

REPORT

Case reference 495041

Report of an investigation by Stephen Rix appointed by the monitoring officer for the London Borough of Hackney into an allegation concerning Councillor Michael Levy.

Updated: 17 September 2013

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1. Executive summary

1.1. On 23/02/12 Cllr Vincent Stops submitted a written complaint against Cllr Levy arising from Planning Sub-Committee's meeting on 01/02/12. Cllr Stops' complaint is that at the December 2010 Planning Sub-Committee Cllr Levy declared a personal and prejudicial interest in an application for 16 Leabourne Road. Cllr Levy then spoke in support of the application at the Sub-Committee and took no part in its deliberations. At a Planning Sub-Committee meeting on 01/02/12 Members considered an identical application to that considered in December 2010 relating to the same property – 16 Leabourne Road. In his role as Chair, Cllr Stops prompted Cllr Levy as to whether he had a prejudicial interest. Cllr Levy said no and he took part in the Committee's consideration of the matter and voted on it. In Cllr Stops' view, Cllr Levy had a personal and prejudicial interest in the matter.

1.2. Cllr Levy was involved with and supported the application for 16 Leabourne Road prior to the Planning Sub-Committee meeting on 01/02/12. Under the old Codes of Conduct he should therefore have declared a personal and prejudicial interest at that meeting and taken no part in the deliberation and voting on it. Under the current Codes of Conduct he did not hear the planning application with an open mind.

2. Michael Levy's official details

2.1. Michael Levy was first elected to office on 20 December 2007 and was re-elected on 6 May 2010 for a term of 4 years.

2.2. Michael Levy currently serves on the Planning Sub-Committee. He has also served on the North East Neighbourhood Committee and Community Safety and Social Inclusion Scrutiny Commission in recent years.

- 2.3. Michael Levy gave a written undertaken to observe the Code of Conduct on 10 May 2010.
- 2.4. Michael Levy has not attended any of the training sessions held by the Monitoring Officer on the Code of Conduct in relation to the relevant period.

3. The relevant legislation and protocols

3.1. The complaint was originally made on 23 February 2012 under the Codes of Conduct that existed at the time. The Localism Act 2011 introduced a new ethical framework which came into force on 1 July 2012. The Council adopted new Codes of Conduct under the Act which came into force on 1 July 2012. This complaint is therefore being dealt with under the new arrangements.

3.2. The provisions in the old Code of Conduct For Members that were allegedly breached are as follows:

- Paragraph 8.1(b): "You have a personal interest in any business of your authority where either – (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;"
- Paragraph 8.2(a): "In sub-paragraph 8.1(b), a relevant person is - (a) a member of your family or any person with whom you have a close association"
- Paragraph 10.1: "Subject to sub-paragraph 10.2, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the

interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest."

- Paragraph 12.1: "Subject to sub-paragraph 12.2, where you have a prejudicial interest in any business of your authority - (a) you must withdraw from the room or chamber where a meeting considering the business is being held..."

3.3. Under the new Code of Conduct For Members the relevant provisions are as follows:

- Paragraph 8.1: "You have a disclosable pecuniary interest if it is of a description specified in regulations made by the Secretary of State and either: (a) it is an interest of yours, or (b) it is an interest of: (i) your spouse or civil partner; (ii) a person with whom you are living as husband and wife, or (iii) person with whom you are living as if you were civil partners and you are aware that that other person has the interest.
- Paragraph 10.1: "If you attend a meeting and are aware that you have a disclosable pecuniary interest in any matter to be considered, or being considered, at that meeting, you must – subject to paragraph 12.1 below – disclose that interest to the meeting, and – unless you have obtained a dispensation – you cannot participate in any further discussion on the matter and must leave the meeting room whilst the matter is under discussion and voting takes place."
- Paragraph 11.3: "When contractual, financial, consent, permission or licence matters are under consideration and you have actively engaged in supporting an individual or organisation on the matter, you cannot participate in the meeting as a member of the Committee and must leave the meeting whilst the matter is under discussion and voting takes place."

