- To consider whether, on the facts, there were breaches of the Code as set out in the Investigator's report or otherwise (again this appears to be undisputed)
- Consider what sanctions are appropriate in the event breaches are found, taking into account any representations made by the parties. In this respect it should be noted that Mr Barham is no longer a parish councillor and has not been since May 2007. In these circumstances the only sanction available to the Committee is that of censure.

BUNDLE OF DOCUMENTS

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FINAL REPORT

This represents the final report of the investigator produced following receipt of comments

SBE 17755.07

Final report of the investigator

Complaint against Edward Barham

1. Background

The Standards Board for England received a complaint from Mr A J Hoad against Edward Barham who was the Chairman of Rolvenden Parish Council at the time of the conduct the subject matter of the complaint. Mr Barham is no longer a councillor having not been re-elected in the Parish Council elections of May 2007.

Pursuant to the local determination provisions of the Local Government Act 2000 the Standards Board referred the complaint to the monitoring officer of Ashford Borough Council for local determination. The monitoring officer engaged the author to investigate the complaint and report back to him.

Mr Hoad alleged that Mr Barham breached the code of conduct in relation to Mr Hoad's planning application for a new site for his factory. The breaches he says relate specifically to three meetings of the Parish Council dated 16 January 2007, 29 January 2007 and 20 February 2007. He says that Mr Barham failed to declare a prejudicial interest in his planning application and that;

- i) having declared an interest at the meeting on 16 January 2007 and having removed himself from the room during consideration of the item, he then improperly used his influence and misused his position to ensure that the decision made on 16 January 2007 was reconsidered on 29 January 2007 and that
- ii) he failed to declare a prejudicial interest at the meeting on 20 February 2007.

2. The Code of Conduct

The relevant Code of Conduct for the Rolvenden Parish Council at the time of the allegations was the Model Code of Conduct for Parish Councils contained in the Parish Councils (Model Code of Conduct) Order 2001 (attached as appendix 1 to this report). It was adopted by the Parish Council. The relevant parts of the Code for the purposes of this complaint are;

“ 7- (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 any 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 person, any firm in which they are a partner, or any company of which they are directors;**
- (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or**
- (d) any body listed in sub-paragraphs (a) to (c) of paragraph 13 below in which such a person holds a position of general control or management**

(2) in this paragraph –

- (a) “relative” means spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece or the spouse or partner of any of the preceding persons; and**
- (b) “partner”above means a member of a couple living together “**

(8) 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 whenever the interest becomes apparent

(9)- (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

10. 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 standards committee of the responsible authority; and**
- (b) not seek improperly to influence a decision about that matter**

3. History and allegations

Mr Hoad has owned and run a sausage factory in Rolvenden for many years. It was accepted by everybody I spoke to that the factory is an important local employer and that the village wants to keep it. Mr Hoad wants to build another factory in or around the

village and relocate the business. Mr Barham and his family own a substantial amount of land in and around Rolvenden. It is generally known that Mr Hoad and Mr Barham do not get on well but Mr Hoad wants it known that this did not motivate his complaint and that his motivation in making the complaint was to have an independent person investigate what he saw as a breach of a power and for the findings to be made public. They trace their differences back to disagreements about the location of some local needs housing in the village.

Mr Barham had been discussing with Mr Hoad the location of local needs housing and also the possibility of his locating the factory on his land at Windmill Farm. Mr Hoad did not want to take a leasehold interest on Mr Barham's land for his new factory.

4. Evidence

I interviewed Mr Hoad and Mr Barham in person and interviewed Ms Serra, the Parish Council Clerk over the telephone. They have all agreed their statements which are attached at appendix 2, 3 and 4. Having completed these interviews I did not consider it necessary to interview anybody else. I also considered all the papers sent to me by Mr Hoad and Mr Barham. These consisted mostly of agendas and minutes of the Parish Council meetings and also letters that passed between them.

From the interview notes it can be seen that there is no relevant conflict of evidence about the events that took place. It can also be seen from the correspondence between Mr Hoad and Mr Barham that they had been corresponding in 2006 about their various land ownerships and the location of some local needs housing and also the location of the factory. Mr Barham had put forward the Windmill Farm site as a possible location for the factory and also considered that some of his land could be used for local needs housing but conditional upon land immediately behind it being used for commercial use (letters dated 5,8,13 June 2006 and 18 September 2006 at appendices 5, 6, 7, and 8).

Mr Hoad declined the Windmill Farm site and submitted a planning application for the factory to be built outside the village built up area boundary. The application was submitted to Ashford Borough Council under application number 06/02370/AS for the construction of a new factory and creation of a new vehicular access at land east of Redwood, Tenterden Road, Rolvenden, Kent. The Parish Council was consulted on the application and first considered the matter at its meeting on 16 January 2007. At that meeting Mr Barham declared a personal and prejudicial interest in another application and also "a potential interest in application no 06/02370/AS should other sites be considered in the consultation" (minutes of 16 January meeting appendix 9). He left the room and took no part in the discussion of the item. The Parish Council resolved to support the application and on 18 January 2007 wrote to the planning officer at Ashford Borough Council to tell him. At the end of the letter there is a reference to fact that there will be another meeting to consider the matter planned for 29 January 2007. (appendix 10).

On 19 January 2007 Mr Barham wrote to Ashford Borough Council to object to the application. On the same date he submitted a statement to Parish Councillors that sets out various objections to the proposal and also sets out the content of some of the discussion he had been having with planning officers about the application. He did this despite the fact that he had declared a prejudicial interest and his explanation is that the Parish Council needed to know all the relevant planning considerations and they had not had them at the meeting on 16 January(appendix 11). On 22 January there is a summons to members of the Parish Council to attend an extraordinary meeting of the Parish Council on 29 January 2007 to consider a resolution to rescind the decision of 16 January and to reconsider the matter.(appendix 12). Mr Barham did not attend that meeting as he still felt he had a prejudicial interest. At that meeting no decision was reached and the matter was put off until the meeting of 20 February 2007.

At that meeting some members and the clerk were surprised to see him at the meeting because of the fact that he had previously declared an interest and stayed away. The minutes record that a member read out the parts of the code requiring members to get dispensations where they have a prejudicial interest. The minutes record that Mr Barham's reply was that he had contacted Ashford Council and that as the applicant had stated that he would have no commercial interest in land owned by the Chairman he did not have an interest to declare and would remain to Chair the meeting. The Parish Council decided on Mr Barham's casting vote to object to the application on various grounds amongst which is the objection that alternative sites have not been fully explored. The objection is sent to Ashford Borough Council (appendix 13).

During the course of the investigation I became aware that Mr Barham also has an interest in land on the other side of the road from the application site and I asked him whether it was correct that he had such an interest in land on the other side of the road from application site (about 150 yards away from the site). His response to me by e-mail was ;

“ in response to your question, you are well aware that I and my family own land in Rolvenden, it lies at the heart of some aspect from the complainant . Yes, we do own land on the other side of the A28 to the application site but I cannot see that it materially affects this matter. One of the fields in question is occupied by Rolvenden Football Club , who have been there for something near 40 years and the other land is arable, beyond the confines of the village envelope.(I think from the distance quoted that the complainant means the former.)

You are aware that the complainant “would not be interested in moving to Windmill Farm site under any circumstances” and I think, given the circumstances, one could reasonably assume that the complainant would extend that to include any other leasehold site I might offer him, notwithstanding the football club being tenants of the site and therefore making it unavailable.

The football field site is owned by trustees of which I am one, and therefore I could not offer the land without approval of others in any event”

5. Findings

I find that within the terms of paragraph 7 of the Code of Conduct a decision upon application 06/02379 might reasonably be regarded as affecting the well being or financial position of Mr Barham on account of the combination of the ownership of the Windmill Farm land and the land on the other side of the road from the application site and the history of discussions about the location of the factory and local needs housing. I also consider that within the terms of paragraph 9 of the Code of Conduct this amounted to a prejudicial interest Thus he should not have taken part in any meeting at which the application was considered. He should also not have engaged in influencing Parish Councillors about the application.

I consider that a member of the public knowing of Mr Barham's land ownerships, his aspiration for his land in the area and his attempts to engage in commercial deals with Mr Hoad relating to his land would reasonably regard Mr Barham's interest as being so significant that it is likely to prejudice his judgement of the public interest.

I accept that Mr Barham genuinely believed that once Mr Hoad made it clear in a note dated 23 January 2007 (attached as appendix 14) he would no longer deal with him, that his interest disappeared, however that is not how the code works. The code deals with such an interest from the point of view of an outsider looking in and as I have said I consider this leads to the conclusion that the interest was prejudicial against the background of the following factors;

1. The history of the commercial negotiations between the two men about the possible relocation of the factory.

2. The fact that those negotiation broke down. An outsider might take the view that Mr Barham was disappointed and might therefore not deal as even-handedly with the application as someone who had not been negotiating to have the factory on their land

3. Mr Barham's opposition to the proposed new factory site could be seen as a tactic to force Mr Hoad to reconsider the Windmill Farm site. In this regard it is particularly relevant that one of the reasons for opposing the application arising from the February meeting was in part that other sites had not been fully considered. In his letter of 19 January 2007 Mr Barham says

“ before approval is given for it further consideration should be given to other alternatives”.

He is also clearly trying to promote the Windmill site for development through the Local Development Framework and indeed engaged consultants who he says in his letter dated 18 September 2006

“are particularly interested in my Windmill Field Site, my outline plans for

which you are aware: a mixed residential and industrial development on a small scale”

4. The existence of his interest in the land on the other side of the road from the application site

As a result of all the above matters I find that Mr Barham had a personal and prejudicial interest in the planning application and that the following breaches of the code of conduct occurred;

- a. A breach of paragraph 8 of the code in the failure to declare a personal interest and a breach of paragraph 10(a) in failing to withdraw from the meeting of 20 February 2007.
- b. A breach of paragraph 10 (b) of the code by seeking improperly to influence the decision by making representations as part of seeking to have the matter reconsidered through his statement to Rolvenden Parish Council when he had a prejudicial interest in the matter

Sarah Foster

16 April 2008

The Parish Councils (Model Code of Conduct) Order 2001

<i>Made</i>	<i>5th November 2001</i>
<i>Laid before Parliament</i>	<i>6th November 2001</i>
<i>Coming into force</i>	<i>27th November 2001</i>

The Secretary of State for Transport, Local Government and the Regions, in exercise of the powers conferred upon him by sections 50(1) and (4), 81(2) and (3), and 105(2), (3) and (4) of the Local Government Act 2000[1], and of all other powers enabling him in that behalf, having carried out such consultation as is required by virtue of section 49 of that Act, and being satisfied that this Order is consistent with the principles for the time being specified in an order [2] under section 49(1) of that Act, hereby makes the following Order:

Citation, commencement and application

1. - (1) This Order may be cited as the Parish Councils (Model Code of Conduct) Order 2001 and shall come into force on 27th November 2001.

