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HEAD OF PAID SERVICE'S OFFICE
HEAD OF PAID SERVICE
Richard Holmes

14 August 2019

Dear Councillor

You are summoned to attend the meeting of the;

JOINT STANDARDS COMMITTEE

on **THURSDAY 22 AUGUST 2019** at 12.00 pm.

in the Council Chamber. Maldon District Council Offices, Princes Road, Maldon.

A copy of the agenda is attached.

Yours faithfully



Head of Paid Services

COMMITTEE MEMBERSHIP

CHAIRMAN
VICE-CHAIRMAN

Councillor Mrs M E Thompson
Councillor R G Boyce MBE

COUNCILLORS

M W Helm
R H Siddall
C Swain

PARISH COUNCILLORS

Councillor John E Anderson
To be appointed

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AGENDA
JOINT STANDARDS COMMITTEE
THURSDAY 22 AUGUST 2019

1. **Chairman's notices (please see overleaf)**
2. **Apologies for Absence**
3. **Minutes of the last meeting** (Pages 5 - 6)

To confirm the Minutes of the meeting of the Committee held on 20 June 2019, (copy enclosed).

4. **Disclosure of Interest**

To disclose the existence and nature of any Disclosable Pecuniary Interests, other Pecuniary Interests or Non-Pecuniary Interests relating to items of business on the agenda having regard to paragraphs 6-8 inclusive of the Code of Conduct for Members.

(Members are reminded that they are also required to disclose any such interests as soon as they become aware should the need arise throughout the meeting).

5. **Report into an alleged breach against the Members' Code of Conduct** (Pages 7 - 18)

To consider the report of the Monitoring Officer, (copy enclosed).

6. **Any other items of business that the Chairman of the Committee decides are urgent**

NOTICES

Sound Recording of Meeting

Please note that the Council will be recording any part of this meeting held in open session for subsequent publication on the Council's website. Members of the public attending the meeting with a view to speaking are deemed to be giving permission to be included in the recording.

Fire

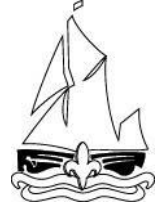
In event of a fire, a siren will sound. Please use the fire exits marked with the green running man. The fire assembly point is outside the main entrance to the Council Offices. Please gather there and await further instruction.

Health and Safety

Please be advised of the different levels of flooring within the Council Chamber. There are steps behind the main horseshoe as well as to the side of the room.

Closed-Circuit Television (CCTV)

This meeting is being monitored and recorded by CCTV.



**MINUTES of
JOINT STANDARDS COMMITTEE
20 JUNE 2019**

PRESENT

| | |
|---------------|-----------------------------------|
| Chairman | Councillor Mrs M E Thompson |
| Vice-Chairman | Councillor R G Boyce MBE |
| Councillors | M W Helm, R H Siddall and C Swain |

181. CHAIRMAN'S NOTICES

The Chairman drew attention to the list of notices published on the back of the agenda.

The Chairman introduced Norman Hodson as the Independent Person and the Monitoring Officer explained his role.

A question was asked why there was only 1 councillor from the Independent Group on the Committee. The Monitoring Officer explained that this was because of the political balance provisions and the requirement that the Conservative Group have a majority of the seats. The seats for the parish council representatives have to be included in that calculation.

182. APOLOGIES FOR ABSENCE

There were none.

183. MINUTES OF THE LAST MEETING

RESOLVED that the Minutes of the meeting of the Committee held on 21 February be approved and confirmed.

184. DISCLOSURE OF INTEREST

There were none.

185. EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED that under Section 100A (4) of the Local Government Act 1972 the public be excluded from the meeting for the following item(s) of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A to the Act, and that this satisfies the public interest test.

186. COMPLAINT AGAINST A PARISH COUNCILLOR

The Committee considered the report of the Monitoring Officer concerning 2 complaints made by two parish councillors against each other.

Councillor M Helm resolved that no further action should be taken on both complaints and Councillor R Boyce seconded. Upon a vote being taken it was resolved that no further action should be taken on both complaints.

RESOLVED that no further action be taken.

There being no further items of business the Chairman closed the meeting at 8.28 pm.

