

THANET DISTRICT COUNCIL

COMPLAINT BY COUNCILLOR IAN DRIVER AGAINST THE CHIEF EXECUTIVE

REPORT OF THE DESIGNATED INDEPENDENT PERSON

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Glossary

This is a glossary of the main abbreviations used in the text of the report:

CE	-	Chief Executive, Dr Susan McGonigal
DIP	-	Designated Independent Person
EKO	-	East Kent Opportunities LLP
HP	-	Mr Harvey Patterson, former Monitoring Officer
IP	-	Independent Person, Ms Alison Lowton
KCC	-	Kent County Council
LASO	-	Local Authorities (Standing Orders) (England) Regulations 2001
MO	-	Monitoring Officer
MHO	-	Ms Madeline Homer, Director of Community Services
MH	-	Mr Matt Hyland, executive officer of EKO
SB	-	Mr Steven Boyle, the interim Monitoring Officer of TDC
ST	-	Mr Simon Thomas, Planning Manager of TDC
TDC	-	Thanet District Council
TB	-	Ms Theresa Bruton, Head of Regeneration Projects, Kent County Council and an officer of EKO.
NPPF	-	National Planning Policy Framework

Chronology

November 2011 – application made for planning permission by EKO

2013

- 15 May - email from MHO to MH on policy issues
- 17 May - Note from ST to CE on application
- 22 May - EKO Board meeting discuss application
- 24 May - CE to TB at EKO email seeks clarification re application details
- 29 May - CE chasing email to TB and MH that resulted in the complaint
- 29 May - MH sends note 'The Facts – Housing development at Eurokent'
- 29 May - **Meeting** between CE, ST and MHO to discuss application
- 29 May - email CE to MH requesting him to meet ST and MHO
- 30 May - CE emails ST and MHO to say she has asked MH for a meeting
- 3 June - meeting (informal) ST and HP
- 5 June - **Meeting** between CE, MH, ST and MHO to discuss application
- September - application formally varied
- October - application refused by Planning Committee

Introduction

1. I was appointed on 02 July 2014 as a Designated Independent Person [DIP] under the Local Authorities Standing Orders (England) Regulations 2001 [LASO] by Thanet District Council [TDC] to conduct an investigation into a complaint made by Councillor Driver about the conduct of Dr Susan McGonigal , the Chief Executive of TDC [CE].
2. On 21 April 2014 TDC was supplied with a report from an independent person, Ms Alison Lowton [the IP], of an initial or preliminary assessment of two complaints made by Councillor Driver as to the conduct of the CE with respect to a planning application made by EKO to TDC, as local planning authority, relating to proposed development at New Haine Road, Ramsgate [the site]. She found that neither of the complaints would amount to allegations of misconduct meriting the appointment of a DIP.
3. These recommendations, when in a draft stage, were the subject of criticism from Mr Harvey Patterson [HP], who was then in post as the monitoring officer of TDC and has since left the employment of the Council, in light of further material in his possession which had not been considered by the IP, which criticism remained after the report was published in its final form. This issue is referred to in paragraph 1.5 of the IP's report.
4. TDC obtained advice from leading counsel, Mr Ashley Underwood QC, on the matter in the light of the fact that the report of the IP may have been based on incomplete material. His Opinion, dated 19 May 2014, addressed a number of issues including whether the IP's investigation took account of all relevant factors and was sufficiently broad. It was a result of the Council accepting his advice on the latter matter that it resolved that the second complaint could be the subject of a separate investigation by a DIP and, thus, led to my appointment.
5. The report of the IP was considered at a meeting of the General Purposes Committee of TDC at its meeting on 3 June 2014 when I am instructed that it was resolved to accept the recommendation of the IP that there was no case to answer with respect to the first complaint from Cllr Driver and in respect of the second of his complaints it was resolved:

“Without implying that there has been any misconduct by the Chief Executive, having regard to the obligations imposed by regulation 7 of the 2001 regulations, also having regard to paragraph 5.13 of Alison Lowton’s report and her disregard of the previous Monitoring Officer’s allegations that he was approached by the Chief Planning Manager because he felt pressured, it is resolved to appoint a DIP to investigate whether the Chief Executive wanted to make sure that planning officers had all the available information; or rather was she intending to direct them as to what recommendation to make; and if the later (sic), did that amount to misconduct.”

Terms of Reference

6. I am instructed in the role of DIP to carry out the necessary investigations to investigate the complaint set out above fully and report back to the General Purposes Committee of TDC in writing with findings and recommendations.
7. As indicated above, my terms of reference relate solely to the second of the complaints made by Cllr Driver as to the alleged conduct of the CE and revolve essentially around her conduct in communicating with Simon Thomas, the Planning Manager of TDC who had day to day charge of the processing and assessment of the application by TDC's planning department, by email in May 2013 and two face to face meetings in late May and early June 2013.
8. I should stress that in light of the background to my appointment I have looked at matters entirely afresh and have not considered myself bound in any way by the conclusions reached by the IP. Further, my task is not to conduct a review of the IP's investigation or of the allegations made by HP as to the way in which these complaints were addressed by TDC. I am concerned to carry out a fresh and independent investigation of the complaint in question as expeditiously as reasonable possible.

Constitution

9. The Constitution of TDC provides in article 12 for the appointment of a Chief Executive whose function it is to have responsibility for overall corporate management and operational responsibility (including overall management responsibility for all officers). The CE also holds the statutory position of Head of Paid Service. Under the Officer Employment Rules included within the Constitution it is provided in paragraph 6 for the Head of the Paid

Service among others that, aside from suspension, *“No other disciplinary action may be taken in respect of any of those officers except in accordance with a recommendation in a report made by a designated independent person”*. Similar provisions are contained in paragraph 10 of the Prescribed and Other Standing Orders contained in the Constitution. Accordingly the Disciplinary Procedure adopted by TDC does not apply to the CE.