- Paragraph 15.1: “Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life, you should not be prohibited from participating in a decision in your political role as a Member. However, you should avoid placing yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.”
- Paragraph 15.2: “When making a decision in such situations, you should consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken.”

3.4 The provisions in the old Planning Code of Conduct For Councillors that were allegedly breached are as follows:

- Paragraph 1.4: "Members of the Planning Sub-Committee should not organise or in any way be involved in the support of or opposition to planning applications or enforcement actions other than as permitted in the Constitution. Similarly, Members of the Planning Sub-Committee should not allow themselves to be lobbied by members of the public..."
- Paragraph 1.7: "If a Sub-Committee Member does decide to become involved in organising the support of or opposition to a planning application, or has allowed themselves to be lobbied, then that Member should accordingly declare an interest at the beginning of the committee meeting ... and remove themselves from the room when the Planning Sub-Committee is determining the item in question. By becoming involved in a planning application prior to the committee meeting other than to read the Planning Officer's report or to attend a site visit accompanied by

the Planning Officers, the Member risks forfeiting their right to take part in the discussion or vote on that particular item."

- Paragraph 3.1 says: "A Sub-Committee Member with a prejudicial interest must withdraw from the Committee meeting as soon as it becomes apparent that the matter in which they have a prejudicial interest is being considered...The Sub-Committee Member must not participate in any discussion on the matter in the Sub-Committee meeting or vote on or be present at the vote on that matter. A Sub-Committee Member may not in any way seek to improperly influence a decision about that matter."

3.5 Under the new Planning Code of Practice for Members the relevant provisions are as follows:

- Paragraph 1.1: "Planning Sub-Committee Members have to retain an open mind on any application as they are a part of the decision making process and cannot be seen to side with either the applicant or those who are making representations at the meeting at which the application would be determined. Adhering to the following rules will also ensure that public confidence in the Sub-Committee is maintained and serve to minimise the prospect of non-planning related matters affecting the judgment of Sub-Committee Members."
- Paragraph 1.2: "As decision makers, Sub-Committee Members should neither be seen to be pre-judging the application, nor to be influenced by those with whom they have a special relationship such as fellow Council Members, at any stage prior to determination. Sub-Committee Members should similarly avoid making public statements as to their support of, or opposition to, any application."

- Paragraph 1.4: “Council Members should represent the best interests of residents. Sometimes they may find themselves in a difficult situation where they are sent lobbying material. If a Council Member finds themselves in such a situation they need to decide whether they wish to sit on the Sub-Committee and hear the application or to represent the interests of their residents.”
- Paragraph 1.7: “If Sub-Committee Members are under any doubt as to the implications of a view which they might have expressed or a role which they might have played on a planning matter before going to the Sub-Committee meeting, they should seek advice from the Corporate Director of Legal, HR and Regulatory Services in advance of the relevant meeting or from the Legal Adviser to the Planning Sub-Committee before the meeting begins.”
- Paragraph 6.1: “Members must hear all planning applications with an open mind. They must not make up their mind on an application before they have heard the full application and any representations made for or against it.”
- Paragraph 6.2: “Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life, you should not be prohibited from participating in a decision in your political role as a Member. You may have even directly or indirectly expressed a view on a matter which may be relevant to a decision. However, you should avoid placing yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.”
- Paragraph 6.3: “When making a decision in such situations, you should consider the matter with an open mind and on the facts

before the meeting at which the decision is to be taken. If a Member has made up their mind before the meeting they should therefore not hear the application.”

- Paragraph 7.1: “Members should only consider the merits of an application as set out before the Sub-Committee, as allowed for under the relevant legislation, before determining whether or not to approve an application with or without additional conditions. Sub-Committee Members must not give weight to non-planning matters that may be raised by any party involved in the Sub-Committee meeting.