MRS M E THOMPSON
CHAIRMAN

Report on a complaint against Cllr Mark Bassenger – Members’ Code of Conduct

1. The Complaint

On the 16th July Councillor R P F Dewick, as Chairman of South Eastern Area Planning Committee (SEAPC), informed me that he was concerned that Councillor M G Bassenger had failed to make the right declaration of his interest in relation to a planning application at Bridgemarksh Lane Marina, Althorne at the committee meeting on the 15th July. Subsequent to the meeting two members of the public also made complaints of a similar nature. Councillor R P F Dewick believed that Councillor M G Bassenger should have declared a Disclosable Pecuniary Interest (DPI) rather than a Non-Pecuniary Interest.

2. The Issues

- a) Should Councillor Bassenger have declared a DPI because the development was likely to affect Councillor Bassenger’s home in accordance with paragraphs 4.2, 7.1 and 8.1 of the Code of Conduct?
- b) If he should have declared a DPI, did he believe that he was bound to declare it or was it just poor judgement?

3. The basic facts

- 3.1 Councillor Bassenger has a beneficial interest in Creek View, Bridgemarksh Lane, Althorne. It is near the Bridgemarksh Marina which was the subject of a planning application for the use of part of it for a Clubhouse. This would mean the area could be used for the sale of food and alcohol. As the “crow flies” the site of the planning application is approximately 130 metres from Councillor Bassenger’s home (see **APPENDIX A** for a satellite picture).
- 3.2 At the start of the meeting Councillor Bassenger declared a non – pecuniary interest based on him being a “neighbour”. He later agreed to take Councillor Dewick’s advice and treat the interest as a DPI, but when the matter was debated Councillor Bassenger reverted to his position of having a non-pecuniary interest. He remained in the Chamber, participated in the discussion and voted against the development. The Committee however, by majority, agreed with the officer recommendation and approved the application (see **APPENDIX B** for a transcript of audio recording of the relevant parts as transcribed by Cllr Bassenger and **APPENDIX C** for the minutes)

4. My interview with Cllr Bassenger

- 4.1 Councillor Bassenger agreed that as the “crow flies” his property is about 130 metres from the planning application site to the Nautico Clubhouse. It is about 200 metres by road. The site is beyond the seawall on land that is reclaimed saltings.
- 4.2 Councillor Bassenger explained that it is not possible to see the site from his property, inside or outside, nor hear any noise from the operation of the Clubhouse which was operating unlawfully prior to the application. Moreover, he does not hear any noise from the Marina other than the occasional jangling of the cranes. While the Clubhouse operated there was no noticeable increase in traffic movements nor in noise. As no-one parks in the Lane there were no parking issues that affected his property.

- 4.3 During the debate on the application Councillor Bassenger raised Local Plan policy issues including whether the development would be inclusive for disabled people, visual impact and being outside the development envelope. He further raised issues about no parking allocation for the site in the Marina. His main reason for objecting to the application was that he felt the Marina is part of a sensitive conservation area and needs protection from this sort of development. On a personal level he did not use the Marina much and only for launching his canoe.
- 4.4 Cllr Bassenger believed that his declaration of having a non-pecuniary interest was right because he had made such declarations at the Parish Council on about 3 or 4 occasions. No-one had challenged those declarations, including one of the two other complainants who had attended the Parish Council meetings. He therefore felt that his declaration was correct. He declared the interest as non-pecuniary because he lives in the area but did not consider that the application would have any impact on the value of his property. He recognised that the use of the word “neighbour” and being “2 houses away” caused concern that his declaration should have been pecuniary.
- 4.5 Cllr Bassenger explained that he changed his mind about making a personal statement and then leaving the chamber because he wanted to speak clearly about an application he had called in. He felt that he was being unfairly treated by members and did not understand why he was being singled out. The offer of giving a personal statement was not clearly available because it was thought he could not do so as he had not made a written representation on the application. He also changed his mind when the committee came to the item because he genuinely did not, and still does not, believe he had a pecuniary interest.