(2) This Order applies in relation to parish councils[3], and references to "authority" shall be construed accordingly.

Model code of conduct - parish councils

2. - (1) The Secretary of State hereby issues a model code as regards the conduct which is expected of members and co-opted members[4] of authorities and that code is set out in the Schedule to this Order.

(2) All the provisions of the model code in the Schedule to this Order are mandatory[5].

Transitional provision

3. - (1) On the day an authority's code of conduct is adopted or applied[6] to it, the following shall, where applicable to the authority, be disappplied as respects that authority until 27th July 2002 -

(a) sections 94 to 98 and 105 of the Local Government Act 1972[7];

(b) any order made under section 83 of the Local Government Act 1972 [8];

(c) any regulations made or code issued under sections 19 and 31 of the Local Government and Housing Act 1989[9];

(d) in section 17 of the Audit Commission Act 1998, subsections (1)(b), (3), (5)(b), (7) and (8) and in subsection (2), the words "subject to subsection (3)" and paragraphs (a) and (b)[10];

(e) section 18 of the Audit Commission Act 1998[11];

(2) Section 16(1) of the Interpretation Act 1978[12] shall apply to a disapplication under paragraph (1) above as if it were a repeal, by an Act, of an enactment.

Signed by authority of the Secretary of State for Transport, Local Government and the Regions

Nick Raynsford
Minister of State Department for Transport, Local Government and the Regions

5th November 2001

SCHEDULE

Article 2

THE MODEL CODE OF CONDUCT - PARISH COUNCILS

PART 1

GENERAL PROVISIONS

Scope

1. - (1) A member must observe the authority's code of conduct whenever he -

- (a) conducts the business of the authority;
- (b) conducts the business of the office to which he has been elected or appointed; or
- (c) acts as a representative of the authority,

and references to a member's official capacity shall be construed accordingly.

(2) An authority's code of conduct shall not, apart from paragraphs 4 and 5 (a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.

(3) Where a member acts as a representative of the authority -

- (a) on another relevant authority^[13], he must, when acting for that other authority, comply with that other authority's code of conduct; or
- (b) on any other body, he must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be

subject.

(4) In this code -

(a) "member" includes a co-opted member of an authority; and

(b) "responsible authority" means a district council or a unitary county council which has functions in relation to the parish councils for which it is responsible under section 55(12) of the Local Government Act 2000.

General Obligations

2. A member must -

(a) promote equality by not discriminating unlawfully against any person;

(b) treat others with respect; and

(c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

3. A member must not -

(a) disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; nor

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

4. A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

5. A member -

(a) must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage; and

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

(i) act in accordance with the authority's requirements; and

(ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.

6. A member must, if he becomes aware of any conduct by another member

which he reasonably believes involves a failure to comply with the authority's code of conduct, make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him to do so.

PART 2

INTERESTS

Personal Interests

7. - (1) A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 12 and 13 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend or -

- (a) any employment or business carried on by such persons;
- (b) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
- (d) any body listed in sub-paragraphs (a) to (e) of paragraph 13 below in which such persons hold a position of general control or management.

(2) In this paragraph -

- (a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
- (b) "partner" in sub-paragraph (2)(a) above means a member of a couple who live together.

Disclosure of Personal Interests

8. 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.

Prejudicial Interests

9. - (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

(2) A member may regard himself as not having a prejudicial interest in a matter if that matter relates to -

- (a) another relevant authority of which he is a member;
- (b) another public authority in which he holds a position of general control or management;
- (c) a body to which he has been appointed or nominated by the authority as its representative;
- (d) any functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992[14], where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and
- (e) any functions of the authority in respect of an allowance or payment made under sections 173 to 173A and 175 to 176 of the Local Government Act 1972[15] or section 18 of the Local Government and Housing Act 1989[16].

Participation in Relation to Disclosed Interests

10. 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[17] from the standards committee of the responsible authority[18]; and
- (b) not seek improperly to influence a decision about that matter.

11. For the purposes of this Part, "meeting" means any meeting of -

- (a) the authority; or
- (b) any of the authority's committees, sub-committees, joint committees or joint sub-committees.

PART 3

THE REGISTER OF MEMBERS' INTERESTS

Registration of Financial and Other Interests

12. Within 28 days of the provisions of an authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his financial interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the monitoring officer of the responsible authority[19] of -

- (a) any employment or business carried on by him;
- (b) the name of the person who employs or has appointed him, the name of any firm in which he is a partner, and the name of any company for which he is a remunerated director;
- (c) the name of any person, other than a relevant authority, who has made a payment to him in respect of his election or any expenses incurred by him in carrying out his duties;
- (d) the name of any corporate body which has a place of business or land in the authority's area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
- (e) a description of any contract for goods, services or works made between the authority and himself or a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above;
- (f) the address or other description (sufficient to identify the location) of any land in which he has a beneficial interest and which is in the area of the authority;
- (g) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above; and
- (h) the address or other description (sufficient to identify the location) of any land in the authority's area in which he has a licence (alone or jointly with others) to occupy for 28 days or longer.

13. Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his other interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the monitoring officer of the responsible authority of his membership of or position of general control or management in any -

- (a) body to which he has been appointed or nominated by the authority as its representative;
- (b) public authority or body exercising functions of a public nature;
- (c) company, industrial and provident society^[20], charity, or body directed to charitable purposes;
- (d) body whose principal purposes include the influence of public opinion or policy; and
- (e) trade union^[21] or professional association.

14. A member must within 28 days of becoming aware of any change to the interests specified under paragraphs 12 and 13 above, provide written notification to the monitoring officer of the responsible authority of that change.

Registration of Gifts and Hospitality

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

EXPLANATORY NOTE

(This note is not part of the Order)

The Order contains a model code of conduct as regards the conduct which is expected of members and co-opted members of parish councils. Under section 51 of the Local Government Act 2000, each authority must adopt a code of conduct applying to its members which must incorporate any mandatory provisions of the model code. Under section 51(5) of that Act, where an authority does not adopt such a code within six months of the Order coming into force, the mandatory provisions of the model code will apply to the members of the authority until it does.

Article 1 provides that this Order applies only to parish councils.

Article 2 provides that a model code for parish councils is set out in the Schedule to the Order, and states that all of its provisions are mandatory.

Article 3 makes transitional provision for eight months following the coming into force of the Order to disapply existing statutory provisions relating to the National Code of Local Government Conduct, members' interests, surcharge and declarations of office.

In the **Schedule to the Order**, **paragraph 1** of the model code provides that the code applies whenever a member is acting in his official capacity, and that it does not apply in other circumstances unless otherwise indicated. Additionally, where a member is acting as a representative of his authority, he must continue to observe the authority's code, unless he is subject to another relevant authority's code, or unless (in relation to any other body) it conflicts with any other legal obligations.

Paragraph 2 provides that members must promote equality, treat others with respect and not do anything which compromises the impartiality of those who work for the authority.

Paragraph 3 provides that members must not without consent disclose confidential information they have acquired and must not prevent others from gaining access to information to which they are entitled.

Interview notes of Edward Barham

Taken 23 November 2007.

So far as I can see Mr Hoad's complaint is twofold: firstly that I influenced councillors after the January RPC meeting about the planning application for a new factory and secondly that I remained chairman of the February meeting when he considered I should have left because I had an interest.

As Chairman of the Parish Council I did some preliminary investigations since his planning application was pretty big for Rolvenden. I phoned the planning officer at Ashford Council Mr Lwellyn Lloyd (the case officer). *Inter alia* he said he was waiting for the outcome of strategic consultation. The proposed site was out side the built up area boundary and he suggested I also speak to his colleague Mr Cole in that department.

My family and I own a substantial amount of land in the Rolvenden area. In the past I had tried to interest Mr Hoad to put his new factory on my land. I have land at Windmill Farm but I won't sell freehold and he had indicated he would not want to take a leasehold interest. However at the first meeting of the Parish Council Mr Hoad had not ruled it out. I therefore withdrew form the meeting

At the meeting of 16 January I left the meeting when the application was being considered because there were strategic issues and the Parish Council was still considering other sites for the factory, which might have affected my land. Among those sites would have been Windmill Farm. When the meeting opened I explained that I was going to leave and also tried to explain what Ashford Council was wanting from the Parish Council. As the item came up I left the room. When I was called back and after the close of the meeting I asked what had happened and I found out that the Parish Council had approved the application. I asked the Vice Chairman if they had answers to any of the strategic issues raised by Ashford Borough Council.

It became clear in the next few days to me that the Vice Chairman had not been properly briefed, largely because of my sudden, and so far as he was concerned unexpected, departure from the meeting. The Parish Council had not considered the bigger picture. I took advice from the Kent Association of Parish Councils and they said that the Parish Council could reconsider the application if sufficient councillors demanded so.

I spoke to some of the other councillors (not all of them) asking them if they were happy. I put it to them that if they wished to reconvene then I would provide them with the information that they had not had at the first meeting. They met on 29 January. Again I did not attend because I thought I had the same interest. I was not even in the building. (Subsequently I established that Mr Hoad had discounted using my Windmill Farm site prior to this meeting, so I consider that I could have been present had this information been known to me, as below)

From the minutes I can see that there was tension at the meeting. Mr Hoad was pretty livid that someone was outmanoeuvring him and his application faced rejection at Parish Council level. The meeting failed to come to a decision and closed. The matter

was therefore back on the agenda for a meeting on 20 February. I chaired the meeting on 20th and did not declare an interest. There was an outcry at the meeting from the complainant and some councillors.