3.3 Section 25 of the Localism Act 2011 came into force on 15 January 2012. It deals with predetermination and provides:

25 Prior indications of view of a matter not to amount to predetermination etc

(1) Subsection (2) applies if—

(a) as a result of an allegation of bias or predetermination, or otherwise, there is an issue about the validity of a decision of a relevant authority, and

(b) it is relevant to that issue whether the decision-maker, or any of the decision-makers, had or appeared to have had a closed mind (to any extent) when making the decision.

(2) A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—

(a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and

(b) the matter was relevant to the decision.

(3) Subsection (2) applies in relation to a decision-maker only if that decision-maker—

- (a) is a member (whether elected or not) of the relevant authority, or
- (b) is a co-opted member of that authority.
- (4) In this section—

...

“decision”, in relation to a relevant authority, means a decision made in discharging functions of the authority, functions of the authority's executive, functions of a committee of the authority or functions of an officer of the authority (including decisions made in the discharge of any of those functions otherwise than by the person to whom the function was originally given);

- (5) This section applies only to decisions made after this section comes into force, but the reference in subsection (2)(a) to anything previously done includes things done before this section comes into force.

4 The evidence gathered

- 4.4 I have taken into account the evidence from Cllr Michael Levy (ML), Cllr Vincent Stops (VS), the Governance officer for the Sub-Committee (EP), the legal adviser at the meeting (BB), Head of Development Management (FN), Planning Officer (JT), Graham Loveland Interim AD (GL), Planning Officer (JM) and Enforcement Manager (MJ)..

Prior to Planning Sub-Committee meeting on 9 December 2010

- 4.5 The Planning Sub-Committee meeting on 9 December 2010 was preceded by a series of meetings. According to JT, the meetings involved GL, ML, Councillor Steinberger, Mervin Shayer (Planning Agent) and the applicants. ML said he did not attend any meetings with Mervin Shayer. JT said these meetings took place over the course of a few months and involved discussions on the acceptability or otherwise of the proposed planning application on 16 Leabourne Road.

There were also a series of emails exchanges between JT, GL and Mervin Shayer relating to the application and a series of discussions regarding amendments to the proposal which were subsequently put forward to be considered.

- 4.6 JT said ML's role was to facilitate the meeting though at the time it was more Cllr Steinberger who had a bigger part to play in the meetings. JT said Cllr Steinberger and ML tried to convince planning officers and GL that the application should be considered acceptable despite it not being in accordance with the development policies and general design guidelines. There were a series of emails communicating this between JT and Mervin Shayer.
- 4.7 JT said GL had an open door policy and that Councillor Steinberger and ML often approached GL regarding issues in the N16 area. JT said 16 Leabourne Road was just one of quite a few proposals that GL instigated meetings on and with hindsight it appeared GL actually supported the proposals contrary to other officers' opinion.
- 4.8 The application was sent to committee with a recommendation for refusal which FN said was unusual because officers had delegated authority for refusal. FN said the reason why it went to committee was because officers didn't support the application, but GL did even though there were planning issues.
- 4.9 FN said it was unusual to have an Assistant Director supporting an application when officers are not. She said in her time at Hackney officers and the AD don't usually come to a different view. She said the development plan is the document referred to and as far as planning officers were concerned the application was clearly contrary to policy. She said in addition the application had been refused prior to the application for appeal. She said officers are normally very consistent in their decision making. She said at the time GL wanted to support the application as he was more sympathetic to the Orthodox Jewish

Community, their needs for housing etc. and that is why she believes GL allowed the application through to committee.

4.10 FN thought ML supported the application as she thought he was the ward member and there were a number of housing issues in Stamford Hill. She said there are lots of large Orthodox Jewish families there and because the community want to stay together there is a pressure for housing.

4.11 GL said he was aware ML took an interest in the site and a number of other sites in the north of the borough. He said he was aware that ML had an interest in this particular application and GL thought ML said he was intending to speak on the item and then arrange for a substitute for the meeting.