10. The Disciplinary Policy adopted by TDC requires *“A fair and reasonable procedure must be followed in all potential disciplinary situations”*. The first appendix to this policy requires the DIP to *“create a report. This report will:*
 - i) State an opinion as to whether (and if so, the extent to which) the evidence obtained supports any allegation of misconduct against the relevant officers,
 - ii) Recommend any disciplinary actions which appears to be appropriate for the Council to take against the relevant officer,
 - iii) Be provided to the relevant officer for their information.
 - iv) It is expected that reasonable remuneration will be paid to the designated independent person appointed by them and any costs incurred by them in the course of the process.

11. Paragraph 5 of the same document provides the steps that the DIP may recommend to the Council as a result of the above process. However, there are no requirements as to the process to be followed by the DIP. In my view, it is nevertheless axiomatic that the process should at all times follow the requirement made of all disciplinary process in that it should follow a fair and proportionate procedure.

Procedure

12. On 23 July 2014 I issued a memo to Mr Steven Boyle [SB], the interim monitoring officer for TDC as to the scope of this inquiry and the procedures I intended to follow. The next day SB supplied a note to the proposed witnesses to the inquiry, namely the CE, the Planning Manager and MHO, which conveyed the effect of my memo to him and made arrangements for the proposed interviews to take place.
13. I later received requests from both Simon Thomas and the CE to be accompanied at their interviews which I accepted. This was communicated to them by SB. In the event ST was accompanied at his interview and the CE was not.
14. The CE requested access to the record of her interview and the opportunity to see the report in draft prior to its submission to TDC. I agreed with these requests.
15. As a result of these matters on 14 August 2014 I issued a revised and enlarged Memo on Procedure to TDC, the CE and those I was to interview. I supplied this to SB and he distributed it to CE, MHO and ST.
16. I was supplied by short narrative notes of the relevant events by the CE and Madeline Homer prior to their interview. Simon Thomas declined this opportunity.
17. I interviewed Madeline Homer and Simon Thomas on 12 August 2014 and the CE on 18 August 2014 as arranged by SB and I am grateful for the facilities provided by the Council to carry out the interviews and the very helpful services of Pauline Davis who was present at the interviews, recorded their content and thereafter provide a written note of them for my purposes.
18. SB offered HP the opportunity of being interviewed on 28 July 2014 to which he did not respond until 20 August 2014 when he explained that he had been indisposed but was now willing to co-operate with my investigation. Although this arose after I had completed the interview process and in the time set aside for writing up this report I thought it right to offer him the opportunity of an interview in case he had further evidence of fact to relate to me as opposed to his interpretation of the events, which was already well documented.

This offer was communicated to him by SB on the same day. He did not respond and on 26 August 2012 SB repeated the offer of an interview to him in the course of that week and asked for a note to be forwarded either the same day or the next. In the event HP provided a note to me on 01 September. In terms of evidence the note included more detail of his meeting with ST and also on later events in October 2013 which, although they did not bear directly on the matters I was charged to investigate, could be relevant in terms of context. The bulk of the document related to his views on allegations of misconduct. Having considered the note I did not consider it necessary to follow it up with an interview given the limited role that he played in these events. So, on the same day I informed him that an interview would not be necessary but asked him to reply to a series of short questions which he did on 04 September.

19. In accordance with the agreed procedure I supplied both the CE and SB with the draft of this report on 05 September 2014.
20. I was not required to follow any particular procedure in my instructions. LASO does not proscribe any particular format for the conduct of a regulation 17 investigation by a DIP. Likewise, the references to the DIP process in the Constitution of the Council are silent as to the procedure to be followed. I have therefore been guided in my choice of process by the nature and scope of the allegation, the need to proceed with reasonable expedition, particularly as the CE remains in post and is on sick leave, and above all the requirements of fairness. At the outset I informed SB as the monitoring officer of my choice of procedure and he has not objected to it neither has the CE.
21. I have seen the correspondence from external solicitors in 2012 which at that time was advising use of an adversarial public procedure on the part of a DIP. The authority given for the use of this process was the JNC Conditions of Service for Chief Officers. I have not been instructed that in the context of this investigation that I am constrained in this way. As is already clear I have chosen not to follow that sort of procedure suggested which, while appropriate to certain allegations of misconduct, would here be inappropriate, cumbersome and disproportionate to the exercise I was instructed to undertake. Given the absence of any procedural complaint from the CE, who would be the person who could call for this cumbersome procedure to be invoked if it is still her right under the JNC

Conditions, I can see no reason for anyone else to have any complaint about the procedure I have undertaken.

Documents

22. I was supplied with a compendious bundle of documents on appointment which are far too numerous to list individually but were collected together in groups headed as follows:
- i. Agenda and minutes for various meetings of the GPC.
 - ii. Final Report of the IP
 - iii. Letter sent to all members of the GPC by HP
 - iv. Opinion of Ashley Underwood QC
 - v. Council's Officer employment rules
 - vi. General advice from DMH Stallard unrelated to this complaint.
 - vii. Correspondence following initial complaint
 - viii. Presentation to Planning Committee members by EKO concerning the application
 - ix. EKO members agreement
23. In addition I asked for and was provided with the following documents relating to the EKO application in order better to understand the background to the complaint:
- x. Design and Access Statement
 - xi. Planning Statement both dated October 2011
 - xii. Report to Committee on the application which was undated but was prepared for the meeting of the relevant committee of TDC on 23 October 2013 when it was refused
 - xiii. Appellant's Statement of Case for the inquiry into that refusal to which was attached the relevant notification of refusal of the application.

These are background documents and ultimately have had a limited impact on the content of this report other than to provide for me some of the background relating to the application and the policy stances taken with respect to it by the officers of TDC and EKO respectively.