5. Analysis

- 5.1 When deciding whether a councillor has a DPI the test is whether the matter in question “is related to or likely to affect” a financial interest of the councillor, in this case the value of Councillor Bassenger’s house. In determining the first issue an objective test should be applied, namely would an ordinary member of the public knowing all the facts consider it likely to affect the value or saleability of Councillor Bassenger’s house. Councillor Bassenger said that the planning application site cannot be seen from his house nor could anyone hear any noise from it. Furthermore, he asserts that there were no traffic noise or movements of any consequence. These are relevant factors and, in my view, Councillor Bassenger was right to take them into account. However, perception is also relevant. The new grant of permission for the Clubhouse that would result in on- site consumption of alcohol and food only 130 metres away. I believe that the ordinary member of the public would conclude that Councillor Bassenger’s house was close enough to make it likely that there would be a pecuniary effect, even if there were no hard evidence of visual or noise impacts. Any potential purchaser of Creek View is likely to be influenced by the near presence of the Clubhouse.
- 5.2 In my view Councillor Bassenger should have declared a DPI. I am not basing this on his own description of being a “neighbour” and “2 houses but more on the perception of an ordinary person applying his mind to the facts. I realise that although this is an objective test it is still a matter of opinion, but I am called upon to make that assessment. I have not found it easy to reach a conclusion, nor did Councillor

Bassenger, because he changed his mind twice. Initially I was persuaded by Councillor Bassenger's assessment that he could neither see the site nor hear anything from it, but I believe that there is the factor of perception to consider as well.

- 5.3 On the first issue I believe Councillor Bassenger should have declared a DPI.
- 5.4 This means I now need to address the second and equally important issue – what was Councillor Bassenger thinking in relation to the declaration. His change of mind twice during the meeting shows that Councillor Bassenger was trying to grapple with the challenge of deciding on the right declaration. Furthermore, he was not avoiding the matter by making no declaration. In fact, I was impressed with Councillor Bassenger's openness in the interview. I believe he honestly formed the view, albeit with some difficulty, that he had no pecuniary interest. His previous declaration at Parish level, and that no-one challenged those declarations, point in the direction that his judgement on this occasion was poor and that he was not dishonest. I think that his judgement was clouded by his sense that he needed to represent the public and that as ward member he ought to be heard during the debate, in fact I would go so far to say that he felt he had a public duty to participate in the decision.
- 5.5 On the second issue I conclude that Councillor Bassenger made an honest but poorly judged declaration.

6. A sanction

- 6.1 If the Committee agree with me on both issues, then the following options are available or a combination of them:
- A) Do nothing on the basis that it was an honest failure and this process in itself has been a salutary lesson;
 - B) Issue a formal censure in the form of a letter which is publicised on the Council's website;
 - C) Require that more training is undertaken to understand more clearly the requirements of the Code;
 - D) Recommend to Council that Councillor Bassenger should be removed from one or more committees for a set time, including South Eastern Area Planning Committee.

7. Final Word

- 7.1 Finally, I would like to thank Councillor Bassenger for his cooperation and for providing a transcript of part of the audio recording of the committee meeting. During the interview Councillor Heard was in attendance as a support to Councillor Bassenger and his contributions were helpful. I am grateful to both councillors.