Planning Sub-Committee meeting on 9 December 2010

4.12 At the Planning Sub-Committee meeting on 9 December 2010 ML declared a personal and prejudicial interest in the application. He spoke in support of the application pursuant to Paragraph 3.2 of the old Planning Code for Members, but took no part in its deliberations. FN said the application was refused even though ML and GL supported it.

Prior to Planning Sub-Committee meeting on 1 February 2012

4.13 After the December 2010 meeting and prior to the Planning Sub-Committee meeting on 1 February 2012, ML says he had no involvement with the planning application for 16 Leabourne Road. He said once the meeting [in December 2010] was over it was finished. He said the applicant's wife came to the December meeting and he commiserated with her. He said he was contacted by the applicant prior to the February 2012 meeting and said he didn't want to get involved with it. He said it was about 15 months before and the applicant had said there had been a material change in circumstance.

He said that he stepped back from it and to the best of his recollection that was the extent of his involvement after the December 2010 meeting. This is at odds with the oral evidence of JT, FN and GL all of whom said ML was involved with the application prior to the February 2012 meeting.

- 4.14 JT said he had emails that showed ML was in discussions with GL. He said none of the emails were from ML, but they did refer to him. He referred to an email from GL's PA to GL, FN and JM and cc to JT dated 06/09/11 at 14:24 Subject: 16 Leabourne Rd – *“Dear all, You should know that Cllr levy has just phoned again for Graham about this and is in turn being pressed by the agent. I’ve explained Graham is in back to back meetings today and most of tomorrow so I’d chase. Regards. J.”*
- 4.15 JT referred to an email from GL to FN and JM c.c. to JT dated 31/08/11. Subject: 16 Leabourne Rd. He referred to the reference to ML in the penultimate line which reads *“You’ll want to know that I have been pressed by Cllr Levy on this”*.
- 4.16 JT also referred to an email from GL to FN, JM c.c. to JT dated 08/09/11. Subject: 16 Leabourne Rd which read: *“Cllr Levy buttonholed me yesterday evening about this. Are we in crisis?!!”*
- 4.17 JT was not certain what ML's purpose or motive was. He speculated that ML wanted an opinion on what officers' stance would be on 16 Leabourne Rd following a favourable appeal decision on 22 Leabourne Road. JT then referred to an email from FN dated 08/09/11 in response to GL's email about being buttonholed: *“Graham, he approached me last night about 16 Leabourne after committee ended. I told him my views on it (that I didn’t feel there was a need to change our stance on it as a result of the decision on 22). We must have discussed it for at least 30 mins, but I stressed that we still had to have a discussion with you though. Regards FN.”*

- 4.18 JT said regardless of what ML was discussing with GL or why ML was approaching GL, ML would have been in support of the application. JT said in his opinion he believed ML was in support of the application prior to the February 2012 meeting given the similarities between the two applications.
- 4.19 FN said ML approached GL prior to the February 2012 meeting probably campaigning to get officers to take a different approach. She said on receipt of the third application GL exercised his powers as AD to accept it for consideration. She said given the background to the application and on being approached by ML, GL wanted to give it his support. She said what GL really wanted officers to do was to approve it under delegated powers but she told him that officers could not as there were clearly planning issues. She said ML was definitely supporting the application. It was put to FN that ML may have been trying to get it re-heard by Committee. She said not and that ML was trying to get officers to change their minds and position. She said the site had had two refusals and two appeal decisions against it so ML was trying to get officers to change their minds given the circumstances of the individual that lived there - that the applicant really needed the extension to her house. She said ML was definitely an advocate for the application.
- 4.20 FN was asked to comment on the email from her to GL and JM sent on 08/09/2011 which read: *"Graham, he approached me last night about 16 Leabourne after committee ended. I told him my views on it (that I didn't feel there was a need to change our stance on it as a result of the decision on 22). We must have discussed it for at least 30 mins, but I stressed that we still had to have a discussion with you though."* She said ML was trying to get officers to agree that because the Council lost the appeal on 22 Leabourne that officers needed to take a different view on 16 Leabourne and how the lady there needed her extension. She said she tried to give ML her view which was that even though the Council had lost the appeal on 22 it still didn't change the

position on 16 because 16 had its own planning history where two separate inspectors, both found that the Council's position to refuse permission was correct. FN said that ML should have declared a personal and prejudicial interest at the February 2012 meeting.