On 23 January Mr Hoad had written a note concerning a potential ten other sites for his factory. To quote "Councillors must understand that I am not interested in the Windmill Farm site whatsoever". He was effectively saying he would not do business with me, which is fine, I accept that. That being the case I no longer had an interest to declare because he was never going to do business with me. My defence in this matter hinges on this statement, which I consider removed any interest I may have. I explained this at the meeting and some Councillors who were batting for Mr Hoad did not like it. The PC voted against his application, on my casting vote.

Korkers Sausages are still on their village centre site with no resolution about where the factory will go. Although the Korker factory and Mr Hoad are important to Rolvenden, I did not see why this gave him any precedence to build that I considered to be a very substandard building on a green field site. (The fact that the building was of substandard design was supported by ABC's subsequent request for alternative designs.)

I was similarly of the opinion that ABC should not be held to ransom by Mr Hoad's insistence on obtaining a freehold site, when several of the alternative sites put forward by ABC and RPC, some of which were considered in Mr Hoad's note of 23rd January 2007, would also have been leasehold.

In the end RPC had to make a decision on the application in front of us at the February meeting and I objected as much for its inferior design as to the chosen site

Jim Hoad and I have never really seen eye to eye since the matter of local needs housing on the Glebe Filed site, where I successful in promoting a LNH site, against his wishes.

Agreed by Edward Barham

Interview notes of Jim Hoad

Taken 23 November 2007

Historically there were differences between Mr Barham and the village over the location of some local needs housing.

In terms of my application for the factory, at the meeting of 16 January the Parish Council agreed they would accept it on the site in my planning application. Two of the Councillors on Mr Barham's side were not there as they were on holiday. I was at the meeting. He declared an interest and left the meeting. He really had wanted me as a tenant. There were long discussions at the meeting.

Afterwards I went downstairs and Mr Barham was there. He was talking to several objectors and was intimating that something would be done about it. After that he called for another meeting. Officers at Ashford Council told me they had told Mr Barham to declare an interest.

He did not attend the extraordinary meeting. Prior to it I had written to the Parish Council to ask who had called the meeting and why. I never had a response. I asked the acting Chair at the meeting who had called the meeting – he did not comment. I raised it again and was told if I asked again I would be asked to leave the meeting. There was no decision at the meeting because there was so much argument. The matter was put over to the meeting on 20 February.

I went to that meeting. Mr Barham took the Chair. He was asked by most Councillors here why he was there and that he should declare an interest. He said he had taken advice from the legal department at Ashford Borough Council and they said he should take part. In fact I believe that he was told he should declare an interest. Various councillors were quoting various parts of the Code of Conduct. The meeting was over in seconds. He took the casting vote.

Agreed by Jim Hoad

Interview notes Mrs J M Serra

Taken 31/12/07

I am Clerk to Rolvenden Parish Council.

The Parish Council wanted to consider various sites for the new factory and members felt that all sites had not been considered.

At the meeting on 16 January 2007, the Chairman declared an interest and left the meeting while the application was being considered. After the meeting three councillors decided that they wanted to rescind the decision. The reason was they felt they had not had enough information.

At the meeting on 29 January Mr Barham's statement had gone to all Parish Councillors. They decided after much discussion that they did not have enough information to make a decision and deferred the matter.

At the meeting on 20 February Mr Barham attended. I was a bit surprised to see him. He said he had been in touch with Ashford Borough Council who told him he did not have to declare an interest.

It is common knowledge that Mr Hoad and Mr Barham do not get on. I believe that Mr Barham did these things with the best intentions.

Mr J Hoad
Korker Sausages Ltd
High St
Rolvenden
Cranbrook
Kent TN17 4LN

5th June 2006

Dear Jim

Provision of LNH for Rolvenden

Rolvenden Parish Council are wholly committed to the concept of providing Local Needs Housing in the village to ensure that the next generation of Rolvenden families can remain within the community that they regard as home. You will know that the site presently under consideration is the Glebe Field, with access to this via Monypenny. This site, whilst meeting so many of the criteria for development, does not meet with universal approval and you yourself have attended our meetings to speak against it.

It has occurred to me that the possible solution to selecting a site could in fact have been overlooked in the haste to choose a site beyond the village confines and I am writing to ask whether you may be in a position to release your Korker factory site for the scheme. You have long recognised the need for Korkers to move to larger premises in order to allow your business grow and at the same time one presumes that the current site would potentially be granted consent for residential use.

I should be very please to have your response as a matter of urgency before we get too far involved in the Glebe Field site and certainly prior to our consultation day in the village Hall in early July. You will be aware that Housing Associations usually look to pay a nominal amount for their sites, typically twice agricultural land values, thus enabling them to produce houses cheaply but I am sure that were you to make the Korker site available you will have your reward in the gratitude of the village.

I look forward to your reply.

Yours Sincerely

Edward Barham



Hoads

KORKERS™

8TH June 2006

Dear Edward

Re: Provision of LNH for Rolvenden

Thank you for your letter of 5th June.

I applaud the Parish Council's commitment to provide affordable housing within the village. However, I do not understand why the Parish Council continues to consider Glebe Field with access via Monypenny when the 26th November 2004 edition of The Courier reported that you gave a public assurance that "an access road through Monypenn was not acceptable to the Parish Council". Please clarify.

You ask if I may be in a position to release my factory site as an alternative to Glebe Field. I have made several attempts to relocate the factory in the Rolvenden/Tenterden area. On each occasion I have been frustrated by Ashford Borough Council's Planning Department. Should I be able to acquire a suitable site, subject to the appropriate planning consent, it would probably take two years to relocate and prepare the existing factory site for redevelopment. May I also point out that the Branns Drive site extends to only one fifth of an acre and that access to and from the site is hazardous - this is caused by through traffic ignoring the speed restrictions and the unrestricted parking allowed in the High Street. These are two issues the Parish Council appears reluctant to address.

I am touched by your assurance that the village would be grateful if I sold the factory site for substantially less than its open market value. I daresay "the village" would be equally grateful to the Hole Park Estate or other local landowners if they were similarly altruistic. Have you and they considered that?

May I remind you that I represented Rolvenden on Ashford Borough Council for 20 years, that Korkers employs 18 people and that it contributes £350,000 annually to the local economy. When asked for help I give it when I can and make a point of doing so discreetly.

Yours sincerely

JIM HOAD

13th June 2006

Mr J Hoad
Korker Sausages Limited
High Street
Rolvenden, Kent
TN17 4LN

Dear Jim

Thank you for your letter of the 8th and for clarifying the situation regarding your Brann's Drive site. I am not in the least surprised that you are declining to make it available for the LNH Scheme and quite evidently you will therefore understand my reluctance to do so with my own land. It was therefore unhelpful of you to indirectly criticise me in your leading letter in the Kentish Express some two weeks ago, which implied that there were other sites available. One of the key elements for an LNH Scheme to be successful is a willing vendor.

You may know that in fact I have made an offer of a site for the LNH Scheme on the field adjacent to the tennis courts. But it is conditional on land immediately behind it being made available for commercial use, which could well include your own factory being located there if you so wish. Ashford BC are resolutely against any form of linked development though I will continue to promote the Scheme quietly as the only viable alternative to the Glebe field.

If you would like to talk further about your factory relocating to the Windmill Farm site then I shall be pleased to come and see you.

Yours sincerely

Edward Barham

Handwritten scribbles



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Mr J Hoad
Hoads Korkers
Branns drive
Rolvenden
Cranbrook
Kent
TN17 4

18th September 2006

Dear Jim

Ashford Local Development Framework

You may well be aware that ABC are currently in the early stages of drafting a new LDF, which will cover the development of villages including Rolvenden over the next 10 year period. In order to promote my own sites I have employed planning consultants to act on my behalf, to whom I have shown of my options.

The consultants were particularly interested in my Windmill Field site, my outline plans for which you are aware; a mixed residential and industrial development on a small scale. What has particularly caught their eye and they believe will similarly inspire ABC to consider including it in a new plan, is the offer of an employment site, which is such a rarity at present in the rural areas. Most site owners would want to maximise their capital value and sell for housing. The prospects of a designated employment site in the village, in the probable absence of any other, would surely encourage ABC that the answer to your own factory relocation is glaringly obvious and indeed residents might balk at the prospect of two significant employment sites at once.

So once again I am encouraging us to work together on the Windmill site, which I firmly believe would be to our mutual advantage. You would have a state of the art factory in which your business can grow as well as releasing your existing site for development. I would have an enlarged "Windmill Farm Business Park" with you as the prime tenant. What you would not have is the freehold. The alternative for you would seem to be to move from the village, as you would have to agree that alternative sites are few and far between, and I know you have looked. If you would like me to come and discuss this proposal some time do give me a call,

Yours Sincerely

Edward Barham

Edward Barham

ROLVENDEN PARISH COUNCIL

Minutes of the Parish Council Meeting held TUESDAY 16TH JANUARY 2007, 8PM, The Gallery, Rolvenden Village Hall for the purpose of transacting the following business.

Present: Mr M.Hook, Mr B.Hindley, Mr S.Bryant, Mr J.Probyn, Mrs I.Newman, Mr B.Burvill, Vice Chairman, Mr E.G.Barham, Chairman, Mrs J.M.Serra, Clerk to the council, Ward Member- Cllr Mrs J.Hutchinson, the correspondent to the local papers and sixteen residents

Apologies for absence were accepted :from Mr J Wilkins[holiday],Mr D.Clements[ill health]

Declaration of Members' Interests under the Code of Conduct adopted by the Parish Council 18th March 2002, relating to items on this agenda to be made here.

Mr E.Barham declared a personal and prejudicial interest as owner of the site in planning application 06/02355-item 91[i] also potential interest in application no.06/02370/AS should other sites be considered in the consultation.

Mr B.Hindley- personal interest in application no 06/02443 as owner of a property opposite the location.

88. Minutes of the parish council meeting held 12th December 2006, copies previously had been sent to all members. Mr Hindley asked for an amendment on item 84 line 12 to change "would be consulting" to "would consider". Members approved the amended minutes and agreed for them to be signed as a correct record.

