

APOLOGIES Committee Services
Email: Committee.clerk@maldon.gov.uk

DIRECTOR OF STRATEGY,
PERFORMANCE AND
GOVERNANCE
Paul Dodson

08 June 2022

Dear Councillor

You are summoned to attend the meeting of the;

JOINT STANDARDS COMMITTEE

on **THURSDAY 16 JUNE 2022** at **2.00 pm**

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

Please Note: Following the relaxation of Covid rules, members of the public can now physically access meetings in the Council Chamber. With physical attendance the Council encourages all attendees to wear a face mask and complete a lateral flow test. All meetings will continue to be live streamed on the [Council's YouTube channel](#) for those wishing to observe remotely.

A copy of the agenda is attached.

Yours faithfully



Director of Strategy, Performance and Governance

COMMITTEE MEMBERSHIP:

CHAIRMAN	Councillor Mrs J L Fleming, CC
VICE-CHAIRMAN	Councillor S P Nunn
COUNCILLORS	M G Bassenger Miss A M Beale M W Helm C Mayes E L Stephens Mrs M E Thompson
PARISH / TOWN COUNCILLORS (non-voting)	Councillors M R Pearlman and N R Todd
INDEPENDENT PERSON (non-voting)	Mr J Mitchell





**AGENDA
JOINT STANDARDS COMMITTEE**

THURSDAY 16 JUNE 2022

1. **Chairman's Notices**
2. **Apologies for Absence**
3. **Minutes of the last meeting** (Pages 3 - 22)

To confirm the Minutes of the meeting of the Joint Standards Committee held on 8 February 2022 (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. **Motion of Councillor A S Fluker regarding Planning Decision on Land South of Charwood and East of Orchard, Stoney Hills, Burnham-on-Crouch** (Pages 23 - 40)

To consider the report by the Monitoring Officer (copy enclosed).

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

NOTICES

Recording of Meeting

Please note that the Council will be recording and publishing on the Council's website any part of this meeting held in open session.

Fire

In the 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 Televisions (CCTV)

Meetings held in the Council Chamber are being monitored and recorded by CCTV.



**MINUTES of
JOINT STANDARDS COMMITTEE
8 FEBRUARY 2022**

PRESENT

Chairman	Councillor M G Bassenger
Vice-Chairman	Councillor Mrs J L Fleming, CC
Councillors	Miss A M Beale, M W Helm, C Mayes and Mrs M E Thompson
Substitutes	Councillor C Swain

502. CHAIRMAN'S NOTICES

The Chairman welcomed everyone present and went through some general housekeeping arrangements for the meeting.

503. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors R P F Dewick and R H Siddall. It was noted that Councillor C Swain was attending as a substitute for Councillor Siddall.

504. MINUTES OF THE LAST MEETING

RESOLVED by assent that the Minutes of the meeting held on 6 September 2021 be approved and confirmed.

505. DISCLOSURE OF INTEREST

There were none.

506. ADOPTION OF NEW CODE OF CONDUCT FOR MEMBERS

The Committee considered the report of the Monitoring Officer that presented to the Committee the new Model Code of Conduct for Members (the Code) from the Local Government Association (LGA), at Appendix 1, and the accompanying Guidance, at Appendix 2, with a view to making a recommendation to the Council.

The Chairman introduced the report and deferred to the Monitoring Officer to present the detail. The Officer took the Committee through the report and advised that revisions submitted last year satisfied previous concerns raised by Essex Councils. Most District Councils were moving towards adoption and the new code was an

improvement on the current one, incorporating important principles established across the country.

The Code itself was much more self-explanatory and the accompanying guidance to assist with interpreting the code included a number of examples. Of real significance was the section on Declarations of Interest and the Monitoring Officer highlighted that interests now related to relative and close associates. The three categories of interest had been updated as follows and the considerations around each interest were explained:

- **Disclosable Pecuniary Interests (DPI)** – these were unchanged as they were defined in statute in the Localism Act. If a Member did not declare a DPI they would breach the Code of Conduct and commit a crime. Table 1 of Appendix 1 to the report detailed the types of DPI. A Member with an DPI on an item being discussed by Committee could not debate or vote on that item and would have to leave the room.
- **Other Registrable Interests (ORI)** –detailed in table 2 of Appendix 2. This was a new category and related to unpaid directorships, public interest bodies, charity membership etc. Members were required to register these and at a meeting if there was a matter arising which directly related to the financial interest or wellbeing of one of the ORI they would have to declare it as well. A Member with an ORI on an item being discussed by Committee could not debate or vote on that item and would have to leave the room.
- **Non-Registrable Interests (NRI)** – Another new category and was broken into two types of interest financial and wellbeing. Members had to consider if a matter ‘directly’ related or ‘affected’ their financial interest or wellbeing. These interests could relate to a member, their partner / spouse, a relative or a close associate. If a Member had an NRI they could not debate or vote on that item of business.

The Monitoring Officer drew Members’ attention to paragraph 9(a) of the Code and suggested that it be amended to include reference to ‘or well-being’.