- 4.21 On the nature of ML's involvement prior to the February 2012 meeting GL explained that there is a particular contention in that part of the borough to do with the Orthodox Jewish Community seeking extensions to houses which are challenging at times and go beyond what planning policy would allow. He said what ML and a number of other members were keen to explore was the extent to which they could 'push the policy envelope', asking is this really contrary to policy, are there mitigating items that would allow it to be agreed? He said officers were concerned to ensure that the particular policy that doesn't allow big front roof extensions would be breached. He said that policy which is in housing supplementary guidance talks about the character of the street and proximity to other properties which may have already had, historically for whatever reason, big bulky front extensions. He said it all hinged on number 22 Leabourne Road that got permission for a front extension and built it bigger than that which was consented. The Council took enforcement action against that. When 22 Leabourne Rd was referenced as setting a precedent in nearby property, it was there but it was not consented. He said that is what the dialogue hinged on. In the intervening period 22 Leabourne Rd became regularised through the appeal process. He said he thought the applicants appealed against the enforcement action. He said in the intervening period between 9th December and 1st February 22 Leabourne Rd became a lawful development by virtue of an appeal. GL said his dialogue with ML, as he recalled, was very much around exploring what was happening with 22 Leabourne Rd because as ML would see it that would make a material change. He said as officers we took the same view and that was why officers recommended 16 Leabourne Rd the second time around for approval, because there was a material change in circumstances in relation to 22 Leabourne Rd.

GL's recollection is that the dialogue he had with ML in the period from 9 December to 1 February 2012 was around that sort of issue.

- 4.22 GL commented on the email dated 31/08/11 from him to FN and JM c.c. to JT and what ML's motive was. GL said that ML knew that there had been a change in the dynamics of the case by virtue of the 22 Leabourne Rd decision and ML knew what GL's view was. GL said he had been very upfront about that. GL said the email represented his personal view and that in light of it he probably had conversations with ML. He said the pressure he was referring to was ML wanting to know if he had progressed the dialogues, and that was what the email was doing.
- 4.23 GL was asked what he meant in his email to FN and JM of 08/09/2011 when he said: "*Cllr Levy buttonholed me yesterday evening about this. Are we in crisis?!!*" GL said he thinks what he would have meant by that was there were conflicting opinions amongst officers about the importance of 22 Leabourne Rd and its significance on the application, and it was creating some sort of crisis in terms of officers reaching a conclusion.
- 4.24 GL said ML was not supporting the application and just wanted it reconsidered. GL said ML was no fool, and understood all that. In GL's view he said ML was at pains in their dialogue, and he thinks ML made this point overtly himself, that what he was doing was simply looking at the change in planning circumstances by virtue of 22 Leabourne Rd. GL said that at no time did ML say 'You have to approve this'. GL said it wasn't about that and that ML was wanting to understand what 22 Leabourne Rd meant in terms of how it might affect officers thinking. GL said ML had been careful to position himself in such a way that he could fairly say he didn't have a prejudicial or personal interest.
- 4.25 ML commented in his response on the draft report that the conversations he had with GL as the Ward Councillor were centered

solely around the appeal decision on 22 Leabourne Road and on how it may affect Officer's thinking. He said any follow up calls that were made were to ask for updates on what the legal opinion on the matter was, as a result of the successful appeal at 22 Leabourne Rd. He said he believed this was borne out by JT at paragraph 50 of his witness statement.