24. In the course of the investigation I was supplied by the CE with the following documents:
- xiv. Briefing Note for CE from ST of 17 May 2013 headed "*Notes for Sue*".
 - xv. Copy email from CE to MH dated 29 May 2013.
 - xvi. Copy of MH's meeting note with TDC of 5 June 2013.
 - xvii. CE's note of same meeting on 5 June 2013.
 - xviii. A bundle of documents from the CE by email from SB 31 July 2014
 - xix. Agenda paper for EKO meeting 24 June 2013
 - xx. Minute of EKO meeting of 23 May 2013
25. In the course of the investigation Simon Thomas supplied the following documents:
- xxi. His notebook entry of a meeting with Madeline Homer on 03 June 2013.
 - xxii. A copy of the attachment to the email from the CE to him and Madeline Homer dated 30 May 2013 at 09:44.
 - xxiii. Extracts from the draft Core Strategy 2009.
 - xxiv. Extracts from the Issues and Option for the new Local Plan 2013
26. MHO supplied me with one document after her interview:
- xxv. Email of 15 May 2013 from MHO to MH

Background to the Complaint

28. A useful summary of the factual background to the complaint is to be found in paragraphs 4.1 to 4.6 of the IP's report. The essential background is formed by the following:
- i. On 17 May 2007 TDC and KCC established EKO as a jointly owned JVC, to facilitate the development of certain named areas of the district to promote the regeneration of the area.
 - ii. On 22 August 2008 TDC entered into a Members Agreement with KCC and EKO for the parties *"to collaborate in obtaining planning permission for the development and subsequent dealings with.... KCC Eurokent and TDC Eurokent"* amongst other sites.
 - iii. The decisions of EKO are delegated to the Management Committee which consists of three representatives from each of the two members although, at the material time, there were two only representatives from TDC namely, the CE and the Leader.
 - iv. In November 2011 TDC registered the application made by EKO for planning permission on the Eurokent site.
 - v. EKO instructed Savills to act as its agents and they were assisted by EKO's own (part time) executive officer, Matt Hylands [MH]. Putting it as neutrally as possible he has been described to me as an experienced promoter of development schemes, someone who may have difficulty in seeing the other point of view in any given situation and who had limited time to devote to any particular project given the scope of his work both for EKO and elsewhere.
 - vi. Simon Thomas [ST] was the senior member of the planning department of TDC in post as Planning Manager from 2011 and he took overall responsibility for the handling of the application supported by another member of the planning staff, who acted as case officer. They both came to the application for the first time after it had been registered, another officer had dealt with the pre-application stages.
 - vii. Dr Susan McGonigal [CE] had been in post from June 2011. Prior to that she had risen in the employment of TDC successively from 2007 as Head of Financial Services, Director of Finance, and Deputy Chief Executive. She had no planning expertise or experience. She had been a member of EKO nominated by TDC also from about 2008.

- viii. Madeline Homer [MHO] was in post as the Director of Community Services at the time. Amongst her responsibilities was to act as the line manager of ST. She had no planning expertise so her role was essentially at an administrative or managerial level. As a director she reported directly to the CE. She was an experienced professional in the area of housing and regeneration.
- ix. The issues revolve around contact in late May and early June 2013 between the CE and ST, in his capacity as Planning Manager of TDC, concerning the application. .

- 29. Although EKO was a creation of TDC and it was a part owner of the Eurokent site, the decision to grant or refuse planning permission was that of TDC alone acting as local planning authority. EKO is a separate entity from TDC and its officers or members could not direct officers of TDC to handle the application in any particular way or require favourable treatment of their application.
- 30. The CE was concerned both as a member of the board of EKO and as CE of TDC with the future of this site and the result of the application. She is not qualified as a planner and has no relevant experience of planning. Obviously she did not deal with the day to day detail of the application which was handled by MH for EKO who dealt directly with the planning officers of TDC, including ST, the case officer and, on occasions with MHO.
- 31. The CE stepped into the matter in May when it appeared that the officers for each body had stalled in their negotiations over the application and she sought to see if the issues between them were capable of sensible resolution.
- 32. I have prepared a chronology of the relevant contacts which lie at the heart of the investigation and produce this as annex to my report.
- 33. The issue I have to address is whether in seeking to pursue a resolution to the differences between the officers of EKO and TDC concerning the application the CE put undue pressure on ST to produce a favourable recommendation in the report to committee on the application or sought to direct him to the recommendation he should reach on the matter.

The Application

34. Although the merits of the application are largely irrelevant to the issues which I have to resolve they are part of the context in which the issues arose and are, to that extent only, relevant to this inquiry. As a result I will set them out a little more fully than they appear in the report of the IP.
35. The application site, land at New Haine Road, Margate, is described as 23.8 hectares of land to the north of the Newington Estate and to the south of Westwood Cross Town Centre. It is described within the report as "*..land allocated as employment land within the Thanet Local Plan (2006) [TLP], and is undeveloped and much of it is used as farmland.*" It was a site allocated under policy EC1 of the TLP, sometimes called "the Old Plan" by witnesses, for economic development intended for use for business purposes, where use was to be restricted to employment i.e. Use Classes B1 (Business), B2 (General Industry) and B8 (Storage and Distribution). I understand that this allocation followed the commitment to the redevelopment of the site principally for employment purposes resulted from a planning permission for mixed use redevelopment issued in 1997. At some stage well before the application EKO had constructed a new spine road through the site at substantial capital cost in order to make it more attractive to potential occupiers. Both KCC and TDC were concerned to recover that cost if the redevelopment of the site were to go ahead.
36. The Draft Core Strategy Preferred Options Consultation Document of 2009 signalled a change in the attitude of TDC as planning authority to the appropriate uses to secure the redevelopment of the site. Paragraph 7.65 referred to the fact that the take up for the Eurokent site had been far slower than expected and it was "*proposed that this site be allocated for a mix of uses more compatible with the proposed residential and business community role for Westwood*". Policy option E6 proposed that the allocation be amended accordingly. Draft policy DCS11 proposed the site be allocated for between 400 to 600 dwellings and 15.5 ha of business use.
37. This was the policy against which the application was framed. However, this plan did not progress further down the statutory path and was subsequently abandoned in favour of

“combining the previously proposed Core Strategy and Site Allocations DPD to produce a single Local Plan DPD”¹. As a result, at the relevant time, its policies bore little weight as such, if any, but they did indicate as a matter of fact a moving away from the allocation of the 2006 plan solely for business uses towards a mix including residential use in the harsh light of market experience over a substantial period of time in years both of economic boom and recession and that the new single Local Plan was likely to inherit a similar policy approach to the site to that proposed in the 2009 Core Strategy.