The Committee was reminded that the Code only applied when acting in the capacity of a Councillor. Members were advised that Essex County Council were moving towards adoption circa June 2022 and most other authorities will be doing so shortly after that.

The Chairman moved the recommendation as set out in the report and this was duly seconded. Councillor Mrs M E Thompson proposed an amendment that paragraph 9a be amended to read “...to a greater extent that it effects the financial interest *or well-being* of the majority..” This was duly seconded.

The Chairman opened the debate, which ensued with a number of comments raised by Members. In response the Monitoring Officer provided the Committee with further information including:

- The LGA had advised that it would be undertaking an annual review of the Code;
- Whistleblowing related to employees, not Members and the Council had a Whistleblowing Policy. The Code dealt with Members treating other Members with respect and bullying.
- Members were reminded that the Council had previously adopted and now published a public interest test as mentioned in Best Practice 6 within the Code.
- It was clarified that where a member of the public had the right to address a Committee and Member of that Committee declared an interest which would

result in them not being able to debate or vote and having to leave the meeting, they could prior to leaving be given the same right to speak as a member of the public. However, this would not apply to another District Councillor wanting to speak at an Area Planning Committee they were not a Member of because they would have no interests to declare.

- Members' attention was draw to the section 'Application of the Code of Conduct' and how it applied to a Member when acting in their capacity as a Councillor. In respect of Political Group meetings and application of the Code, the Monitoring Officer advised that there had been differing views on this and he hoped the new Code would provide a clearer view.

It was noted that Parish and Town Council representatives to sit on the Committee would be appointed at the Statutory Annual meeting of the Council.

The Chairman then put the proposed amendment in the name of Councillor Mrs Thompson to the Committee and this was duly agreed by assent. The Chairman then moved the recommendation as set out in the report, duly amended to the Committee, advising that this would be a recommendation to the Council. This was duly agreed by assent.

RECOMMENDED that the Council adopt the Model Code of Conduct attached as **APPENDIX 1** to these Minutes, (version of May 2021) together with the amendment resolved at the Joint Standards Committee on 8 February 2022 to include 'or well-being' in Appendix B, paragraph 9 (a) of the code and that the code take effect by 1 November 2022 unless brought into effect prior by the Monitoring Officer depending on when Essex County Council bring into effect the New Code of Conduct.

507. ANY OTHER ITEMS OF BUSINESS THAT THE CHAIRMAN OF THE COMMITTEE DECIDES ARE URGENT

There were none and the Chairman thanked all present for their contributions.

The meeting closed at 3.14 pm.

M G BASSENGER
CHAIRMAN

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Local Government Association

Model Councillor Code of Conduct 2020

Joint statement

The role of councillor across all tiers of local government is a vital part of our country's system of democracy. It is important that as councillors we can be held accountable and all adopt the behaviors and responsibilities associated with the role. Our conduct as an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to. We also want individuals from a range of backgrounds and circumstances to be putting themselves forward to become councillors.

As councillors, we represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent our local area, taking decisions fairly, openly, and transparently. We have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.

Importantly, we should be able to undertake our role as a councillor without being intimidated, abused, bullied, or threatened by anyone, including the general public.

This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.

Introduction

The Local Government Association (LGA) has developed this Model Councillor Code of Conduct, in association with key partners and after extensive consultation with the sector, as part of its work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance. It is a template for councils to adopt in whole and/or with local amendments.

All councils are required to have a local Councillor Code of Conduct.

The LGA will undertake an annual review of this Code to ensure it continues to be fit-for-purpose, incorporating advances in technology, social media and changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code and the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

Definitions

For the purposes of this Code of Conduct, a “councillor” means a member or co-opted member of a local authority or a directly elected mayor. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who

- a) is a member of any committee or sub-committee of the authority, or;
- b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

For the purposes of this Code of Conduct, “local authority” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

General principles of councillor conduct

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the [Seven Principles of Public Life](#), also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

Application of the Code of Conduct

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring

Standards of councillor conduct

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

General Conduct

1. Respect

As a councillor:

1.1 I treat other councillors and members of the public with respect.

1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

2. Bullying, harassment and discrimination

As a councillor:

2.1 I do not bully any person.

2.2 I do not harass any person.

2.3 I promote equalities and do not discriminate unlawfully against any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and

contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

3. Impartiality of officers of the council

As a councillor:

3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

4. Confidentiality and access to information

As a councillor:

4.1 I do not disclose information:

- a. given to me in confidence by anyone**
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
 - i. I have received the consent of a person authorised to give it;**
 - ii. I am required by law to do so;**
 - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
 - iv. the disclosure is:**
 - 1. reasonable and in the public interest; and**
 - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
 - 3. I have consulted the Monitoring Officer prior to its release.**

4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

4.3 I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

5. Disrepute

As a councillor:

5.1 I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in you or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

6. Use of position

As a councillor:

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

7. Use of local authority resources and facilities

As a councillor:

7.1 I do not misuse council resources.

7.2 I will, when using the resources of the local authority or authorising their use by others:

- a. act in accordance with the local authority's requirements; and**
- b. 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 local authority or of the office to which I have been elected or appointed.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport

- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

8. Complying with the Code of Conduct

As a Councillor:

8.1 I undertake Code of Conduct training provided by my local authority.

8.2 I cooperate with any Code of Conduct investigation and/or determination.

8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

Protecting your reputation and the reputation of the local authority

9. Interests

As a councillor:

9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority .

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in **Table 1**, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

10. Gifts and hospitality

As a councillor:

- 10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**
- 10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
- 10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

Appendix A – The Seven Principles of Public Life

The principles are:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”. You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

“**Disclosable Pecuniary Interest**” means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

"Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A ‘sensitive interest’ is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a ‘sensitive interest’ you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. [Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it]

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in **Table 2**), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest.

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which **affects** –
- your own financial interest or well-being;
 - a financial interest or well-being of a relative or close associate; or
 - a financial interest or wellbeing of a body included under Other Registerable Interests as set out in **Table 2**

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter (referred to in paragraph 8 above) **affects** the financial interest or well-being:
- to a greater extent than it affects the financial interests **or well-being** of the majority of inhabitants of the ward affected by the decision and;
 - a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. [Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it]

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the

	<p style="text-align: right;">APPENDIX 1</p> <p>councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council —</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land and Property	<p>Any beneficial interest in land which is within the area of the council.</p> <p>‘Land’ excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
Licenses	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer</p>
Corporate tenancies	<p>Any tenancy where (to the councillor’s knowledge)—</p> <p>(a) the landlord is the council; and</p> <p>(b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.</p>
Securities	<p>Any beneficial interest in securities* of a body where—</p> <p>(a) that body (to the councillor’s knowledge) has a place of business or land in the area of the council; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were</p>

	spouses/civil partners have a beneficial interest exceeds one hundredth of the total issued share capital of that class.
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* 'director' includes a member of the committee of management of an industrial and provident society.

* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Table 2: Other Registrable Interests

You must register as an Other Registrable Interest :

- a) any unpaid directorships
- b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority
- c) any body
 - (i) exercising functions of a public nature
 - (ii) directed to charitable purposes or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

of which you are a member or in a position of general control or management

The LGA has undertaken this review whilst the Government continues to consider the recommendations made by the Committee on Standards in Public Life in their report on [Local Government Ethical Standards](#). If the Government chooses to implement any of the recommendations, this could require a change to this Code.

The recommendations cover:

- Recommendations for changes to the Localism Act 2011 to clarify in law when the Code of Conduct applies
- The introduction of sanctions
- An appeals process through the Local Government Ombudsman
- Changes to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
- Updates to the Local Government Transparency Code
- Changes to the role and responsibilities of the Independent Person
- That the criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished

The Local Government Ethical Standards report also includes Best Practice recommendations. These are:

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors.

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Best practice 7: Local authorities should have access to at least two Independent Persons.

Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to

review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council, rather than the clerk in all but exceptional circumstances.

Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

The LGA has committed to reviewing the Code on an annual basis to ensure it is still fit for purpose.



**REPORT of
MONITORING OFFICER**

to
**JOINT STANDARDS COMMITTEE
16 JUNE 2022**

**MOTION OF COUNCILLOR A S FLUKER REGARDING PLANNING DECISION ON LAND
SOUTH OF CHARWOOD AND EAST OF ORCHARD, STONEY HILLS, BURNHAM-ON-
CROUCH**

1. PURPOSE OF THE REPORT

- 1.1 To assist the Committee make a recommendation to the Council on any action that should be taken on the Motion of Councillor A S Fluker, duly seconded by Councillors R P F Dewick and M W Helm, automatically referred to this Committee on 12 May 2022.

2. RECOMMENDATIONS

To the Council:

- (i) That the Council set up an external investigation into the decision-making process in relation to this planning application only;

OR

- (ii) That the Council set up an external investigation into the decision-making process of this application, but with the terms of reference being to look at member decision-making generally to identify any systemic problem;

OR

- (iii) That the Council rejects the call for an external investigation but accepts the findings of the Inspector and that Council emphasises the need for more objective and evidence-based decision-making in the future;

OR

- (iv) That the Council rejects the need for an external investigation.

3. SUMMARY OF KEY ISSUES

- 3.1 The Motion from Councillor Fluker is cited here in full:

“Preamble:

With reference to the Cost Decision Appeal Ref/APP/X1545/W/21/3281036 Land south of Charwood and east of Orchard House, Stoney Hills, Burnham-on-Crouch, CM0 8QA and in the best interests of maintaining the status of the Council as a Local Planning Authority.

Motion to Council:

With regards to openness, transparency, and public interest the Council writes to the Planning Inspector appointed by the Secretary of State, Mr Terrence Kemmann-Lane JP DipTP FRTPI MCMI, asking him to evidence his findings of ‘substantive’ ‘unreasonable behaviour’ and pre-determination by ‘elected members’, and that the Council appoints an Independent Person to conduct a review of the decision notice and report their findings to Council.”