89. Local Needs Housing Scheme – Mr Clements had left a message with the Clerk that the Rural Housing Trust were busy examining the reasons for the refusal of planning permission in order to decide on any future action. The funding allocated to the scheme for Rolvenden would be transferred to the next housing project and another application may need to be made in the future to fund a Rolvenden scheme

90. Rolvenden Speed Management Scheme – Signs and bollards are in place with work expected to start very soon.. There was no indication of any changes to be made at the junction of Maytham Road/High Street although the Parish Council expected the corner at Regent House to be widened. Chairman to contact Highways on the possible confusion over the arrangement. Ward Member suggested Highways had made savings on this Scheme and ask for an improvement to be made on the verge opposite the village hall.

Mr Barham left the meeting at the point and Mr Burvill took the chair for application nos 06/02355 and 06/02370 in which Mr Barham had declared a prejudicial interest.

91. Planning – all related matters

[i] Applications for CONSULTATION received from Ashford Borough to be considered

06/02355/AS Installation of six antennas and four transmission dishes to existing mast together with six equipment cabinets and ancillary development to facilitate mast sharing by Orange PCS Ltd, Windmill Farm, Benenden Road, Rolvenden- Discussed at length. Reflection from the mast causes problems to residents and should be painted to reduce reflection from sunlight Evergreens need to be planted in with other species to improve screening as it appears the mast will increase in height.

Ask that the relevant companies be obliged to remove their masts as they become redundant.

Members voted by a majority to support the application.

06/02308/AS New two storey extension with velux and dormer windows to front elevation.

Replacement dormer window, new and additional windows throughout, entrance door with porch and other alterations. Butterfly Cottage, Hastings Road, Rolvenden Plans viewed and discussed. No comments. Members supported the application

06/02370/AS Construction of factory to provide new premises for the relocation of Kerker Sausages Ltd from Branns Drive and the creation of a new vehicular access. Land east of Redwood, Tenterden Road, Rolvenden.. This item taken out of sequence as Mr Barham had left the meeting. Mr Burvill was chairing the meeting. Members were given copies of letters received from residents objecting to the development and whom attended the meeting to make their opinions known. Members discussed the proposal at great length. Chairman gave residents the opportunity to speak. Issues raised-development of a green field site for industrial use, its proximity to residential dwellings, extension of the village envelope, probable ribbon development along the Tenterden Road, new access & increase in HGV use, security lighting, concern for the environment and local wildlife. The representative of the applicant was also allowed to speak. There was concern at the lack of detail necessitating the need to move and the non availability of other sites. Members voted by a majority to support the application.

Mr Barham returned to the meeting and took the Chair continuing with 06/02308

Minutes of parish council meeting held 16th January 2007 – page 3

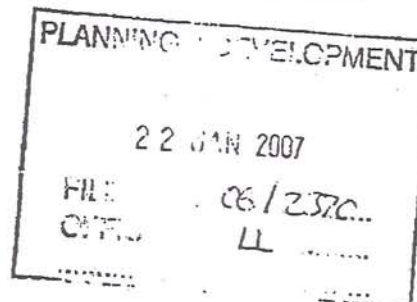
91. Planning [iv] Permission REFUSED by Ashford Borough to the following application
06/02083/AS Garage and the creation of a new vehicular access. Land adjacent to 35 Gatefield Cottages, Rolvenden
[v] Kent & Medway Structure Plan- copy received of published adopted plan.- copy retained by the Clerk
[vi] Other planning related issues not raised elsewhere on this agenda to be accepted and considered.
Planning Applications WITHDRAWN at applicants' request:
06/01433/AS Proposed two storey extension and internal alterations. 22-24 Frensham Road, Rolvenden Layne.
06/01500/AS Listed Building Consent for application no.06/01433/AS
06/01434/AS Proposed two storey extension to provide carer's accommodation and treatment room. 20 Frensham Road, Rolvenden Layne.
06/01499/AS Listed Building Consent for application no. 06/01434/AS
92. Ashford Borough Council – [a] Parish Forum 17th January 2007, 7.05pm Civic Centre. Agenda received- copy to chairman.-noted [b] Code of Conduct training session for parish councillors-Civic Centre. 7th February .6pm.-noted [c] other related matters to be accepted and considered.-none
93. Kent Assoc.Parish Councils [a] Information Day, Harrietsham, 24th January- agenda copied to all members.No offer to attend [b] Ashford Area Committee-minutes of meeting held 6th December- copy to all members for information.
[c] NALC's Shaping Communities Conference.London 13th February. [d] LCR [Local Council Review]- newsletter of NALC for councillors
94. Lord Lieutenant of Kent – Invitation to attend Annual Civic Service, All Saints Church,Maidstone. 20th March 2007- reply by 26th January. Chairman offered to attend & would reply
95. Bus Shelter, Regent Street- The Chairman had sent the relevant information on this matter to all members prior to the meeting. The original 21year lease dated 1968 had expired 1989 with the last payment made to Mrs Wright in 1990. No request for payment had been received after that date. Members discussed the options and the proposal to re-adopt the original lease that had expired and offer to pay the outstanding rent.
Resolution – to re-adopt the original lease and offer to pay the outstanding rent to the Executor of the late Mrs M.Wright. Agreed unanimously. The clerk had given the original lease to the Chairman and he would send a letter to the Executor of the late Mrs M.Wright
96. KCC-PROW- Redesignation of roads used as a public path to restricted byway status -letter received for information- copy to all members for information
97. KCC-Youth Advisory Groups- letter received-copy to all members for information- noted
98. FINANCE- all related matters
[i] Letter of appreciation received from Victim Support for the donation from the parish council.
[ii] Resolved to pay the following :
[a] Mr S.Brooks. street cleaning. December- 5 weeks @ £25 per week= £125
[b] Safeplay Ltd- repairs to all playground equipment as required by Rospa report- £3736.67
[c] J.M.Serra. clerk's wage £288.08. plus reimbursement of expenses- £45.29 = £333.37
[iii] Accounts presented at this meeting to be accepted and considered for payment.-none
[iv] Quarterly operational inspections of the two playgrounds as recommended in EN1176 – A conflict of interest could arise if the inspections were carried out by the company that would possibly be asked to repair the items .Decision- no. as substantial amount had recently been paid out to bring the areas up to standard.
[v] Request for Precept of £16500 plus concurrent functions grant £1808.99 submitted to Ashford Borough Council 18th December 2006.-noted
[vi] Other financial related issues not raised elsewhere in this agenda to be accepted and considered.- none

ROLVENDEN
PARISH COUNCIL

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Llywelyn Lloyd
Development Control
Ashford Borough Council.
Civic Centre,
Tannery Lane,
Ashford,
Kent TN23 1PL



18th January 2007

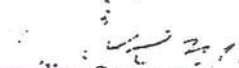
**Re; application no. 06/02370/AS Construction of factory to provide new premises for the relocation of Korker Sausages Ltd from Branns Drive and the creation of a new vehicular access
Land east of Redwood, Tenterden Road, Rolvenden.**

The parish council at their monthly meeting held 16th January 2007 voted by a majority to support the application.

The parish council had received letters of objection from residents and some residents had attended the meeting in order to make their opinions known. Issues raised included the development of a green field site for industrial use and its proximity to residential dwellings, the resulting extension of the village envelope and probable ribbon development along the Tenterden Road.

The parish council are to hold another meeting in order to discuss this application and will contact you again after that meeting. The meeting is planned for Monday 29th January 2007

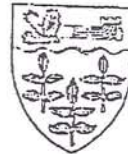
Yours sincerely


Jacqueline Serra [Mrs]
Clerk to the Council

PLANNING AND DEVELOPMENT UNIT

DEVELOPMENT CONTROL MANAGER
Martin Vink BA (Hons) DipTP MRTPI

Direct Line (01233) 330740
Direct Fax (01233) 330682
E-Mail llywelyn.lloyd@ashford.gov.uk
Ask For Llywelyn Lloyd
Our Ref 06/02370/AS
Date 21 December 2006



ASHFORD
BOROUGH COUNCIL

CIVIC CENTRE
TANNERY LANE
ASHFORD
KENT TN23 1PL
DX 151140 (Kent) 7
www.ashford.gov.uk

Consultation to: Rolvenden Parish Council

Application No: 06/02370/AS
Town and Country Planning Act 1990 (as amended)
Planning and Compulsory Purchase Act 2004
Application for Full Planning Permission
Proposal: Construction of factory to provide new premises for the relocation of korker sausages ltd from Branns Drive and the creation of a new vehicular access
Location: Land east of Redwood, Tentarden Road, Rolvenden, Cranbrook

I enclose a copy of the above application for your information. Please let me have any comments you wish to make as soon as possible and in any case before **14 January 2007**.

Please give your reply in the space available at the bottom of this letter giving any reasons for your comments as well. Please clearly indicate whether you have no comments, you support or you object to the application.

Yours sincerely

Development Control Manager

Comments of Rolvenden Parish Council: 06/02370/AS

The Rolvenden Parish Council

~~has no comments to make on this application*~~
~~supports the application*~~
~~objects to the application for the reasons set out below*~~
(* delete as necessary)

Reasons for objecting to the application or any other comments:

Passed by a majority vote.

See attached letter.

Signed

Clerk to the Rolvenden Parish Council

Date

18/01/07

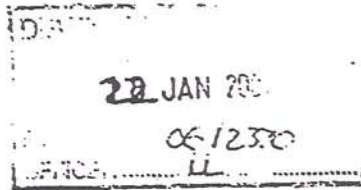


INVESTOR IN PEOPLE

HOLE PARK

19th January 2007

Mr Llewelyn Lloyd
The Planning Department
Ashford Borough Council
Civic Centre
Tannery Lane
Ashford, Kent
TN23 1PL



Hole Park Estate
Rolvenden, Cranbrook,
Kent TN17 4JA

Office: 01580 241344
House: 01580 241386
Fax: 01580 241882
Email: edwardbarham@holepark.com
www.holepark.com

Dear Mr Lloyd

New Korker Factory on Land to East of Redwood, A28 Rolvenden

I wish to register my objection to the above application, which you are currently considering.