38. Whilst this application was being considered TDC was preparing a new Thanet Local Plan, the Local Plan DPD referred to in the quotation above, which was approved by Cabinet for the purposes of public consultation on 3 June 2013. This has been dubbed “The New Plan” by the witnesses. This contained a point of potential significance for the application. Paragraph 2.1 revealed that there was a substantial over supply of employment land in the area – a need for between 3 and 15ha for the period to 2031 against an indentified supply of 74 ha. This clearly was an additional consideration that tended to support the concept of mixed use on the site, not only to obtain the desired regeneration of the area but also to reduce the concern as to loss of allocated employment land that would arise from that process.
39. The application for outline planning permission did not conform with the policy EC1 of the 2006 Plan in that it was a mixed use scheme comprising up to 550 dwellings; up to 63,000 sqm class B1 business floorspace; car showroom; a new local centre comprising up to 2,000 sqm convenience retail (class A1, A2, A3); a school up to 4,500 sqm; community facilities up to 500 sqm (class D1/D2) and community healthcare up to 1,200 sqm; and associated highway works with all matters reserved for subsequent approval.
40. Moreover, since this was a site allocated under the 2006 plan for purposes other than housing the proposals were in conflict with policy H1 of the 2006 Plan.
41. The application therefore involved consideration of the issue in principle of the release of this large site from an allocation solely for employment uses to a mix of uses, including employment among them but only as part of a mix containing a major element of other land uses, principally residential use. However, this accorded with the mix of uses that had

¹ Local Development Scheme 2013 published by TDC.

previously been considered appropriate by the Council in the context of the preparation of the 2009 Core Strategy and which was proposed in principle to take forward in the emerging New Local Plan. It also involved the issue of principle of the use of a site partially for residential development that was not allocated for that purpose thereby putting the application in conflict with Saved Policy H1.

42. This conflict with the policies of the 2006 Plan were to be resolved by the Council in the light of the guidance of national planning policy in the form of the National Planning Policy Framework published in March 2012. In particular it would require consideration of the sustainability of the proposals; the issue of whether TDC could identify an appropriate 5 year housing land supply on which would turn, in part, the appropriate weight to be given to policy H1 and of the issue of whether the reservation of the site solely for employment purposes could be supported in the light of the advice of paragraph 22 of the NPPF, for example, which counsels against the long term protection of sites allocated for employment use where there is no reasonable prospect of the site being so used.
43. The scale and complexity of the application as well as its content made a significant or major application for TDC. I was told by ST that it was among the largest two or three applications under consideration by TDC at that time.
44. The advice on this issue of principle is put in a fair and neutral way in the report to committee of October 2013 under the heading Principle, Policy Background. Rather than paraphrase this advice I set out the concluding passage:

“Employment land allocations are currently being reviewed through the development of the new Local Plan. The site has been extremely slow in uptake of employment land in the 15 years since it was originally allocated, some parts being developed but the vast majority being left undeveloped. The evidence regarding the need for employment land indicates that the current allocations provide a significant surplus of employment compared to the future need, and having regard to these factors it is considered that there is no reasonable prospect of the whole site coming forward for employment purposes. It is therefore considered that the application should be treated on its merits having regard to market signals and the relative need for different land uses to support sustainable communities, in accordance with paragraph 22 of the NPPF.”

45. Having considered comprehensively all the relevant considerations the report concludes with a neutral recommendation that members visit the site before determining the application "*so as to fully appreciate the impacts of the proposed development, including the physical relationship with existing settlements and the opportunities for improved linkages between Newington and Westwood.*" In the result the application was refused on two grounds. The first raised the issue of the conflict of the proposals with policy H1 of the TLP 2006 and the second relied upon the absence of a s.106 obligation to secure the necessary contributions required to make the application acceptable.

Contact between the CE and TDC's Planning Department

46. As a member of the Board of EKO the CE had resolved to support the making of the planning application to TDC. It was, in the first place, a matter for EKO to form a view whether or not the application was in the public interest of the area it was designated to serve. But, ultimately, as I have already stated, the decision as to whether or not it was appropriate to approve the application by the grant of planning permission was reserved to TDC as local planning authority, subject to the ordinary rights of appeal to the Secretary of State.
47. I was informed by the CE in her statement that both she and the then Leader of TDC (Councillor Clive Hart) were of the view that the application as proposed to be revised, particularly with the provision of the affordable housing at 30% and the school land with the special needs school, *“would be of significant benefit to the district, over and above the financial benefit of developing the site. In addition, discussions were at an early stage around other possible investment in community assets on the Eurokent site (via s106 agreement) that would further enhance the regeneration potential of that part of the district”*. Both the CE and ST emphasised to me the need for regeneration of this wider area which is one of the most deprived in the South East of England. Moreover, the fact that EKO had already made a major investment in providing a spine road for the site and the pictures of the currently derelict condition of the site in my instructions appear to point towards the need to redevelop the site earlier rather than later.
48. The CE relates in her statement that MH had complained to her about the delay in getting a planning committee date for the consideration of the application in the Spring of 2013. He informed her at this stage that there was general disagreement between him and the TDC planners on the impact of the NPPF on the application and that some of the necessary assessments (transport and environmental impact) had caused delays.
49. The EKO had a board meeting scheduled for 22 May 2013 when a decision was to be made on how to continue to process the application.
- (a) Email communication between CE and others**