- 3.2 On 17 February 2021 the South Eastern Area Planning Committee resolved to refuse a planning application to construct a cul-de-sac road with turning head and vehicular and pedestrian access off Stoney Hills, erect one detached bungalow and garage, lay out parking spaces and garden (Minute No. 265 refers). This was contrary to officer recommendation.
- 3.3 Due to the possibility of legal challenge on the grounds of alleged pre-determination the application was re-determined by the District Planning Committee on 9 June 2021. The Committee resolved to refuse the application again contrary to officer recommendation. The Minutes of that meeting are shown as **APPENDIX 1**.
- 3.4 There was a written representations appeal determined by a Planning Inspector. His decision letter is shown as **APPENDIX 2** and he granted the application. There is nothing in that letter that alleges pre-determination by any Member. The Costs Decision letter is shown as **APPENDIX 3** in which the Inspector awards the full costs of the applicant on the grounds that the decision of the Council collectively demonstrated “unreasonable behaviour”.
- 3.5 In the Motion there is incorrect reference to the Inspector awarding costs due to pre-determination. He made his decision on unreasonable behaviour alone. Pre-determination is mentioned in **APPENDIX 3**, but only in relation to reciting the allegation of the Applicant in his application for costs.
- 3.6 As the Inspector did not base his decision on pre-determination there is no benefit in writing for more specific information about individual councillors.

4. CONCLUSION

- 4.1 Members gave two reasons for refusal which were not substantiated, and it is this that led to the finding of unreasonable behaviour, but not to pre-determination. The Committee needs to decide whether this decision warrants the special treatment of an external investigation.

5. IMPACT ON STRATEGIC THEMES

- 5.1 None.

6. IMPLICATIONS

- (i) **Impact on Customers** – Delayed and unfair decision-making.
- (ii) **Impact on Equalities** – None.
- (iii) **Impact on Risk** – None.

- (iv) **Impact on Resources (financial)** – The Council has to pay out the costs of the Applicant.
- (v) **Impact on Resources (human)** – None.
- (vi) **Impact on the Environment** – None.
- (vii) **Impact on Strengthening Communities** – None.

Background Papers: District Planning Committee report of 9 June 2021.

Enquiries to: Simon Quelch, Lead Legal Specialist and Monitoring Officer.

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82. 20/01166/FUL LAND SOUTH CHARWOOD AND EAST OF ORCHARD HOUSE, STONEY HILLS, BURNHAM-ON-CROUCH

Application Number	20/01166/FUL
Location	Land South Of Charwood and East of Orchard House, Stoney Hills, Burnham-On-Crouch
Proposal	Construct cul-de-sac road with turning head and vehicular and pedestrian access off Stoney Hills, erect one detached bungalow and garage, lay out parking spaces and garden
Applicant	Mr Burrows - Virium Technology Limited
Agent	Mr Stewart Rowe - The Planning And Design Bureau Ltd
Target Decision Date	3 May 2021
Case Officer	Louise Staplehurst
Parish	BURNHAM NORTH
Reason for Referral to the Committee / Council	Departure from the Local Plan 2017

It was noted from the Members' Update that a further consultation response had been received.

A copy of the report and Members' Update considered at the South Eastern Area Planning Committee on 17 February 2021 were attached as Appendices 1 and 2 respectively to the report.

In response to a question the Specialist – Development Management advised that the access road to the site was private and had been approved as part of a previous planning application.

Councillor R G Boyce proposed that the Officers' recommendation of approval be agreed. This was duly seconded.

In accordance with Procedure Rule No. 13 (3) Councillor C Morris requested a recorded vote. This was duly seconded.

Councillor Morris advised that if the proposal for approval failed he wished to propose that the application be refused due to the design being incongruous and contrived.

During the debate that followed some concern was raised regarding the distance between and the impact the proposal would have on the outlook of Orchard House.

Councillor Boyce left the meeting during the debate and did not return.

In response to some questions raised the Lead Specialist Place provided Members with further information regarding the proposed development including how it was not unusual to have an elevation without windows.

In response to a point of order raised by Councillor W Stamp regarding whether the proposal in the name of Councillor Boyce could be put as he had since left the meeting, the Lead Legal Specialist and Monitoring Officer advised that although Councillor Boyce had left the meeting the proposal still stood.

The Chairman the put the proposal to approve the application to the Committee and the voting was as follows:

For the recommendation:

Councillors M F L Durham, J V Keyes, R H Siddall, E L Stephens, C Swain and Mrs M E Thompson.

Against the recommendation:

Councillors M G Bassenger, Miss A M Beale, B S Beale, Mrs P A Channer, M R Edwards, Mrs J L Fleming, B B Heubner, K M H Lagan, C Mayes, C P Morley, C Morris, S P Nunn, N G F Shaughnessy, W Stamp and Mrs J C Stilts.

Abstention:

Councillor M S Heard.

The Chairman declared the motion was therefore lost.