There can be few people in Rolvenden who would want to lose Mr Hoad's Korker factory from the village, as it is an important employer. Similarly, I am sure that everyone would agree that the business needs to be able to grow and to operate from modern facilities, both of which may be difficult to achieve from the existing constrained site.

My principal objection is because the site has not been zoned for development. For a parish community such as Rolvenden, this application is a very significant one and it would have been preferable for the relocation of the Korker factory to be on to a site, which had been properly zoned for development, having gone through the full riggers of that process. The application site would no doubt have been considered as part of that process but before approval is given for it further consideration should be given to other alternatives.

If the application were successful it would create a prime infill site between it and the property known as Redwood. Though development of this infill may be several years away, it is worth considering now the detrimental effect upon Rolvenden that this continued ribbon development down the A28 will have.

My final objection is on the grounds that the building is of no architectural merit whatsoever. Had the applicant sought to build something of architectural interest, then I would be happy to forego both of the above grounds for rejection. In practice the application is for the dullest, most uninspired, though practical building that the applicant and his architects could possibly have dreamt up.

I urge you to reject the application and, at the same time, take guidance from the applicant and The Parish Council as to how the clear need for a new factory can be met in or near Rolvenden.

Yours sincerely

Edward Barham

Statement to Rolvenden Parish Council,
Planning Application AS/0602370 Korker Factory,
Land East of Redwood, A28, Rolvenden

Prior to the Parish Council meeting held on 15th January, and in anticipation of me being Chairman of that section of the meeting, I had consulted at length with Ashford Borough Council in how this planning application should be viewed seeking their general advice. My first conversation was with Mr Llewelyn Lloyd, the Case Officer handling this application.

Mr Lloyd stated that his consideration of this application was only just beginning and that he was seeking guidance from a number of other parties before he, and others, would be deciding what officer recommendation to make. He recognised that the application site was outside the confine of the village, and would be contrary to planning policy for a factory to be built of this type but he was aware that there were specific reasons why a site should be found in Rolvenden for the application to proceed. He would need to be sure that there was sufficient justification in this regard to recommend the application, for the factory should be built outside the envelope.

If the application was approved, he recognised that firstly we could expect houses to be built on the current factory site and secondly that a sizeable infill plot would be created between Redwood and the application site, which may well lead to development in the future. The application therefore was more complex than it may at first appear.

Mr Lloyd was therefore looking for clear guidance from The Parish Council with regard to how we viewed this application and also for us to consider the wider implications of that decision. In that regard, he suggested that I spoke to his colleague, Mr Simon Cole, in the Strategic Planning Department.

Mr Cole had been asked by Mr Lloyd to consider the strategic matters concerning this application. In view of the fact that the site was not zoned for development, his remit in this instance was to consider the broader issues concerning this application as well as making recommendation to Mr Lloyd. He was pleased to have a discussion with me and he too was seeking guidance from The Parish Council. He advised, that in effect, The Parish Council was being asked to provide a Parish Plan with regard to the future of the Korker business. Parish Plans would usually subsequently form part of a Structure Plan, though clearly that would not be the case in this instance, due to the timescale. The points that Mr Cole sought guidance on were as follows:

1. Did the PC wish to retain the Korker business, with its associated employment, within the parish if we assume that the current site is not appropriate for the business in the medium term?
2. Was the application site the best location amongst all other possible sites? In this regard, a process not dissimilar to the search for the LNH site may be appropriate. In considering this point, the PC was to take into account the site availability and designation issues (i.e conservation area).

3. If the application site was not the favoured site for a factory in the future and the answer to 1. above was "yes", the PC must state why this was so and suggest a reasonable alternative.

Mr Cole asked for comments on this matter to be sent to Mr Lloyd, from whom he would seek the necessary information.

In the light of Mr Cole's comments, and following a discussion with Councillor Hutchinson, it was clear to me that I must declare interest in this planning application because I own sites that the P.C. may wish to consider as part of the Parish Plan part of the debate. Whilst I had had a brief discussion with the Vice Chairman, prior to the meeting commencing, I did not have time to explain all of the above to him and it subsequently became clear to me that the Parish Plan, or strategic issues, had not been considered in detail. I therefore suggested to him that he may wish to reconvene the Parish Council to consider this one application, which he has elected to do.

Edward Barham

19th January 2007

ROLVENDEN
PARISH COUNCIL

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to all members

22nd January 2007

You are summoned to an Extraordinary Meeting of the Parish Council to be held **MONDAY**
29TH JANUARY 2007, 7PM, in Rolvenden Primary School in order to transact the following
business.

The meeting has been called by three parish councillors- Mr Burvill-Vice Chairman, Mr Clements
and Mr Probyn [LGA 1972 ss15(9) and 34(9)]

Apologies for absence- to be accepted

Declarations of Members' Interests under the Code of conduct adopted by the Parish Council
18th March 2002; relating to items on this agenda to be made here.

88. **Minutes** of the last meeting of the parish council held 16th January 2007 to be agreed and
signed -[if available]

89. **In accordance with Rolvenden Parish Council Standing Order no.37**

Special Resolution: to rescind the resolution passed at the last meeting of Rolvenden Parish
Council with regard to planning application no. 06/02370/AS

90. To discuss and debate the planning application listed below:

06/02370/AS The construction of factory to provide new premises for the relocation of Korker
Sausages Ltd. from Branns Drive, Rolvenden and the creation of a new vehicular access.- Land
east of Redwood, Tenterden Road, Rolvenden

**Response to Ashford Parish Council
Application 06/02370/AS**

**Construction of factory to provide new premises for the re-location of
Korker Sausages Limited from Branns Drive and the creation of a new
vehicular access.**

Rolvenden Parish Council, by a majority, is against the above application. This decision has been reached after two ordinary and one extraordinary meeting of the Council during which many members of the public including the applicant and his professional advisors have spoken at length. The decision to reject the application was a close one as RPC recognises the special circumstances that surround this application, the applicant and in particular the need to find a site, if at all possible, for the Korker factory. We are told that there has been a long discussion between the applicant and ABC but at no time has RPC been asked to assist or give it opinion as to where the factory should be located and we are therefore only able to comment on the detail of this application

The following are the reasons for reaching our decision

Enlargement of the Village

Fundamental to our objection is the unwelcome development of the village on a main road site in a very visible location that creates a ribbon development, extending the built village area. In this respect we are also concerned about the infill plots that the proposed development would create both to the East and West of the application site, between Stillwaters and Redwood respectively. The rural approach to the village would be lost for ever. We recognise however that this consideration may be beyond the remit of determining this application, which is why we would have preferred to have been consulted at the outset on this strategic planning matter

Alternative sites

RPC are not satisfied that all alternative sites have been fully investigated. The applicant in a letter dated 23rd January referring to a meeting with Mr Vink dismisses a series of alternatives without giving full reason. Some of these sites were never suitable but others, most notably Leigh Green, are worthy of further investigation. There comes a time when a successful business such as Korkers must accept it has outgrown its village roots and move to properly designated prepared site which Leigh Green may well offer.

Building design

The design of the building as submitted is extremely poor and plain and would not look out of place in any industrial site anywhere in Britain. But we are dealing with a green field site in an AONB and we would have anticipated something a little better. The use of vernacular features, local materials or something truly innovative may have been more likely to have met with our approval.

In this regard this application contrasts sharply with the proposed new Benenden Primary School where a turf roofed, glass sided building demonstrates the high standard of architecture that is expected for projects in the High Weald AONB. We cite the Benenden design merely as an example of what is happening and make no suggestion that it would be appropriate for this site.

The applicant informs us that a meeting is to be held on 26th February to discuss new designs. RPC wish to be kept informed of any amended plans and to be able to comment on them

Disturbance to neighbours

We are concerned about the effect that the proposed development would have on Gatefield Cottages, in terms of car and lorry movements from early morning, light pollution from the probably inevitable security lighting and noise from the 24-hour operation of chillers and freezers. We accept that this should be viewed in conjunction with a busy A28 but believe it is unacceptable for the residents overlooking the proposed factory site.

Employees

The applicant has confirmed that 9 of the 18 employees (full and PT, including directors and family members) are Rolvenden residents, 8 of whom currently drive to work. The need for the business to be located in Rolvenden for the sake of its employees is therefore not valid as the staff are clearly demonstrating that they are happy to drive to work and one presumes capable and able to drive the extra distance to a possible alternative site in Tenterden.

Landscaping

The landscaping provisions as proposed would provide little or no landscaping on the south side making the site visible from the south, the area of Pix's lane and Sparkswood. The coppice woodland of Sparkswood Gill that is relied upon will at some time be cut at which time the proposed factory would stand out very clearly, even more so than it would now during the winter months when there is no leaf cover.

Loss of Parking

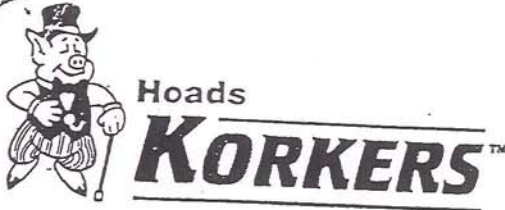
The residents of Gatefield Cottages rely upon the layby on the south side of the A28 as the majority of these houses have no off road parking and to park on the A28 is highly dangerous and disruptive to traffic. The visibility splays for the new access would remove at least part of this parking, for which no replacement is available.

Rolvenden Parish Council urges Ashford BC to reject the application as submitted and would welcome the possibility of entering into round table discussion as to how the applicant can best be accommodated in his search for new premises.

Edward Barham
Chairman Rolvenden Parish council

Jacque Serra
Clerk to the council

22nd February 2007



23rd January 2007

Korkers Sausages, Sites Considered

Suggestions from Martin Vink, Chief Planner at ABC after we met him at the meeting in Ashford.

In addition to the problems stated, these were not close enough to retain the existing village labour with even Tenterden requiring transport.

1. The former steel works and offices at Bethersden, totally unacceptable by Highways. Also the owner did not want to sell a part of it. Existing asbestos clad buildings unsuitable for food industry.

2. Former garage and now furniture (previously Moriarty's) show room at High Halden, much too small, narrow roads, bad sight lines, garage behind required access through.