50. The CE's statement records that she asked ST to provide her with a note on the planning policy position "*so that I could understand TDC's policy stance in relation to the EKO application in light of the draft 'new' Local Plan being in existence*". This note was obviously required for the purposes of the EKO Board meeting on the 22 May and was sent on 17 May 2013.
51. The CE records that at the EKO board meeting on 22 May MH was critical of the response of TDC's planning officers in terms of a confrontational attitude being taken with respect to the application.
52. A meeting was arranged between the CE and ST to discuss the application for 29 May 2013.
53. On 24 May 2103 at 09:44 the CE communicated by email with Theresa Bruton [TB] at EKO. The single paragraph dealing with this issue was as follows: "*I was going to email you and Matt for clarification around the current intentions for the residential development...I could do with knowing what the revised area for residential development is, and what proportion that is of the whole site referred to within the outline planning application (i.e. EKO and Rosefarm plots); ideally I could do with knowing this as it stands currently, and would it would be assuming Laleham school land swap goes ahead. Are you able to get that info from Matt urgently - as I intend to refer to it in my meeting with Simon Thomas and Maddy early next week.* I note that EKO formally approved to proceed with the Laleham School amendment to the application at its meeting on 24 June.
54. This note is evidence of the fact that the CE was intending to hold a meeting with the relevant officers of TDC in the course of the next week and that she needed further information of the detail of the proposal for that purpose. The fact that she is seeking such information tends to confirm the explanation given by her, ST and MHO, that she was not concerned with the details of the proposal on a day to day basis. It is also clear from this that the outline proposal was in a somewhat fluid state as to the constituent elements of the proposed mix of land uses at that time.
55. The next email in the chain is the reply from TB to CE also dated 24 May 2013 at 12:06. This states: "*Matt will look at over the weekend. Will take some unpicking of the current layout*

and reassessment with the proposed school included." This requires no further explanation.

56. On 29 May 2013 at 11:21 CE sent a chasing email to TB and MH under the heading 'Up-date', designated as high importance and classified as confidential containing this short message: "*Any news? I have my meeting with TDC planners this afternoon, and I need this to illustrate the argument I want them to use to support the application. Also, could you confirm that the 30% social housing element will all be family homes? Thanks, Sue.*" I have emphasised the passage that has led to the complaint. I shall return to consider its meaning and implications later in this report.
57. On 29 May 2013 at 13:07 MH sent an email to CE enclosing a note entitled "*The Facts - Housing Development at Eurokent May 2013.*" The note deals with matters of detail relating to the application and closes by identifying the possibility that if the Laleham Special Needs School were relocated to the site the likely quantum of residential units in the mix could possibly be up to 350 residential units based primarily on family dwellings, which would be a reduction of almost 40% on the previous maximum of 550 units. The text of the email is simply: "*Sue, As requested for your use in discussions, Regards, Matt.*"
58. Next in the chain the CE sent an email to ST and MH on 30 May 2013 at 09:44 under the heading 'Up-date'. It sent for information an attachment described as "*Whilst Planning consent has not been forthcoming for the Eurokent site EKO has assumed that permission will materialise.doc.*" The email is classified as 'Sensitive'. The content reads "*For information. I have emailed Matt and asked for a meeting next week - I'll let you know when he comes back to me. Sue.*" It was by reading the chain of emails of which this forms part that ST read the comment made in the email of 29 May about the CE wanting the officers of TDC to use a particular argument to support the application.

The Meetings

59. The first meeting was that of 29 May held between the CE, ST and his line manager, MHO. It was called by the CE. ST told me that in itself that was an unusual event as the CE had only been involved in one or two meetings on planning applications in his experience. He made a note of it in his notebook shortly thereafter.

60. His note records the CE starting the meeting by making reference to the recent meeting of the EKO board and the need of EKO to meet a £3m+ debt by March 2014 to cover its contribution to the provision of the access road to the Eurokent site. She then asked whether TDC would be able to grant planning permission for housing on the site. ST records that he then proceeded to explain the policy issue against the proposal in much the same terms as I have already described it but then told the CE that it might be possible to make an argument to support the application if there was demonstrable benefit to Newington, a very deprived residential area close to the site, but there were problems in terms of the physical links between the site and Newington. The CE responded by saying that she would like a meeting with MH of EKO to explore this option further. ST agreed to the idea but cautioned that it could not be assumed that this would provide a solution to the issue.
61. He explained to me that throughout he was alert to the fact that the case for an exception to the Local Plan policies could have been made out in accordance with the NPPF advice if there was a convincing demonstration of the likely regenerative effects for Newington as part of the assessment of the overall sustainability of the proposal. I should place a stress on the 'could' on the last sentence because I think it is clear that at this stage ST had not been persuaded that the links were adequate but he had not closed his mind to the possibility of further work or changes to the application making them sufficient to outweigh the clash with the policies of the 2006 TLP. This would also link in with the fact that on 29 May Cabinet had approved the draft new plan consultation document. He also told me that a common aspect of his job is in the management of expectations. So it appears from his recollection the meeting had these outcomes: first, the CE was fully informed as to the policy issue and the need to demonstrate benefits for Newington over and above the provision of housing if the policy impasse was to be removed; second, she was put on notice that whilst ST would meet with EKO to discuss these issues there was no guarantee that the difficulty could be overcome but some potential existed.
62. Madeline Homer's recollection of the meeting is as follows:
- An initial meeting was had between Sue, Simon and myself to discuss our understanding of the application i.e. the site was an employment site in the current local plan but had been described as a mixed site in the now discarded Core

Strategy and was intended to be described as such in the emerging local plan so we were testing what rationale could be made that might support this approach (as the application would have to be presented as a departure to the current local plan). Simon raised the possibility of making a regeneration argument linked to the re-development of Newington (nearby housing estate undergoing transformational re-development) and offered to explore this. Sue and I raised the matter of the 5 year housing supply i.e. were we completely confident that we had the necessary numbers in light of the NPPF requirements and changing status of the SE Local Plan. Simon was (at that time) of the opinion that there was no risk for TDC in respect of this.