The Lead Legal Specialist and Monitoring Officer clarified that the Committee now needed to consider the proposal by Councillor Morris for refusal and if Members were mindful to refuse the application it was important to agree reasons as a refusal would be contrary to the Officers' recommendation.

A discussion followed, during which a number of reasons for refusal were discussed and in response the Lead Legal Specialist provided some legal guidance advising that the Committee had to specify in what way the proposed development would demonstrate harm. The Lead Specialist Place suggested, having listened to Members discussion, that the reasons for refusal could be that the proposed design was incongruous and contrived and would have impact on the neighbours at Orchard House due to loss of outlook. Councillor Morris amended his proposal of refusal for the reasons outlined by the Officer. This was duly seconded.

The Chairman then put the proposal for refusal, contrary to the Officers' recommendation to the Committee and the voting was as follows:

For the recommendation:

Councillors M G Bassenger, Miss A M Beale, B S Beale, Mrs P A Channer, M R Edwards, Mrs J L Fleming, B B Heubner, J V Keyes, K M H Lagan, C Mayes, C P Morley, C Morris, S P Nunn, N G F Shaughnessy, W Stamp and Mrs J C Stilts.

Against the recommendation:

Councillors R H Siddall, E L Stephens, C Swain and Mrs M E Thompson.

Abstention:

Councillor M S Heard.

The Chairman declared that the motion was therefore agreed.

RESOLVED that this application be **REFUSED** for the following reasons:

1. The design of the dwelling is considered to be incongruous and contrived which would cause harm to the character and appearance of the surrounding area, contrary to policy D1 of the Local Development Plan (LDP).
2. The proposal would result in demonstrable harm to the residential amenity of the western neighbour of Orchard House by resulting in a harmful loss of outlook from this neighbouring dwelling, contrary to policy D1 of the LDP.

There being no other items of business the Chairman closed the meeting at 9.39 pm.

M S HEARD
CHAIRMAN



Appeal Decision

Site visit made on 9 March 2022

By Terrence Kemmann-Lane JP DipTP FRTPI MCI

an Inspector appointed by the Secretary of State

Decision date: 24th March 2022

Appeal Ref: APP/X1545/W/21/3281036

Land south of Charwood and east of Orchard House, Stoney Hills, Burnham-on-Crouch, CM0 8QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr K Burrows against the decision of Maldon District Council.
 - The application Ref. FUL/MAL/20/01166 dated 14 October 2020, was refused by notice dated 11 June 2021.
 - The development proposed is construct cul-de-sac road with turning head and vehicular and pedestrian access off Stoney Hills, erect one detached bungalow and garage, lay out parking spaces.
-

Decision

1. The appeal is allowed and planning permission is granted to construct cul-de-sac road with turning head and vehicular and pedestrian access off Stoney Hills, erect one detached bungalow and garage, lay out parking spaces on land south of Charwood and east of Orchard House, Stoney Hills, Burnham-on-Crouch, CM0 8QA accordance with the terms of the application, Ref FUL/MAL/20/01166, dated 14 October 2020, subject to the conditions set out in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by Mr K Burrows against Maldon District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are: i) the effect of the design of the proposed dwelling on the character and appearance of the surrounding area; and ii) the effect of the proposed development on the living conditions of the neighbours at Orchard House by virtue of a loss of outlook.

Reasons

4. Stoney Hills is located outside of the settlement boundary of Burnham-on-Crouch. Apparently it originated as 'plotland' development of the early to mid-twentieth century. Over the years the character has changed from a rural area with dispersed development into one of a more suburban character. There have been significant numbers of new dwellings approved in the locality in recent times. The properties within the general area are mainly individual detached

two storey houses, chalet style dwellings and bungalows with a variety of styles, scale and form.

5. The site, within the northeast corner of the Stoney Hills area, abuts the rear boundaries of Myrtle Cottage and Orchard House and it shares the access point from the eastern side of Stoney Hills with the dwelling Charwood and others which have been approved surrounding Charwood. As I saw at my site visit, development is currently underway for the continuation of the cul-de-sac and the construction of 6 dwellings on both sides of the road.

The effect of the design on the character and appearance of the surrounding area

6. Paragraphs 4 and 5 above provide a brief description of the area within which the appeal site sits. There is no particular form of dwelling that dominates the character of the area, other than that most of the recent development in the immediate vicinity has been in the form of single or one and a half storey dwellings. As such the design of the appeal bungalow is unremarkable. At the front of the proposed bungalow the central section projects forward with the main bulk of the dwelling set back and projecting to the south. There is also a further projecting element at the rear which comprises a utility room that links to the garage. The main roof is hipped, but the projecting elements are gabled. These roofs are shown to be finished with plain tiles, with the walls above a brick plinth being either weather boarding or rendered. The articulation of the accommodation provides interest to the design, whilst the materials relate well to the palate of materials used locally. There is no specific criticism of the design by the council, and for my part I consider that it relates well to the character and appearance of the surrounding area, making a positive contribution to it.
7. With particular reference to whether it would be 'incongruous and contrived', the lack of windows in the rear elevation maybe somewhat unusual, but there is no requirement in terms of the internal environment of the dining room, kitchen or utility room for windows, and it does mean that there can be no overlooking, perceived or real, to or from the neighbours to the west. In addition, the articulation of the rear elevations relieves what otherwise might be a monolithic appearance.