3. Unigate Dairys, Tenterden, far too small.

4. Former chocolate factory, Leigh Green, Tenterden, in total disrepair and limited parking.

A number of more local sites have also been pursued privately:
Again some are outside Rolvenden

5. Industrial estate on Cranbrook Road, Tenterden. Very untidy, including agricultural and vehicle maintenance. Buildings dilapidated. Not viable for the food industry.

6. Farm building Rolvenden Layne. Building of no use and unstable, needed total rebuild. Access has very poor visibility and would not be allowed.

7. Redundant Farm Building, Benenden. Required transport from Rolvenden. Agricultural building unsuitable for the food industry.

8. Stillwaters, Gatefield. Negotiations broke down. Highway visibility required of 220m each way. Outside village confines, affecting traffic speeds and walking distance.

9. Land opposite Gatefield. Inside the developed area of Rolvenden and within walking distance. Good sight lines for access road. Natural slope aiding low profile building.

10. Windmill Farm, Rolvenden. Speculative offer from Mr Barham (June 06). Had to be leased not freehold. Highly tentative idea dependent on links with low-cost housing and other permissions. See letter from E Barham and the previous (clearly ignored) statement from ABC Planners. Not a site or offer which could be taken seriously.

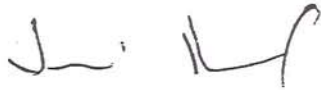
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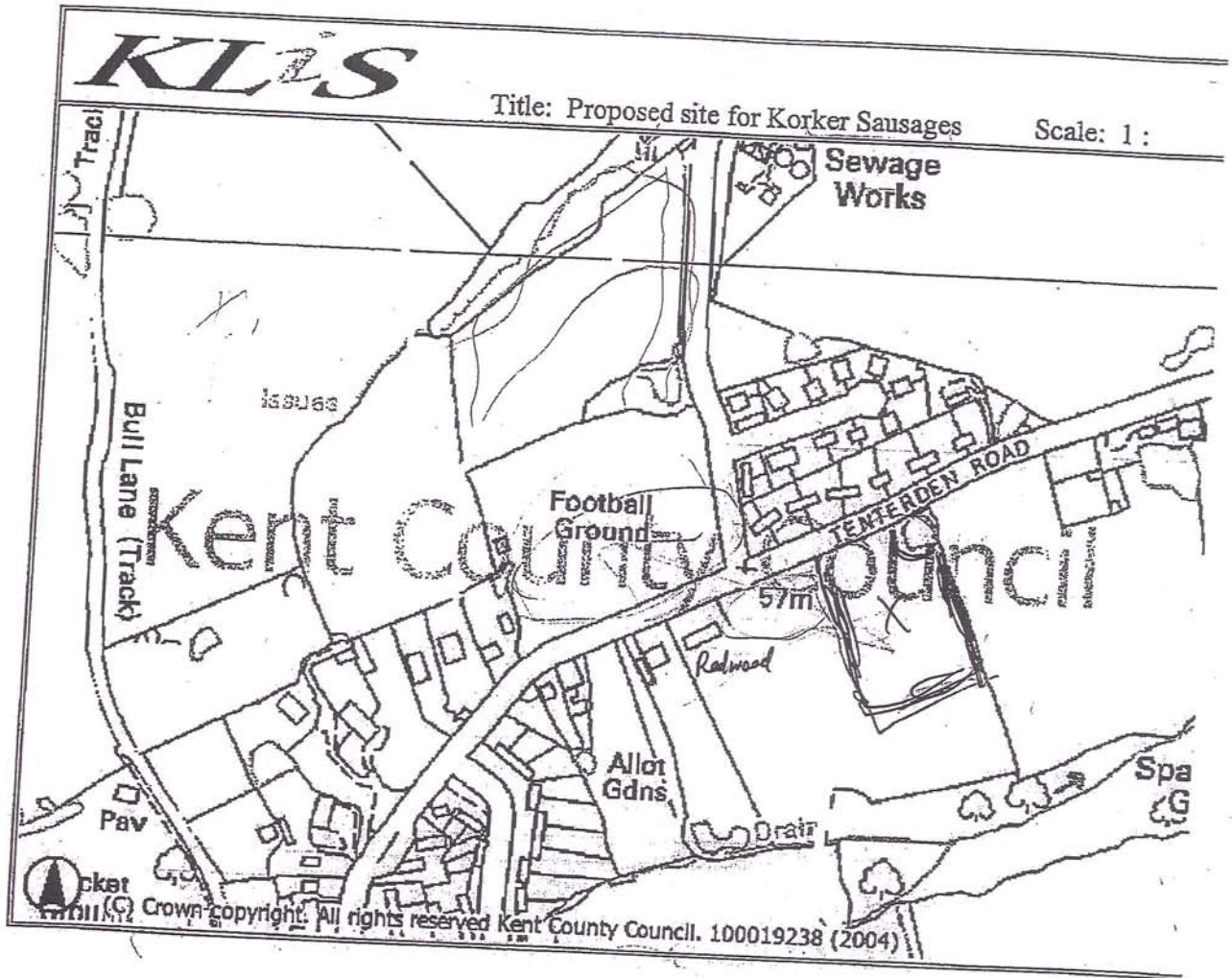
Councillors must understand that I would not be interested in moving to Windmill Farm site under any circumstances whatsoever.

From the above it is seen that I have looked at all possibilities other than simply moving to Ashford. The selected scheme is the only option for retaining the business in or even near to Rolvenden.

Yours faithfully

A handwritten signature in black ink, appearing to read 'J. Hoad', written in a cursive style.

JIM HOAD



Mr Mortimer

For the sake of clarity
would you please desist from
addressing me as 'Councillor', as I am not
elected.

would you please send or e-mail
the pre hearing papers, lest I change my mind
Edward Barham.

HOLE 
PARK

A GARDEN FOR ALL SEASONS

Hole Park Estate
Rolvenden, Cranbrook,
Kent TN17 4JA

Office: 01580 241344
House: 01580 241386
Fax: 01580 241882

Email: edwardbarham@holepark.com
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Mr T Mortimer
Ashford Borough Council
Tannery Lane
Ashford
Kent
TN23 1PL

26th May 2008



Dear Mr Mortimer
SBE 17755 .07

I enclose the form D you requested in respect of the hearing to be held on 16th June to determine my case. No other forms are not enclosed, being blank. I shall not attend the hearing. My reasons are as follows.

I believe it is almost inevitable that the Committee will find me guilty of the very tightly drawn Code of Conduct regarding declarations of interest, particularly those relating to prejudicial interest. As a landowner in the village and with extensive family and financial interests in many aspects of village life dating back 100 years, I cannot see how I can successfully challenge this. Needless to say I do not concur with his outcome.

Throughout my life I have sought to serve this community to the best of my ability, including 12 years as Parish Councillor, which has regretfully not been to the taste of the complainant whose long running saga seeking advancement over my family has, at least on this occasion, potentially scored a hit.

In the circumstances it seems pointless to even attempt to challenge the principal of the breach of Code of Conduct, particularly as the Standards Committee have no sanction over me.

Yours Sincerely

Edward Barham

FORM A

Please enter the number of any paragraph where you disagree with the findings in the Investigator's report, and give your reasons and your suggested alternative.

Member's response to the evidence set out in the Investigator's report

Paragraph number from the Investigator's report	Reasons for disagreeing with the findings provided in that paragraph	Suggestion as to how the paragraph should read

Please attach separate sheets if necessary.

FORM B

Please set out below, using the numbered paragraphs, any other evidence you feel is relevant to the allegation made about you.

Other evidence relevant to the allegation

Paragraph number	Details of the evidence
1	
2	
3	
4	
5	

Please attach separate sheets if necessary.

FORM C

Please set out below, using the numbered paragraphs, any factors which you consider that the Standards Committee should take into account if it finds that you failed to follow the Code of Conduct.

Representations to be taken into account if a member is found to have failed to follow the Code of Conduct

Please note that no such finding has been made yet.

Paragraph number	Factors for the Standards Committee to take into account when deciding whether or not to order any censure, restriction of resources or allowances, suspension or partial suspension
1	
2	
3	
4	
5	

Please attach separate sheets if necessary.

FORM D

Arrangements for the Standards Committee hearing

Please tick the relevant boxes.

<p>1 The proposed date for the Standards Committee hearing is given in the accompanying letter. Are you planning to go to the hearing? If "No", please explain why.</p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p>	<p>Reasons: <i>POINTLESS</i></p>	<p>6 Are you going to call any witnesses? If "Yes", please fill in Form E.</p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p>	
<p>2 Are you going to present your own case?</p>	<p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p>	<p><i>IF I CHOOSE TO ATTEND</i></p>	<p>7 Do you, your representative or your witnesses have any access difficulties (for example, is wheelchair access needed)? If "Yes", please give details.</p>	<p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>	<p>Details:</p>
<p>3 If you are not presenting your own case, will a representative present it for you? If "Yes", please state the name and address of your representative.</p>	<p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>	<p>Name: Address:</p>	<p>8 Do you, your representative or your witnesses have any special needs (for example, is an interpreter needed)? If "Yes", please give details.</p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p>	<p>Details:</p>
<p>4 Is your representative a Practising solicitor or barrister? If "Yes", please give his or her legal qualifications. Then go to question 6. If "No", please go to question 5.</p>	<p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>	<p>Qualifications:</p>	<p>9 Do you consider any part of the hearing should be held in private? If "Yes", please give reasons. Note: It may not be possible to hold any part of the hearing in private as this can only be done on very limited grounds.</p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p>	<p>Reasons:</p>
<p>5 Does your representative have any connection with the case? If "Yes", please give details</p>	<p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>	<p>Details:</p>	<p>10 Do you consider any part of the relevant documents should be withheld from public inspection? If "Yes" please give reasons. Note: It may not be possible to withhold any Documents as this can only be done on very limited grounds</p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p>	