63. Her recollection was therefore that the meeting was primarily to test the rationale to the approach to the site in the emerging or what has been called the new local plan and the need for housing in terms of the 5 year housing land supply. The relevance of the latter is that a shortfall would be a powerful argument in departing from the housing policies of TLP 2006 as advised by the NPPF.
64. Towards the end of her interview she said that they had talked about the policy position at this meeting: *"....clearly we did explore the policy position but my impression of that discussion was that Sue is not a planner, she has not been involved in that side of things at all and I think she was just trying to understand for her own benefit of understanding what the policy position was around the application, but it wasn't anything beyond that."*
65. These were key topics for consideration by TDC in its response to the application. It was critical that the answers to these points were correct and defensible as ultimately they would be probed both by members and EKO.
66. In my view, it would not have been unreasonable for there to be robust discussion at senior officer level to test the merits of such a significant application at a meeting such as this. However, MHO's note does not describe the discussions as having that flavour. She recalls them as exploratory in quality with ST raising arguments in favour of the application for consideration. She told me in interview that the meeting was *"around Sue wanting to know more about the policy position"*. Her recollection is that ST was not in any sense browbeaten or pushed into any particular decision by the CE or that she attempted to do so. Indeed, if matters had taken that course she would have had to consider her duties to protect ST as his line manager. She informed me that she had a good and robust

relationship with ST and she would have anticipated that he would raise matters with her if he had any concerns as to his treatment.

67. The CE's recollection of this meeting was that its purpose was *"to ensure that I understood the position in respect of the Local Plan and the Planning Officer's report."* She had no contemporaneous note of the meeting but recalled in general terms that she put no pressure on ST, whom she found helpful and who made suggestions about what could be provided by EKO to put the application in a more positive light. Equally she recalls that *"he was very concerned about not setting a precedent by supporting the EKO application which would "open the floodgates" for other residential development on employment land elsewhere, which I agreed with"*. In interview she also referred to the fact that she was seeking to understand whether there was any substance in MH's complaints as to the handling of the application by TDC officers and the need from her point of view to understand the relative weight to be attached to the historic and emerging policies at a local level for the site. She was receiving many complaints at the time from MH about the conduct of TDC in handling the application and she *"wanted to be able to understand whether or not EKO was being treated appropriately because sometimes Matt was suggesting it wasn't being and he was indicating that it was being treated unfavourably compared with an external developer."*
68. The CE had no difficulty with accepting the general accuracy of ST's recollection of the meeting as recorded in his notebook. She recalled that MHO, as *"an excellent regeneration officer"* was also asking ST whether there was any scope for approving housing as part of the mix on the site and that he was clear in answer to both of them that the New Plan was at too early a stage to be relied upon.

A Second Meeting between CE, MHO and ST?

69. Madeline Homer recalled an alleged second meeting between her, CE and ST in these terms:

The second meeting involved a run through of the arguments linked to the regeneration rational for a departure from policy H1 (not previously developed). At that meeting Simon was less confident about whether the regeneration argument would be sufficient to support an officer recommendation for approval. I think the 5

year housing supply issue was also raised again at this meeting as I had concerns around whether we were compliant, Simon again re-assured that we were.

70. Neither ST nor CE recall any such second meeting and ST had no note of it in his notebook or diary. MHO had no other recollection of it and had no notes or diary entry that referred to it. In the circumstances I think her memory is defective in this regard and I find that there was only one such meeting and that was the meeting on 29 May. There may be some confusion in her mind with subsequent meetings she alone had with ST, for example that to run-through the draft committee report.

Preliminaries to the Meeting on 5 June 2013

71. The second meeting was that of 5 June between CE, ST and MHO for TDC and MH for EKO. This meeting was the upshot of the TDC internal meeting of 29 May.

72. Prior to this meeting ST had received the email of the 30 May which had alerted him to the phrase used by the CE in that of 29 May about the arguments she wished him to use. A phrase that, she fairly described in interview as *“very clunky language”*. Alerted by this he thought it prudent to check his position with Harvey Patterson [HP] who was the experienced planning lawyer in the team at TDC dealing with the application who was also the monitoring officer. He said: *“I did go to see Harvey informally as the planning solicitor, not as the monitoring officer, just really to get a sounding as to really whether I should attend any subsequent meeting involving the Chief Executive, given her position and if I did, how I should approach that meeting and we had a general discussion and the conclusion was after discussion with him, yes I should attend but I would make my position very clear, so that’s the other reason why... and I made a note of it, he suggested making a note of that as well, which I was going to do anyway and as I say, I felt that was the end of the matter.”*

73. HP has a rather different recollection of this meeting. He stated;

Certainly Simon Thomas felt sufficiently pressurised to come and speak to me about the e-mail and although he did not supply me with a copy, he did inform me of its contents. Simon looked very worried and told me that he felt that both Sue McGonigal and Madeline Homer were improperly involving themselves in this application - the former as Board Member of the applicant LLP and the latter as the Director responsible for Planning and Regeneration. In fact Simon was so

concerned that he considered that he should simply refuse to attend the meeting as he had already set out his policy objections to the application in a confidential briefing note to the Chief Executive - but that he would want my express support for such a course of action.

I was opposed to this course of action for two reasons, firstly because, of itself, the Chief Executive inviting the Planning Manager to a meeting appeared to me to constitute a reasonable management instruction and secondly, because demonstrating that degree of independence would only place Simon at considerable risk in the pending senior management restructure. Instead, we agreed on a middle course of action - that he should attend the meeting but make his position on the application as senior case officer very clear.

74. ST then claims then to have spoken with MHO on 3 June 2013. He has a note of the meeting where he raises his concern about the phrase used by the CE and that he told her about the independence of his professional position as a member of the RTPi and that the CE could not require him to make any particular recommendation on an application. He asked MHO to ensure that the CE was aware of his position and again warned that the claims for the regeneration of Newington did not appear to have any weight.
75. MHO had no recollection of such a meeting. She was surprised also that he had raised the matter with HP. I asked the CE whether she had been warned about ST's position by MHO as a result of this meeting or whether HP had raised any concerns with her at the time. None of the witnesses suggested that there was any involvement at that time by HP in the matter as MO, whether formal or informal, and his evidence confirms that. The CE does not recall MHO informing her of ST's concern for his professional position. She told me that she was surprised that it was not raised as such with her by ST and regrets that it was not raised because had he done so "*I could then have reassured him that I didn't intend to put any pressure on him*". Given the clarity of ST's recollection of the meeting with MHO and his contemporaneous note I conclude on the balance of probability that it took place. I shall come to its significance in the wider picture later.