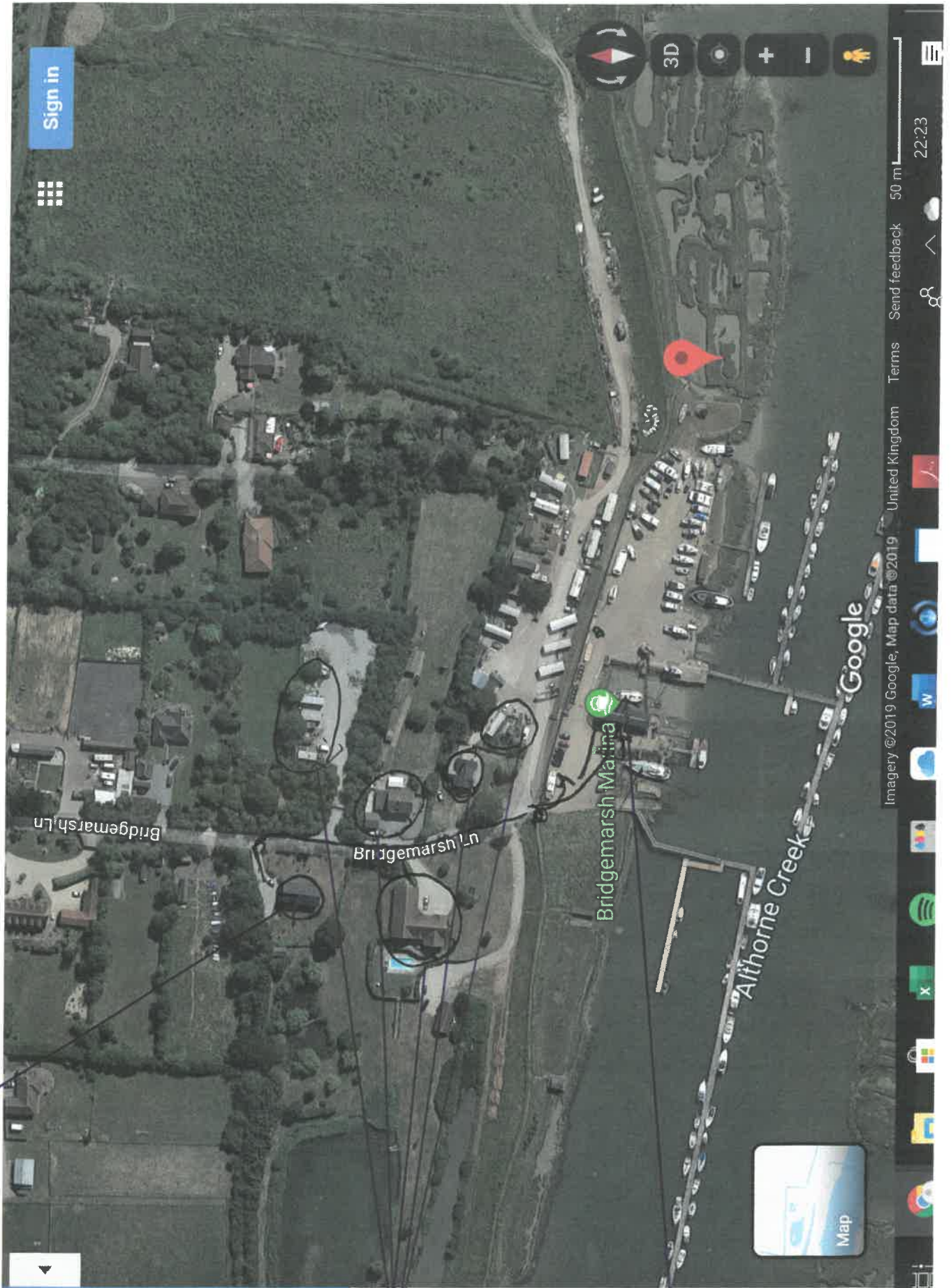
Simon Quelch

Monitoring Officer

August 2019

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Appendix A



Property of Mr. Bassenger.

other residences
Page 11

Site of planning application

*Transcript of part of audio recording provided
by Cllr Bassenger at interview with MO on*

D declares non pecuniary interest

29/7/19

Appendix B

H - declares pecuniary interest

F - agenda item 5, my dog came from AA dog rescue

F - the applicant commodore Wilsden I'm known to him and he to me just in the openness and transparency, thank you.

M - **I've got a non-pecuniary interest in item no 7.** I am a neighbour, I live in Bridgemarsh Lane, I know the applicant and I know the objectors and I have made objection as a resident before I was a Councillor.

D - so are you taking part or are you leaving the room

M - I would like to take part, I don't know if that's possible.

There were sucks of breath from the floor. ETC

D - The decision is yours.

From the floor - it's up to you. ETC

M - Why, as in because being a new councillor I don't know what that actually means.

D - Not knowing - you said you were a neighbour whether how near a neighbour whether it affects, could affect the **value of your property** or anything else which would then

M - okay, I personally don't believe it does

D - so if you are confident of that, that's alright, if you have any doubts I would suggest you leave the room

M - it's very difficult to say that because in my capacity as a new Councillor I live, I would say, 200 yards away from the Marina. I'm not directly connected to the Marina. I don't know, perhaps maybe some of the Officers that have been down there could give me some assistance

D - its not really for anybody else to say

M - I see, okay

D - it's a personal decision. Unfortunately it's something you should have discussed with the monitoring office in advance but if you are in any doubt I would suggest you leave the room for your own sake

From the floor - "hear, hear" and whispers from the floor

Discussion ensues in whisper between Officers, the Chair and Clerk

M said to himself "I don't know, I just don't know"

M – "it seems" (*discussion still going on in background*)
And whispering to me from F.

D – Cllr Bassenger?

M – Yes

D – you can give a personal viewpoint, not a Councillors viewpoint, but a personal viewpoint and then leave the room without a problem.