The effect on the living conditions of the neighbours at Orchard House by virtue of a loss of outlook

8. The effect on Orchard House, specified in the refusal reason, is that the proposed bungalow would cause a loss of outlook, thus bringing a detrimental effect on the living conditions of the occupiers. Such alleged loss of outlook has not been explained, and I can only think that it might be justified in terms of it being oppressive in the outlook of the affected property.
9. That outlook would be potentially from rooms in the eastern elevation of the house and from the garden. The rooms in the eastern elevation serve a living room at the southern end, a kitchen, and a garden room next to the main garden area on the ground floor. At first floor level there are windows to the master bedroom and another bedroom. Orchard house has its main garden area to the north of the building, rather than towards the appeal site, but has a patio area between the house and the appeal site. Orchard House also has a projecting 2 storey element at the back (facing the appeal site). The distance of the nearest part of Orchard house to the rear elevation of the appeal

dwelling is 9.3m (rounded down). On the boundary of the appeal site and Orchard House there is a 2m high fence with a trellis on top.

10. Taking account of the features mentioned above, the fence and trellis limit views of the proposed bungalow from ground floor windows and the patio, leaving the roof as the element that would be apparent. This roof is of a hipped form, reducing its mass and impact compared to a gabled roof, and the fact that the roof slopes away from Orchard House further reduces any impact of overbearing oppressiveness. With the main garden area of the proposed bungalow not backing onto the rear of Orchard House, there could be expected to be limited activity at the rear of the proposed dwelling that should not disturb to the users of the patio. There is no reason why the patio should not be an attractive and tranquil sitting out area. I therefore judge that there would be no oppressive intrusion into the outlook of the ground floor rooms or the patio area of Orchard House arising from the proposal.
11. Turning to the outlook from the bedroom windows of Orchard house, I am told, and it has not been contradicted, that the lower ridges of the proposed bungalow would be at a level 1m above floor level of the 2 bedrooms of that dwelling. This does not amount to an unreasonable impact on the outlook or amount to an oppressive feature. The highest ridge in the proposal is at the apex of a small triangle, with a base of 2.5m, some 12.6m away from the nearest position for someone looking from the Orchard House bedroom windows. I consider that it would be unreasonable to regard this level of intrusion into the outlook as amounting to oppression justifying the refusal of permission.

Development within the Zone of Influence for the Essex Coast Recreational Avoidance Mitigation Strategy

12. I see from the officer's report that the appeal site falls within the 'Zone of Influence' for one or more of the European Designated Sites scoped into the emerging Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). This means that residential developments could potentially have a significant effect on the sensitive features of these Coastal European Designated Sites, through increased recreational pressure, etc. To accord with Natural England's requirements and standard advice, a RAMS Habitat Regulation Assessment (HRA) Record was completed by the council to assess if the development would constitute a 'Likely Significant Effect'. The HRA outcome was that a proportionate financial contribution should be secured in line with the Essex Coast RAMS requirements.
13. As I am now the competent authority in this case, I have a duty to ensure that there is no impact on the Special Protection Area. I am satisfied with the council's screening in this case. Provided the mitigation mentioned above is secured, it can be concluded that the grant of planning application will not have an adverse impact on the integrity of the European sites from recreational disturbance, when considered in combination with other development. The appellant has dealt with this issue by way of a submitted signed and dated legal agreement made pursuant to section 106 of the Town and Country Planning Act 1990. This provides for a payment of the standard tariff of £125.58 (index linked) prior to the commencement of the development, as required under the RAMS. The RAMS is an adopted document, and I am

satisfied that the planning obligation meets the 3 tests set out in paragraph 56 of the National Planning Policy Framework.

Conclusions

14. For the reasons that I have set out above, I conclude that there would be no harmful effect on the character and appearance of the surrounding area from the appeal development, and nor would it have a harmful effect on the living conditions of the neighbours at Orchard House by virtue of a loss of outlook. I will therefore allow the appeal, subject to conditions, which I deal with below.