The Meeting of 5 June 2013

76. This meeting was called by CE and was between CE, MHO, ST and MH.

77. I start with ST's contemporaneous note of the meeting. This records the meeting lasting about an hour, from 4:30 pm to 5:30 pm. It states that the CE starting the meeting with an explanation of her dual role or her wearing 'two hats' with respect to the application and that both bodies, TDC and EKO, had a joint interest in resolving the matter favourably. Thereafter she seems to have taken a back seat whilst MH on the one hand and ST and MHO on the other debated the pros and cons of certain technical issues relating to the application, such as its treatment as a departure from the Saved Policies of the 2006 Local Plan, highways and environmental constraints. The CE intervened again at the end of the meeting when she reminded those present of the benefits of the proposed family housing, the 30% affordable housing and the *"links to Newington which she felt Members would find attractive"*.
78. Central to ST's note of the meeting is his record of his first contribution that followed the explanation of the CE of her role. I will quote the entry in full:
- "I explained that I was attending as Manager of the planning service + my role is to manage the planning application for the LPA (separate entity to TDC in general terms). I could not predetermine the application + ultimately would need to give a balanced report based on my professional judgment to Planning Committee and Full Council if the process takes it (the application) there."*
79. In interview he said that he made this statement partly in response to the explanation made by the CE as to her position and partly because he had intended to do so *"prior to the meeting, just to make it absolutely clear to ensure as a matter of record that my position and the position of the local planning authority was ...the integrity .. that separation was maintained"*. I take the reference to integrity and separation, to the need to separate the role of TDC as planning authority and as a member of the applicant for permission as well as to the integrity of ST's professional role in handling the application for TDC as planning authority. He also said that it was also a response to reading the email of the 30 May which contained the passage that triggered the complaint.
80. When asked about his perception as to whether any pressure was actually being placed upon him in his professional capacity by the CE: *"No, I think there was a need to clarify my position. I felt the need to clarify my position and my assumption was that what I had said*

had been accepted and that was the end of the matter... May be I was overcautious possibly, I don't know but I felt that I needed to clarify the situation..."

81. ST recalled that he was a bit surprised that MH had come in to criticise the process whereas ST had anticipated that the meeting would be about MH explaining the regeneration benefits of the proposals. This was also the view of CE who had expected MH to explain these benefits to the meeting.
82. MHO's recollection of the meeting was somewhat confused with her suggestion of a second internal meeting as I have set out above. In interview she stated that whilst she could not expressly recall the first contribution from ST as to his professional position, she would have fully expected him to say that. She suggested that this was for the benefit of MH, both she and ST knowing the way that he worked, and that this was something that to her knowledge ST did on a fairly regular basis: *"as I'm sure you'd appreciate, we get approached from a lot of interested parties, developers etc., and he's (ST) always very professional about making clear what his role is and the remit within which he works"*. She had some recollection of discussing the departure issue and she recalled the final contribution from the CE and she said: *"That was something that members had expressed very strongly, that they would fully expect any application to contribute that 30%. Members had very openly expressed that view, that's what they would want from an application."*
83. The CE had rather a different recollection of the purpose of the meeting of 5 June than the others that I interviewed. She recalled the principal purpose in two ways. At an early stage in the interview that she was there to facilitate a discussion between the parties, that is between TDC and EKO, and that it was, as she put it, regretful that any such discussion needed to be facilitated in the first place. She had experience of acting as a mediator between MH and a third party before and saw herself filling a similar role. She said she thought *"if I can get them both in the same room at the same time and they can hear each other's side of their viewpoint then they would be better informed as to how to progress"*. The second purpose was to allow MH to test ST on or to expose him to the sort of arguments that he might make on behalf of EKO to the committee when the matter was decided by members.

84. This latter reference to testing the points that MH might make to the committee was not a purpose that impacted upon either ST's or MHO's recollection of the meeting. The CE does not say that she expressed this purpose to the other participants in the meeting and I tend to the conclusion that this purpose only dawned on her in the course of the meeting it having become apparent that EKO and the Planning Department of TDC, as represented by ST, were unlikely to see eye to eye on the merits of the application.
85. ST has a recollection of at some time later touching base with HP as to the outcome of this meeting: *"Yes, I probably popped in and said "Yes it all went fine" and that was the end of the matter. I don't remember but I'm sure I would have done that."*
86. HP's recollection of the same meeting was:
"As I recall, I spoke to Simon a few day after the meeting and I asked him for a briefing. He told me that he had adopted the approach we agreed upon and that he had made his position and policy objections very clear to McGonigal, Homer and Hyland. When I asked Simon what happened next he said that the meeting 'sort of fizzled out' because there was really nothing to talk about if he wasn't willing to be persuaded to support the application."
87. This recollection of the meeting 'fizzling out' after ST explained his position is at odds with ST's actual recollection of the meeting and the fact that it lasted an hour. If he said this to HP at the time it gave HP an inaccurate understanding of what took place and may have coloured his subsequent interpretation of events. Perhaps what had 'fizzled out' was any threat of him being pressurised against his professional judgment to support the application.
88. All parties are agreed that there were no further dealings between the CE and any member of the planning department prior to the determination of the application some four months later in October 2013. I should also note that HP's view of the recommendation in the committee report to the effect that members should draw their own conclusion after a site visit; *"I interpret this as evidence of the ongoing improper pressure that was being placed on Simon Thomas"*.

Other Matters

89. In her statement Madeline Homer referred to other matters:

Simon requested a meeting with me so that he could run through his report including the recommendation which was a site visit, this did seem unusual to me however Simon explained his rationale which at the time sounded sensible but which I cannot now recollect. I do recall saying at the meeting that if he didn't consider he could support the application then his recommendation should reflect this. Although a challenging application Simon seemed comfortable with the approach he was taking and as Simon and I always recognise he is the planning expert (not me) so I accepted his advice on this.