M – okay

D – but if you're staying as a Councillor, I wouldn't.

M – okay, well then also within this pecuniary I was actually the Cllr that called this in so yes, okay then.

D – that's fine.

M – so yes okay then taking your advice I shall give a personal opinion if that's okay and then I shall leave the room

D – your not speaking as a Cllr when you do so. Ok

M – is that okay

Discussion ensues between Chair, Officers and Clerk

Whispering to me from the floor I reply off record to the floor "can you believe it, that's all I'm going to say"

D – We are a bit uncertain ourselves

M – Yeah

D - but believe, the 3 of us believe that you can give your viewpoint but you then leave the room. It's the safest way for you if we've got it wrong then we're in trouble because could this be bad advice for you, I'm in trouble. I should be careful what you do as a neighbour. It's your decision, (*whispering from F – your decision, your decision*) I can't tell you what to do, I can only give you a bit of advice.

M – ok

D – Think about it we're not there yet.

Moving on to agenda item 5

B - Mr Bassenger wants to speak.

M – Again, I’m left in this position of can I speak or can I not speak as a Cllr or a resident

D – You can make a personal statement, it’s up to you, I mean

M - It can’t be up to me can it, I’m a new Cllr so I’m asking you as a Chairman will I be in trouble although I’ve declared a non-pecuniary interest

D – **if it’s a non-pecuniary interest then you are not in any difficulties** but if it’s a pecuniary interest then you are

M – **but I did declare that it was a non-pecuniary interest**

D – well if it’s a non-pecuniary interest and you are happy with that then it’s your decision

M – surely that faces everybody (I meant – why wasn’t everybody questioned)

D – we are all in the same

M – exactly, so I’m not sure why I’ve been singled out for this

D – well you sort of asked a question at the beginning

M – no, I declared a non-pecuniary interest and then I was told that I live nearby

D – well you said as a neighbour

M – well I am a neighbour, I live 2 houses or the house behind the house before the seafront

D- the decision is still yours, we can only offer advice. I told you what I would do in your position.

M – then my position is as an elected Cllr with probably more rights to sit here than most, based on the elections, I’ve been asked by my constituency to represent them and I feel that if I then leave the room and I’m not able to vote because I’m sort of being pressured with this idea that I shall be in trouble in some way, then I feel that slightly unfair really and I think maybe this should be deferred until we can clarify my position.

D – Well that should have been done in advance.

M – Well then perhaps I should have been made fully aware of this.

D - You attended the training session

F – Point of Order

M – Mr Chairman, I did attend the training session

F – Mr Chairman, I raised a Point of Order. *(NB What is the point of order?)* We are here to consider a planning application not to consider whether or not Cllr Bassenger has a pecuniary or non-pecuniary interest in this. He has said that he lives a **couple of doors away** or whatever, we heard that. Early on he said that this application, I think you asked him Chairman would it affect the value of his house, either way and he said no, so it's up to him whether he sits in this Chamber and it's up to him Mr. Chairman how he conducts himself in this Chamber **bearing in mind that he does live 2 doors away** but likewise this application will not affect the value of his house **and it's up to somebody else to report him to the Monitoring Officer or whatever Chairman** so I would propose we go ahead and we leave Cllr Bassenger to make his own mind up in the same way as everybody else does.

H – I'll second that.

F – Thank you. Can we move on?

D - Cllr Bassenger if you'd like to continue but it is, you have to make the decision for yourself we cannot make it for you, you've heard what other people have said you've heard advice has been given to you. It is not for us to make that decision we cannot tell you what you can or cannot do, you've made that decision. If you wish to stay, you declared a non-pecuniary interest and if you wish to stay and speak that is your decision.

M – Thank you Mr. Chairman so therefore I will make the decision that I have a non-pecuniary interest and will stay.

D – Ok so if you'd like to continue then.

F – whispers "very dangerous"

D - Cllr Bassenger, have you anything?

M – I've just had a whisper "very dangerous" and I don't know why

F – Well Mr Chairman I mean I've heard that Cllr Bassenger lives 2 doors away from him and you will remember Chairman that Cllr Sydney who resigned from this Council who lived 1 door away from a strategic application and felt the same as you do etc etc

W – Chairman, can I please just say something. Can the Cllr not pass on any relevant information he feels that may help this committee coming to a decision and maybe then not vote?