Please attach separate sheets if necessary

FORM E

Arrangements for the Standards Committee hearing

<p>Name of witness or witnesses</p> <p>1 _____</p> <p>2 _____</p> <p>3 _____</p>	<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>WITNESS 2</p> <p>a Will the witness give evidence about the allegation? YES <input type="checkbox"/> NO <input type="checkbox"/> If "Yes", please provide an Outline of the evidence the Witness will give.</p> <p>b Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct has not been followed? YES <input type="checkbox"/> NO <input type="checkbox"/> If "Yes", please provide an Outline of the evidence the Witness will give.</p>	<p>Outline of evidence:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Outline of evidence:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>WITNESS 1</p> <p>a Will the witness give evidence about the allegation? YES <input type="checkbox"/> NO <input type="checkbox"/> If "Yes", please provide an Outline of the evidence the Witness will give.</p> <p>b Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct has not been followed? YES <input type="checkbox"/> NO <input type="checkbox"/> If "Yes", please provide an Outline of the evidence the Witness will give.</p>	<p>Outline of evidence:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Outline of evidence:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>WITNESS 3</p> <p>a Will the witness give evidence about the allegation? YES <input type="checkbox"/> NO <input type="checkbox"/> If "Yes", please provide an Outline of the evidence the Witness will give.</p> <p>b Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct has not been followed? YES <input type="checkbox"/> NO <input type="checkbox"/> If "Yes", please provide an Outline of the evidence the Witness will give.</p>	<p>Outline of evidence:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Outline of evidence:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>

Please attach separate sheets if necessary

PROCEDURE FOR LOCAL DETERMINATION HEARINGS

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PROCEDURE FOR LOCAL DETERMINATION HEARINGS

1. Interpretation

- (a) 'Member' means the member or co-opted or former member of a relevant 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' or 'Investigating Officer' means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative.¹ In the case of matters referred to for local investigation, references to the Investigator or Investigating Officer mean the person appointed by the Monitoring Officer to undertake the investigation (which may include the Monitoring Officer and his/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 he/she 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 other than someone who will also be a witness. Note that the cost of such

¹ In practice, the matter is referred by the ESO to the Monitoring Officer, who is then responsible for reporting the matter to the Committee. It is, therefore, convenient for the Monitoring Officer to conduct the pre-hearing process and to present the introductory report to the Committee at the commencement of the hearing.

representation must be met by the Member, unless the Committee has expressly agreed to meet all or any part of that cost.²

4. The Pre-Hearing Procedure

The Monitoring Officer shall conduct the Pre-Hearing Procedure in accordance with the attached procedure.

5. 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.³

6. Setting the Scene at the Hearing

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

7. 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 Committee is quorate.⁴

² Once regulations are made under Section 100 of the Local Government Act 2000, authorities will have a discretion to provide an indemnity to Councillors in specified circumstances.

³ In the interests of openness, the Committee may prefer to receive any such advice in the main hearing room in the presence of the Investigator and the Member. Where this is not practicable, the Legal Advisor should repeat in the presence of the Investigator and the Member the advice which he/she has tendered.

⁴ A meeting of the Committee is not quorate unless at least three Members of the Committee are present for the duration of the meeting. The three Members must include at least one Independent Member, unless an Independent Member would have been present but was precluded from participating in any of the business of the Committee in consequence of a prejudicial interest under the Council's Code of Conduct. If the Committee is responsible for Parish Council matters, it must include at least one Parish Council representative amongst its Members. However it is only a requirement that the parish representative is actually present when the Committee is dealing with a parish matter. Parish Sub-Committees, convened to deal with a parish matter, must have a parish representative as a Member of the Sub-Committee, but there is no requirement for him/her actually to attend the meeting for it to be quorate. [The Relevant Authorities (Standards Committee) Regulations 2001, Regulations 3 and 6. SI 2001 No. 2812].

(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 subject to its overriding duty to determine the Matter within three months;
- (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 this 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.

Where the Committee does not resolve to exclude 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.

8. **The Hearing of the Allegations of a failure to comply with the Code of Conduct⁵**

The Committee will then address the issue of whether the Member failed to comply with the Code of Conduct in the manner set out in the Investigator's report.⁶

- (a) The Chairman shall ask the Member to confirm that he/she maintains the position as set out in the pre-hearing summary.
- (b) The Pre-Hearing Process Summary

The Chairman will ask the Legal Advisor or the Committee Support Officer⁷ to present his/her report, highlighting any points of difference in respect of which the Member has stated that he/she 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 he/she disagrees with any finding of fact in the Investigator's report.

- (i) If the Member admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigator's report, the Committee may then make a determination that the member has failed to comply with the Code of Conduct in the manner described in the Investigator's report and proceed directly to consider whether any action should be taken (Paragraph 8).
- (ii) If the Member identifies additional points of difference, the Chairman shall ask the Member to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigator (if present) whether he/she is in a

⁵ The model procedure recommended by the Standards Board suggests that the Committee should first determine findings of fact and then determine whether there has been a failure to comply with the Code of Conduct. I suggest that these two are so closely connected that the Committee may find that it can conveniently determine the two together without any loss of fairness.

⁶ Note that the Committee's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the Investigator's report. It is possible that, in the course of their consideration, the Committee apprehend that the Member may have failed to comply with the Code of Conduct in some other manner (for example that the Member's alleged failure to treat a person with respect appears also, or in the alternative, to be conduct likely to bring the Member's office or authority into disrepute). Note that such a possible additional or alternative failure will not, at that stage be able to be considered since the Member will not have had notice of the Committee's consideration of the possible additional or alternative failure and that it would therefore be unfair to proceed to consider that second matter at the hearing into the first alleged failure. Where the Committee do apprehend a possible additional or alternative failure, a failure by a different member, or a failure in respect of the code of conduct of another authority, they should refer the second matter to the Monitoring Officer with a view to a separate allegation being made to the Standards Boards for England.

⁷ As set out above, unless conflicted out, it is likely that the Monitoring Officer will:-

- (i) take on the conduct of the pre-hearing process;
- (ii) present an introductory report to the Committee at the commencement of the hearing setting out the outcomes of the pre-hearing process;
- (iii) will (if legally qualified) act as the Legal Advisor to the Committee; and
- (iv) will distribute and publish any required notices of the Committee's determination.

However, there may be reasons in particular cases for the Monitoring Officer to arrange for any or all of these functions to be carried out on his/her behalf.

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 reasons 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 which are set out in the Investigator's report but in respect of which the member did not identify a point of difference as part of 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 points of difference identified by the Member and why he/she concluded, on the basis of his/her findings of fact, that the Member had failed to comply with the Code of Conduct. The Investigator may call witnesses as necessary to address any points of difference.
 - (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 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) No cross-examination shall be permitted but, at the conclusion of the Investigator's report and/or of the evidence of each witness, the Chairman shall ask the Member if there are any matters upon which the Committee should seek the advice of the Investigator or the witness.
- (d) The Member's response
- (i) The Chairman shall then invite the Member to respond to the Investigator's report and to call any witnesses as necessary to address any points of difference.
 - (ii) No cross-examination shall be permitted but, at the conclusion of the Member's evidence and/or of the evidence of each witness, the Chairman shall ask the Investigator if there are any matters upon which the Committee should seek the advice of the Member or the witness.

- (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 whether there has been a failure to comply with the code of conduct.
 - (ii) Any Member of the Committee may address questions to the Investigator, to the Member or to any witness.
- (f) Determination as to whether there was a failure to comply with the Code of Conduct
- (i) At the conclusion of the Member's response, the Chairman shall ensure that each member of the Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the code of conduct as set out in the Investigator's report. If the Standards Committee at any stage prior to determining whether there was a failure to comply with the Code of Conduct 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 Standards Committee may (on not more than one occasion) adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Standards Committee.
 - (ii) Unless the determination merely confirms the Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 6(b)(i) above), the Committee shall then retire to another room to consider in private whether the Member did fail to comply with the Code of Conduct as set out in the Investigator's report.
 - (iii) The Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
 - (iv) The Committee's function is to make a determination on the matter. It 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 or on behalf of the Monitoring Officer. 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) 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.
- (vi) 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 he/she wishes the authority not to publish a statement of its finding 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.⁸

⁸ The sanctions which are available to the Committee under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, Regulation 7, as amended by the Local Authorities (Code of Conduct) (Local Determination (Amendment) Regulations 2004 are any, or any combination, of the following:-

- "(i) censure of that member;
- (ii) restriction for a period up to a maximum of three months of that member's access to the premises of the authority and that member's use of the resources of the authority, provided that any such restrictions imposed upon the member –
 - (aa) are reasonable and proportionate to the nature of the breach; and
 - (bb) do not unduly restrict the member's ability to perform his functions as a member;
- (iii) partial suspension (a) of that member for a period up to a maximum of three months;
- (iv) suspension (b) of that member for a period up to a maximum of three months;
- (v) a requirement that that member submit a written apology in a form specified by the Standards Committee;

- (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 he/she 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 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 which the Committee will make to the authority with a view to promoting high standards of conduct.
- (f) 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.

11. **Reference back to the Ethical Standards Officer**

If at any time before the Committee has determined upon any appropriate sanction, it considers that the nature of the failure to comply with the Code of Conduct is such that the appropriate sanction would exceed the powers of the Committee, it may request the Monitoring Officer to refer the matter back to

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- (vi) a requirement that that member undertake training as specified by the Standards Committee;
 - (vii) a requirement that the member undertake conciliation as specified by the Standards Committee;
 - (viii) partial suspension of that member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the Standards Committee;
 - (ix) partial suspension of that member for a period up to a maximum of three months or until such time as he undertakes such training or conciliation as the Standards Committee may specify;
 - (x) suspension of that member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the Standards Committee;
 - (xi) suspension of that member for a period up to a maximum of three months or until such time as he undertakes such training or conciliation as the Standards Committee may specify".
- (a) See section 83(7), (9) and (10) of the Act for the interpretation of partial suspension
 - (b) See section 83(9) and (10) of the Act for the interpretation of suspension.

Any sanction imposed shall commence immediately unless the Committee direct (for any sanction other than censure) that it shall commence on any date specified by the Committee within six months of the date of the hearing. The effect of suspension is temporarily to deprive the Member of the benefits of any position within this authority from which the Member is suspended, for the duration of the suspension. Thus, during the period of suspension, a Member who is suspended from the Executive would lose any special responsibility allowances which he/she received as a Member of the Executive. A Member who is suspended in total would also lose any basic allowances for the duration of the suspension, and be unable to claim any travelling or subsistence allowances as they would not be incurring any such expenses in the discharge of their functions as a Councillor. But at the end of the period of suspension, the Councillor would automatically slot back into the positions which he/she held prior to the suspension, unless the Council had positively removed him/her from any such position in the meantime.

the Ethical Standards Officer and may adjourn the hearing until the Monitoring Officer advises the Committee of the Ethical Standards Officer's response to such a request.