- 4.26 [Following receipt of ML's comments on the draft report] VS was asked to clarify whose decision it was to refer the planning application back to February 2012 planning sub-committee. VS said he could not recall with absolute certainty as it was too long ago. He said that he would have only known about the issue had officers approached him about it. He said if asked by officers he imagined that he would have wanted it to come to committee. His recollection is that GL asked for his view and he would have said that it should go on the agenda. He said as it came to Committee previously it would seem logical for GL to suggest that it came to Committee again. He said as Chair of Planning he wants to see that the Council applies its policies and that the Council's policies, not his, seek to resist front roof extensions of this kind.
- 4.27 [Following receipt of ML's comments on the draft report] ML subsequently provided email evidence that showed it was VS who requested the application be returned to committee in an email sent on 5 October 2011 from VS to GL.
- 4.28 [Following receipt of the 2nd draft report] VS provided two emails that confirmed it was he who asked for the application to return to Planning Sub-Committee.
- 4.29 Taking into account the evidence of JT, FN and GL I consider that on the balance of probabilities ML was involved with the application prior to the Planning Sub-Committee meeting on 1 February 2012 to the extent detailed by those officers. I am further persuaded by the evidence of JT and FN that on the balance of probabilities ML was in

support of the application prior to the meeting to the extent that at the Planning Sub-Committee meeting on 1 February 2012 he had pre-determined to vote the application through for permission and did not have an open mind.

Planning Sub-Committee meeting on 1 February 2012

4.30 VS prompted ML on whether he had any interest to declare before the item and said to ML that as he declared an interest last time had he got an interest this time. ML said no, as it was a new application with a material change so he was okay to stay in the room. VS says he prompted ML again and reminded him that he did speak on behalf of the applicant previously. ML says either he or VS sought legal advice from BB. According to ML the advice given by BB was that it was left to ML to decide whether he had an interest to declare.

4.31 I have also taken account of the following documentary evidence:

- various emails provided to me by JT, Cllr Levy and Cllr Stops
- minutes of the two planning sub-committee meetings
- officer's reports relating to the planning application to both meetings
- register of Cllr Levy's pecuniary and other interests for the period 28 July 2009 to 2 July 2012
- comments received from Cllr Levy and Cllr Stops on my draft report and 2nd draft report.

5 Summary of the material facts

5.4 Prior to the Planning Sub-Committee meeting on 9 December 2010 Cllr Levy was in support of the application.

- 5.5 At the Planning Sub-Committee meeting on 9 December 2010 Cllr Levy declared a personal and prejudicial interest in the application. He spoke in support of the application and took no part in its deliberations.
- 5.6 Prior to the Planning Sub-Committee meeting on 1 February 2012, Cllr Levy was involved with the application and in support of it to the extent of pre-determination.
- 5.7 At the Planning Sub-Committee meeting on 1 February 2012 Cllr Stops prompted Cllr Levy on whether he had any interest to declare before the item. Cllr Levy declared no interest and proceeded to be involved in the consideration of the item and voted on it.
- 5.8 Cllr Levy did not have an open mind so should have not have taken any part in the deliberations or voting.

6 Michael Levy's additional submissions

- 6.4 Cllr Levy said in his oral evidence that the application to the February 2012 meeting was not identical as there had been a material change.
- 6.5 The application was in fact identical regardless of the changes in circumstances. In any event, I have decided that Cllr Levy was in involved with and supported the application prior to February's meeting and therefore issues of material change are irrelevant.

7. Observations of the Independent Person

The factual background, distilled only from the papers of the Standards Assessment Sub-Committee which have been sent to me, seems to be that:

- At the meeting of the Planning Sub-Committee in December 2010, Cllr Levy declared an interest in an Application (16

Leabourne Road). The papers do not record what was the nature of Cllr Levy's interest.

- At that meeting, Cllr Levy spoke in favour of that Application.
- Having spoken, Cllr Levy took no further part in that agenda item.
- At the meeting of the Planning Sub-Committee in February 2012, the very same Application was again on the agenda.
- On being questioned by the Chair, Cllr Levy declared this time that he had no interest in the Application, and played a full part in the Committee's consideration of the matter.