Conditions

15. The Council has suggested a number of conditions in the event that the appeal is upheld. I have considered these in the light of Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG I have amended some of the text. I consider that the conditions should be imposed for the following reasons: condition 2 is required for certainty and avoidance of doubt as to the development permitted; condition 3 is to ensure that the appearance of the development integrates with the existing in a visually satisfactory manner; conditions 4 and 5 are to ensure that the scheme is landscaped and enclosed in a manner that reflects and adds to the appearance and character of the area; conditions 6 and 7 are to ensure no loss of privacy or amenity to the neighbouring properties; condition 8 is to ensure that the construction of the development is carried out so as not to inconvenience neighbours or users of the access road; conditions 9, 10 and 11 are to ensure that any contamination of the site is found and remedied appropriately to ensure that there is no danger to humans, property, or wildlife, etc; condition 12 is to ensure that means of foul drainage are put in place to avoid contamination and safeguard amenity; condition 13 is to ensure that surface water drainage is put in place to avoid flooding or inconvenience to road users; condition 14 is to provide for renewable energy in the interests of the environment; condition 15 is to ensure that the development relates satisfactorily to its surrounding in terms of the height of building; condition 16 is to ensure satisfactory car parking is provided to avoid hazard or inconvenience to users of the highway; condition 17 is to ensure that the garage accommodation remains available for its intended purpose to avoid parking on the highway.
16. The condition suggested by the council concerning footpath number 5 has not been explained or its location identified to me, and appears not to be relevant to the development. There is also a suggested condition that seeks to protect 'Oak tree T1'; but the Arboricultural Impact Assessment & Method Statement (AIAMS), submitted with the appeal, shows this tree to be well away from the appeal dwelling. Nor does the AIAMS support the proposed condition dealing with trees and hedges generally. For these reasons I have not imposed these conditions.
17. The pre-commencement conditions have been agreed by the appellant.

Terrence Kemmann-Lane

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1150/10 rev A, 1150/18 rev A, 1150/19 rev A, 1150/20, 1150/21.
- 3) Prior to their use in the development hereby approved, written details and photographs of the external materials to be used in the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the details as approved.
- 4) Prior to works above ground level, full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. These details shall include, for example:
 - i. Proposes finished levels contours;
 - ii. Means of enclosure;
 - iii. Car parking layouts;
 - iv. Other vehicle and pedestrian access and circulation areas;
 - v. Hard surfacing materials;
 - vi. Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting);
 - vii. Proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc, indicating lines, manholes, supports);
 - viii. Retained historic landscape features and proposals for restoration, where relevant.

The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the occupation of any part of the development hereby approved unless otherwise agreed in writing by the local planning authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation.

The hard landscape works shall be carried out as approved prior to the first use/occupation of the development hereby approved and retained and maintained as such thereafter.

5. The Details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers shall be submitted to and approved in writing by the local planning authority prior to

first use/occupation of the development hereby approved. The screening as approved shall be constructed prior to the first use/occupation of the development to which it relates and be retained as such thereafter.

6. Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no garages, extensions or separate buildings (other than incidental outbuildings not exceeding 10 cubic metres in volume) shall be erected within the site without planning permission having been obtained from the local planning authority.
7. Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no dormer window or other form of addition or opening shall be constructed in the roof or gable walls of the building hereby permitted without planning permission having been obtained from the local planning authority.
8. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - The parking of vehicles of site operatives and visitors
 - Loading and unloading of plant and materials
 - Storage of plant and materials used in constructing the development
 - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - Wheel washing facilities
 - Measures to control the emission of dust and dirt during construction
 - A scheme for recycling/disposing of waste resulting from demolition and construction works
9. Notwithstanding the details submitted with this application, no development shall commence, other than that required to carry out additional necessary investigation which in this case includes demolition, site clearance, removal of underground tanks and old structures, until an investigation and risk assessment has been submitted to and approved in writing by the local planning authority. The report of the findings must include:
 - i) A preliminary risk assessment to include historical information of how each part of the site has been used in the past;
 - ii) A survey of the extent, scale and nature of contamination;
 - iii) an assessment of the potential risks to:
 - a) Human health,
 - b) Property (existing or proposed) including buildings, crops, livestock, etc, woodland and service lines and pipes,
 - c) Adjoining land,
 - d) Groundwaters and surface waters,
 - e) Ecological systems
 - f) Archaeological sites and ancient monuments;
 - iv) An appraisal of remedial options, and proposal of the preferred option(s). This shall include timescales and phasing of remediation works

This must be conducted by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.

10. No development shall commence, other than where necessary to carry out additional investigation, until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures.

The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The development hereby permitted shall not commence until the measures set out in the approved scheme have been implemented, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority may give approval for the commencement of development prior to the completion of the remedial measures when it is deemed necessary to do so in order to complete the agreed remediation scheme.

This shall be conducted in accordance with the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers' and DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The development hereby permitted shall not commence until the measures set out in the approved report have been implemented.

11. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and submitted to the Local Planning Authority for approval.

The written verification shall include that:

- i) All contaminated material removed from the site is removed by an appropriate licensed contractor to a facility approved by the Environment Agency
- ii) All imported material is suitable for its intended use
- iii) All agreed remediation measures identified as necessary in the contaminated land assessment have been undertaken to render the site suitable for the use specified

This must be conducted by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.