12. **The Close of the Hearing/Appeals**

- (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 the Monitoring Officer 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 2003.⁹
- (d) The notice to the Member shall include a statement as to the rights of the Member to seek permission to appeal from the president of the Adjudication Panel within 21 days of receipt of notification of the finding and shall provide the Member with the necessary appeal form.

⁹ Note that the summary will include:-

- (a) the name of the Member
- (b) the alleged failure to comply with the Code of Conduct
- (c) the finding of the Committee that the Member did or did not fail to comply with the Code of Conduct
- (d) the details of any failure
- (e) brief reasons for the finding
- (f) any sanction or other action determined or recommended
- (g) a statement that the Member has a right of appeal

THE PRE-HEARING PROCEDURE

1. Purpose of Pre-Hearing Procedure

The pre-hearing process is designed to address procedural issues in order to ensure local determinations are dealt with fairly and efficiently.

The aims are:-

- (a) to identify whether the member the subject of the hearing disagrees with any of the findings of fact in the report of the investigator;
- (b) to decide whether any disagreements are significant to the hearing;
- (c) to decide whether or not to hear evidence about these disagreements;
- (d) to decide whether any parts of the hearing should be held in private or any parts of the investigator's report should be withheld from the public.

2. Format of Pre-Hearing Procedure

The pre-hearing process will be conducted in writing by the Monitoring Officer.

3. Notification to the Member

Upon **EITHER**

- (i) reference of a matter from an Ethical Standards Officer for local determination following completion and receipt of the Ethical Standards Officer's report, **OR**
- (ii) receipt of the final report of the Investigating Officer on a matter referred for local investigation which includes a finding that the member failed to comply with the relevant Code of Conduct or where the Standards Committee finds that the matter should be considered at a formal hearing the Monitoring Officer will:-
 - (a) arrange a (provisional) date for the hearing (not less than 35 days from the date the investigator's report is received by him but the hearing must be held within the period of three months from the date the Monitoring Officer received the final report) and identify the Committee or Sub-Committee by which the hearing will be held;
 - (b) notify the members of the Committee/Sub-Committee of the date;
 - (c) notify the member of the reference of the complaint for local determination (where relevant), of the provisional date for the hearing

and provide the member with a copy of the Investigator's report, the pre-hearing procedure note and the hearing procedure;

- (d) notify the Parish Clerk of the same matters in the case the relevant member is a Parish Councillor;
- (e) notify the complainant of the same matters.

4. **Pre-Hearing Inquiries of the Member**

Following notification under paragraph 3 the Monitoring Officer will write to the member and require him to complete and return within 14 days (or such longer period as the Monitoring Officer shall in his discretion permit) Forms A to E substantially in the form recommended by the Standards Board. These forms will ask the member to identify findings of fact with which the member disagrees; identify any additional evidence relevant to the allegation, and to provide detailed information relevant to attendance at the hearing and calling of witnesses and views on the need for private hearings in whole or part.

- Notes:**
- (a) The presumption is that the hearing will be conducted in public and that all documentation will be available for public inspection at least five clear days before the hearing. The decision to conduct all or any part of the hearing in private or to withhold any document from public inspection will be taken in accordance with the legal provisions on access to information in the Local Government Act 1972 (as amended) having due regard to the Human Rights Act 1998. A note on admission of press and public to Standards Committee hearings is attached to the Hearing Procedure.
 - (b) Having been given an opportunity to identify disagreement with the findings of fact contained in the report of the investigator, the member will not be permitted to raise at the hearing any new disagreement, unless exceptional reasons exist for doing so e.g. as a result of new evidence which has only just become available.
 - (c) The provisional hearing date will not be changed unless the reasons why he/she/the representative is unable to attend on the proposed date. Even where there are good reasons to change a date, the hearing may have to take place in the absence of the member or representative if necessary to enable the Committee/Sub-Committee to make a determination within the period required by law.
 - (d) If the member fails or declines to acknowledge receipt of the investigator's report or return the Forms A to E (or any of them) or decides not to attend the hearing, the Committee or Sub-Committee may hear the case in his absence.

5. **Pre-Hearing Inquiries of the Investigator**

On receipt of the response of the member to the investigator's report and the forms referred to in section 4 (or on the expiry of 14 days or such longer period as has been permitted from their being sent to the member whichever is the sooner), the Monitoring Officer will:-

- (a) notify the investigator of the date of the hearing;
- (b) invite the investigator to comment on the member's response (if any) within 14 days and indicate whether he intends to attend the hearing or be represented or give evidence or call witnesses and whether he wishes any part of the hearing to be held in private or any part of his report to be withheld from the public;
- (c) invite the attendance of the investigator if the proper conduct of the hearing requires it in the opinion of the Monitoring Officer.

6. **Preparations for Hearing**

- (a) The Monitoring Officer shall identify any areas of dispute between the member and the investigator and arrange for the attendance of any necessary witnesses to enable the hearing to resolve any such points of difference.
- (b) The Monitoring Officer shall have the discretion to decide whether the hearing date should be changed and, subject to ratification by a resolution of the Committee or Sub-Committee conducting the hearing, whether any part of the hearing should be conducted in private or any part of the investigator's report or documents should be withheld from the public.
- (c) The Monitoring Officer shall prepare a Pre-Hearing Summary Report summarising:-
 - (i) the complaint;
 - (ii) the investigator's report and findings;
 - (iii) the conduct of the pre-hearing procedure recording any facts which are not agreed, who will be present at the hearing and the witnesses to be called;
 - (iv) the key issues to be determined by the hearing;
 - (v) enclosing a copy of the adopted hearing procedure;

and he shall provide the Proper Officer with this report together with all relevant documents to be sent to the member, the complainant and members of the Committee/Sub-Committee together with an agenda for the meeting.

ADMISSION OF PRESS AND PUBLIC TO STANDARDS COMMITTEE DETERMINATION HEARINGS

The Standards Board for England recommends that hearings should be held in public where possible to make sure that the hearing process is open and fair. However, there may be some circumstances where parts of the hearing should be held in private.

1. At the hearing, the Committee will consider whether or not the public should be excluded from any part of the hearing, in line with Part VA of the Local Government Act 1972 (as modified in relation to local determinations by Standards Committees). If the Committee considers that 'confidential information' is likely to be revealed during the hearing, the Committee must exclude the public by law. 'Confidential information' is defined for these purposes to mean information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
2. The Committee also has the discretion to exclude the public if it considers that 'exempt information' is likely to be revealed during the hearing. The categories of 'exempt information' are set out below. The Committee should act in line with Article 6 of the *European Convention on Human Rights*, which gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. The Committee also has a duty to act fairly and in line with the rules of natural justice.
3. Article 6 says that the public may be excluded from all or part of the hearing if it is in the interests of:-
 - (a) Morals;
 - (b) public order;
 - (c) justice;
 - (d) natural security in a democratic society; or
 - (e) protecting young people under 18 and the private lives of anyone involved.
4. There should be a public hearing unless the Committee decides that there is a good reason, which falls within one of the five categories above (3a to e), for the public to be excluded.
5. The Committee must also act in line with Article 10 of the *European Convention on Human Rights*, which sets out the right for people to 'receive and impart information and ideas without interference by public authority'. Any restrictions on this right must be 'prescribed by law and....necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'.

6. Conflicting rights often have to be balanced against each other. The Committee must act in line with Article 8 of the *European Convention on Human Rights*. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the Committee) may interfere with this right unless it is:-
- (a) in line with the law; and
 - (b) necessary in a democratic society in the interests of:
 - (i) national security;
 - (ii) public safety;
 - (iii) the economic well-being of the country;
 - (iv) preventing crime or disorder;
 - (v) protecting people's health and morals (which would include protecting standards of behaviour in public life); or
 - (vi) protecting people's rights and freedoms.

There is a clear public interest in promoting the probity (integrity and honesty) of public authorities and public confidence in them. For these reasons the hearing should be held in public unless the Committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing.

7. In relation to people's rights under both Articles 8 and 10 of the *European Convention on Human Rights*, it should be remembered that any interference with or restriction of those rights must be 'necessary' and must meet 'a pressing social need', and any restriction on people's rights must be 'proportionate'.
8. The Standards Board for England recommends that a Standards Committee should move to a private room when considering its decisions. This will not conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.

**CATEGORIES OF EXEMPT INFORMATION UNDER SCHEDULE 12A OF
THE LOCAL GOVERNMENT ACT 1972 (AS MODIFIED IN RELATION TO
LOCAL DETERMINATIONS BY STANDARDS COMMITTEE)**

1. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the authority.
2. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder appointed by:-
 - (a) a magistrates' court committee;
 - (b) a probation committee within the meaning of the Probation Service Act 1993; or
 - (c) a local probation board within the meaning of the Criminal Justice and Court Services Act 2000.
- 2A. Information relating to a particular chief officer, former chief officer or applicant to become a chief officer of a local probation board within the meaning of the Criminal Justice and Court Services Act 2000.
3. Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority.
4. Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.
5. Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.
6. Information relating to the adoption, care, fostering or education of any particular child.
7. Information relating to the financial or business affairs of any particular person (other than the authority).
8. The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services.
9. Any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
10. The identity of the authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services.

11. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority.
12. Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:-
 - (a) any legal proceedings by or against the authority; or
 - (b) the determination of any matter, affecting the authority;(whether in either case, proceedings have been commenced or are in contemplation).
13. Information which, if disclosed to the public, would reveal that the authority proposes:-
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
14. Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
15. The identity of a protected informant.
16. Information relating to the personal circumstances of any person.
17. Information which is subject to any obligation of confidentiality.
18. Information which relates in any way to matters concerning national security.
19. The deliberations of a Standards Committee or a Sub-Committee of a Standards Committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 64(2) or 71(2) of the Local Government Act 2000.