The Complaint seems to be based upon the inference that if Cllr Levy had (and declared) an interest at the first meeting, then he must have had the same interest at the second meeting, since the matter under consideration was "identical".

It is puzzling that the Planning Committee should have discussed an "identical" Application a second time.

Whatever decision the Committee had made at the first discussion would surely have been re-applied by officers under delegated authority – there being, by definition, no new matter for consideration.

If, nevertheless, this is indeed what happened, then the Committee might have supposed that Cllr Levy's interest would have remained unchanged, and thus needed to be declared again.

However, it is conceivable that although the nature of the Application had not changed over the period December 2010 to February 2012, Cllr Levy's

interest in it may have changed, such that he had no declarable interest by the time of the February Committee meeting.

The above notes are merely logical analysis of the limited information available to me. The case needs investigation as to the facts of the matter, as alluded to above. The Assessment Committee has wisely referred the case to the Monitoring Officer for such investigation.

8. Reasoning as to whether there have been failures to comply with the Code of Conduct

8.1 Was Cllr Levy's failure to declare that he did not have an open mind at the Planning Sub-Committee meeting on 01/02/12 a breach of the current Code of Conduct for Members and Planning Code of Practice for Members.

8.2 I will first address whether there have been breaches of the Planning Code of Practice paragraphs 1.1, 1.2, 1.4, 1.7, 6.1, 6.2, 6.3 and 7.1 which are set out at paragraph 3.5 of this report.

8.3 It is my opinion that Cllr Levy breached the Planning Code of Practice because he was involved with and supported the application prior to the Planning Sub-Committee in February 2012 and did not retain an open mind. He should have declared this before the meeting and not heard the application.

8.4 I will now address the Code Of Conduct For Members paragraphs 8.1 and 10.1, 11.3, 15.1 and 15.2 which are set out at paragraph 3.3 of this report.

8.5 There is no evidence that Cllr Levy had a pecuniary interest under the Code of Conduct for Members that was relevant to this investigation. Cllr Levy's Register of Members Interests for the relevant period disclosed no pecuniary interest relevant to this investigation. Further, it

is my opinion that Cllr Levy did not breach paragraphs 15.1 and 15.2 of the Code of Conduct For Members as there is no evidence that the criteria in paragraph 15.1 was met i.e. that he placed himself under any financial or other obligation to outside individuals or organisations that might seek to influence him in the performance of his official duties.

- 8.6 There is evidence he breached paragraph 11.3 as he had actively engaged in supporting the application and thus he should not have participated in the Planning Sub-Committee meeting on 01/02/12 as a member of the Committee and should have left the meeting whilst the matter was under discussion and voting took place.

9. Finding

- 9.1 Cllr Levy breached the Planning Code of Practice for Members in particular paragraphs 1.1, 1.2, 6.1 as he did not hear the planning application with an open mind.
- 9.2 Cllr Levy did breached the Code of Conduct For Members in particular paragraph 11.3 as he had actively engaged in supporting the application and thus he should not have participated in the Planning Sub-Committee meeting on 01/02/12 as a member of the Committee and should have left the meeting whilst the matter was under discussion and voting took place.

Appendix A

Schedule of evidence taken into account

Case No: 495041

Public

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2	Code of Conduct for Members	33 – 44
3	Planning Code of Practice	45 – 52
4	Section 25 Localism Act 2011	53 – 54
5	Planning Sub-Committee Report dated 03/11/2010	55 – 98
6	Minutes of Planning Sub-Committee on 09/12/2010	99 – 146
7	Planning Sub-Committee Report dated 07/10/2011	147 – 162
8	Minutes of Planning Sub-Committee on 01/02/2012	163 – 200

Independent Person's Observations

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9	Document dated 25/09/2012	201 – 202