- 12.No development works above ground level shall occur until details of the foul drainage scheme to serve the development have been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented as approved prior to the first occupation of the development.
- 13.No development works above ground level shall occur until details of the surface water drainage scheme to serve the development have been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development. The scheme shall ensure that for a minimum:
 - 1) The development should be able to manage water on site for 1 in 100 year events plus 40% climate change allowance.
 - 2) Run-off from a greenfield site for all storm events that have a 100% chance of occurring each year (1 in 1 year event) inclusive of climate change should be no higher than 10/l/s and no lower than 1/l/s. The rate should be restricted to the 1 in 1 greenfield rate or equivalent greenfield rates with long term storage (minimum rate 1l/s) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield).
- 14.Prior to occupation of the dwelling hereby permitted, an Air Source Heat Pump shall be installed at the site and shall be retained as such thereafter.
15. No works related to the alteration of ground levels at the site and no works above ground level shall occur until details of existing ground levels and proposed finished ground levels, and their relationship to the adjoining land, and floor levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 16.The dwelling hereby approved shall not be occupied until two car parking spaces have been provided, one on the driveway and one in the garage, as shown on plan 1150/18. The car parking hereby approved shall be retained for the use of occupiers or visitors to the dwelling in perpetuity.
- 17.The garage hereby approved shall not be used other than for the accommodation of private motor vehicles or for any other purpose incidental to the enjoyment of the dwelling house as such and shall not at any time be converted or used as habitable space/living accommodation.



Costs Decision

Site visit made on 9 March 2022

by Terrence Kemmann-Lane JP DipTP FRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 24th March 2022

Costs application in relation to Appeal Ref: APP/X1545/W/21/3281036 Land south of Charwood and east of Orchard House, Stoney Hills, Burnham-on-Crouch, CM0 8QA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr K Burrows for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for: construct cul-de-sac road with turning head and vehicular and pedestrian access off Stoney Hills, erect one detached bungalow and garage, lay out parking spaces.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

The Application

3. The unreasonable behaviour is substantive (PPG para 046) and concerns elected Councillors consideration of the planning application at two planning committees and the resulting two unsubstantiated reasons for refusal. The background of the need to threaten Judicial Review in order to correct a serious matter of pre-determination at the first committee meeting, whilst not relevant to the planning merits of the appeal, it does provide the context for the subsequent refusal of planning permission. The same cohort of councillors at the subsequent District Planning Committee manufactured unsubstantiated reasons for refusal; and the pre-determined councillor from that cohort is the one who required the application to be determined at planning committee. That councillor is also a town councillor, and the Town Council objected to the application.
4. The relevance of the council's actions at application stage as material to a costs award is confirmed in paragraph 33 of PPG, viz: "behaviour and actions at the

time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded."

5. While the Council, through its Members, can of course choose to set aside the advice of its professional officers, in defending its decision it must substantiate all objections using evidence (paragraph 049 of the PPG). There simply is no evidence to support the refusal of planning permission and a substantive award is therefore sought (PPG paragraph 031). In relation to the first reason for refusal: alleging that the design proposed is incongruous and contrived, this amounts to a vague and generalised assertion about the development's impact that objectively analysed does not stand proper scrutiny (PPG paragraph 049). There was no debate about scale, bulk or massing at all: these were simply three words spoken by a single councillor once. A brief comment was made concerning the lack of windows in the rear wall of the proposed bungalow, but this was made in relation to living conditions of new residents, and not design impacts of the character and appearance of the area. The Committee did not further debate the design of the dwelling.
6. In relation to the second reason for refusal, the allegation that the proposed bungalow would result in a material loss of outlook cannot be substantiated. It is not sufficient for the Council to argue that the roof of the proposed bungalow could be seen from vantage points within Orchard House or its gardens. The allegation is one of material harm to outlook and so material harm must be demonstrated to properly defend the reason for refusal, but has not been so evidenced. The council has failed to substantiate the reason for refusal (PPG para.049).
7. The council's planning officers worked with the applicant during the application process to address potential issues concerning design, the quality of the accommodation, and impacts on neighbours, which culminated the council's chief planning officer recommending approval, with a clear report to guide members.
8. The council has not exercised sound planning judgement and has caused unnecessary expense, and delayed a development that should have been permitted to proceed. All this in the context of a council that cannot demonstrate a 5 year housing land supply. Had the council behaved reasonably, the appeal would not have been necessary. The appellant has accordingly been put to the unnecessary expense of appealing (i.e., wasted expense in the entire appeal process - PPG paras. 030 and 032). Accordingly, a full award of costs (in the meaning of such set out in PPG para. 040) against the Maldon District Council is justified and is requested.

The Rebuttal

9. No response has been provided by the council.

Conclusions

10. As will be seen from my decision issued on this case, I have decided in favour of the appellant on the substantive question of whether the proposed development should be permitted. As will be seen from my decision, on the issue of design I noted that there was no specific criticism by the council, and for my part I considered that the proposed dwelling relates well to the character and appearance of the surrounding area, making a positive

contribution to it. This judgement might not be shared by others, but any alternative view must be supported by reasons. That was not done in this case.

11. Again, in relation to the second issue, the council has not explained how the alleged loss of outlook to the Orchard House occupants would result from the appeal proposal, and I was left to conjecture what form of loss might be involved.
12. I concluded that both refusal reasons in the case had not been substantiated, and did not form any justification for the refusal of planning permission.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maldon District Council shall pay to Mr K Burrows the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

Terrence Kemmann-Lane

INSPECTOR

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