F – "no" in a whisper.

H – We can all make decisions.

D –Everybody in this.

All the Councillors in this room have attended the training day etc
(again asking whether or not M will speak or leave the room etc)

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EXCERPT FROM SOUTH EASTERN AREA PLANNING COMMITTEE MINUTES
– 15 JULY 2019

184. DISCLOSURE OF INTEREST

Councillor R Dewick, advised the Committee that he knew the applicant on Agenda Item 7 - FUL/MAL/19/00382 – Club Nautico, Bridgemarsh Lane, Althorne, Essex but that it did not constitute an interest.

Councillor A L Hull declared a pecuniary interest in Agenda Item 7 – FUL/MAL/19/00382 – Club Nautico, Bridgemarsh Lane, Althorne, Essex, as her partner worked for the applicant. She advised the Committee she would leave the Chamber for this item of business.

Councillor A S Fluker declared in the interest of openness and transparency on Agenda Item 5 - FUL/MAL/18/01518 - Sandbeach Hockley Lane Bradwell-On-Sea Essex CM0 7QB, as his dog came from AA Rescue and Agenda Item 7- FUL/MAL/19/00382 – Club Nautico, Bridgemarsh Lane, Althorne, Essex, as he knew the applicant.

Councillor V J Bell declared a non-pecuniary interest in Agenda Item 8 - Chartwell, 120 Maldon Road, Burnham-on-Crouch, Essex, CM0 8DB, as she knew some of the objectors and had worked in the sector for a number of years.

Councillor M G Bassenger declared a non-pecuniary interest in Agenda Item 7 - FUL/MAL/19/00382 – Club Nautico, Bridgemarsh Lane, Althorne, Essex, as he was a neighbour, knew the applicant and objectors and had objected as a resident on a previous application prior to becoming a councillor. He said he intended taking part in the debate if that was possible.

It was acknowledged that the onus was on the individual regarding how they declare and that as a general rule, if in doubt, it would be best to leave the Chamber for the respective Agenda Item. The Chairman reminded members that the recent training delivered by the Monitoring Officer, attended by all Members, had clarified where they stood in regard to interests and the issue of when in doubt had also been covered. He went on to advise that, where a Member had concerns regarding an application etc., they should speak with the Monitoring Officer in advance of the meeting.

Following further deliberation on the first declaration, Councillor Bassenger then declared he would make a personal statement and leave the Chamber for the debate on Agenda Item 7 - FUL/MAL/19/00382 - Club Nautico, Bridgemarsh Lane, Althorne, Essex.

**187. FUL/MAL/19/00382 - CLUB NAUTICO, BRIDGEMARSH MARINA,
BRIDGEMARSH LANE, ALTHORNE, ESSEX**

| | |
|---------------------------|--|
| Application Number | FUL/MAL/19/00382 |
| Location | Club Nautico Bridgemarsh Marine Bridgemarsh Lane Althorne Essex |

| | |
|---|--|
| Proposal | Section 73A application for extension and alterations to barge S.S. Nautico and for the change of the use on the upper deck from office to club house with associated facilities (resubmission of application FUL/MAL/17/01376). |
| Applicant | Mr John Wilsdon |
| Agent | Mr Mark Morgan - Petro Designs Ltd |
| Target Decision Date | 20.06.2019 E.o.T. 19.07.2019 |
| Case Officer | Spyros Mouratidis |
| Parish | ALTHORNE |
| Reason for Referral to the Committee / Council | Member Call In – Councillor Mark G Bassenger – Concerns about the application |

Following the Officer's presentation Mr Lakin, an Objector, Parish Councillor Mr Brian Noye, Althorne Parish Councillor and the Applicant Mr John Wilsden addressed the Committee.

Councillor Bassenger, having previously agreed to make a personal statement and leave the chamber, sought further clarification from the Chairman.

The Chairman, in response, again reminded Members that they had all attended the Code of Conduct training. The training had been clear on where Members stood in regard to interests and the best course of action to take if in doubt, together with the role of the Monitoring Officer and/or the Standards Committee, in respect of the code of conduct. He repeated that when in doubt on any application Members should seek the advice of the Monitoring Officer in advance of the meeting and that he could only offer advice. How a Member declared was down to the individual.

Councillor Bassenger then reverted to his original non-pecuniary declaration of interest and said he would remain for the discussion on this item of business.