Issues that I am aware have been raised:

EKO made a request to brief members on EKO proposals for the site. I discussed the request with the Monitoring Officer who agreed the proposal.

90. I am also aware there has been reference to a letter detailing TDC planning policy position not being sent, I have no recollection of this letter or of giving any instruction about not sending it. I attend meetings with Matt Hyland from EKO (with Simon in attendance) where TDC Local Plan position was described and discussed in detail.

91. In the time I have known Simon he has always quite rightly been very robust about his professional credibility and has never indicated that he has not been capable of managing expectations whether from members, officers or public.

92. I will take them not in the order of the note but in time order, that is the letter, the meeting between EKO and members of TDC and the committee report.

93. ST referred to having a meeting about these matters with MH and MHO in early May 2013 when he was asked by MH to prepare a briefing for him on the application for use at the Board meeting scheduled for 22 May. As a result ST drafted a letter to go to MH setting out in some detail the conflict with the established planning policies of the area a copy of which he produced after his interview. Before sending it he sought the approval of MHO to its content. ST's recollection was that MHO decided that she would deal with the matter herself and, in the event, she sent a brief email to MH on 15 May explaining the policy issues from the Council's standpoint. ST could not recall the reason given for MHO

preferring this approach. MHO had no recollection of the matter at all and the CE had no knowledge of it in any event. The CE was unaware of these events.

94. I accept the evidence of ST to the effect that he drafted such a letter and that after discussion with MHO it was not sent to EKO. I could speculate on the reasons for this but that is not helpful as I know that similar issues were raised directly with MH at the meeting on 5 June and the response to them at that time of both the CE and MHO.
95. Since the email appears to be an accurate summary of the policy objection explained by ST I find it difficult to see this as part of some conspiracy to favour EKO against the better judgment of the planning officers. It may well be that MHO considered this was a better way of managing MH's expectations in the matter rather than the terms of the letter which might appear more confrontational. In any event, although HP invests the matter with some significance, I do not find that the substitution of the email for the longer draft letter gives me any real assistance with respect to the issues I am investigating.
96. The review of the draft report between ST and MHO took place shortly before its publication and was done to inform her of the content in her role as line manager and in acknowledgment that the agenda paper containing it for the Planning Committee meeting would go out in her name. I also think it likely that he may have wanted to test on a third party non-planner the sense of the report and the unusual neutral recommendation. She remains puzzled by the recommendation and now cannot recollect the justification made at the time by ST which she found then to be convincing. As he described it to me, I sensed that he wanted members to go to the site to test for themselves whether the physical links between the site and Newington were in fact such as to make a convincing case for an exception to be made to policy in the terms discussed above. This to him had been the tipping point in reaching a conclusion on the application and he seems to have felt it best to allow members to make their own judgment in the matter. I understand that this may have been unusual in TDC's experience although from my experience it is an approach which is adopted by planning officers from time to time when applications appear to be well balanced or depend upon members understanding and taking a view on certain physical relationships with respect to a proposed development. In any event, there is no

evidence or suggestion that the CE was in any way involved with the consideration of the application after the meeting on 5 June and this issue is not relevant to my inquiry.

97. As to the meeting between EKO and members, which took place in early October 2013, I understand it was sought by MH on behalf of EKO and approved in principle by HP as monitoring officer, as he later confirmed to me, although had he known of the proposed timing – a week before the consideration of the application by the planning committee – he would have opposed it. It was facilitated by MHO and she attended to observe as did ST and neither of them addressed the meeting. The CE had no link with it and did not attend. It was held for the benefit of TDC members as a result of their status in EKO and not as planning authority. In conclusion, it is a somewhat surprising event and I shall bear in mind that HP regards both the fact of the meeting, and particularly its timing, as an indicator of a campaign to put improper pressure on ST to support the EKO application.

Discussion

General

98. In reading the background material I note that the complaint with which I am concerned is one of a series of complaints made by Councillor Driver concerning the conduct of the CE which appear to have as a common theme the alleged conflict between her role as CE of TDC and that as a member of EKO. These other complaints fall outside my terms of reference and I will make no comment upon their merits or otherwise. However, they perhaps shed a little light on his concerns with respect to the complaint with which I am charged. For this reason I will make a general comment about the perceived conflict between the two roles.
99. The reality of modern local government is that successive administrations have empowered and, on occasion, encouraged the creation of joint venture vehicles between local authorities and between local authorities and other bodies and agencies both in the private and the public sectors. These are seen as a potentially useful and effective means of harnessing the talents and resources of both bodies to achieve common aims, frequently in the fields of regeneration and redevelopment. Entering into such relationships always carries some risk of conflicts of interest or responsibility arising from time to time in the ordinary course of the business of the JVC. Here it took the not unfamiliar form of TDC having a role as a member of the body seeking a planning permission and a separate role as the planning authority for that application.
100. Provided both parties to the JVC are alert to these matters and follow the precepts of good governance, no actual conflict should arise². Local authorities should be adept at dealing with this situation as they are likely to have experience of handing their own applications for planning permission and those of neighbouring authorities or strategic authorities. Here there was at all times a clear demarcation between the officers handing the application in the Planning Department and those officers and members who were also members of EKO.

² “The golden rule for local authority representatives involved with external organisations (which it is often easier to state than to ensure compliance with) is never to become involved in a situation where a conflict of interest arises between the interests of the local authority and the interests of the external organisation. Openness should be the watchword to ensure that standards of propriety are maintained at all times.” Local Authorities Companies and Partnerships, Robert Hann.

The concern of Councillor Driver is whether in the course of consideration of the EKO application prior to its refusal by the Council a conflict of interest arose involving the CE.

101. The fact that meetings took place between the officers handling the application for TDC and the CE who was also a member of the external body is not of itself surprising in the sense that meetings between local planning authorities and applicants for permission are part of the everyday currency. What I suspect is less common is a meeting between the planning officer and the CE on such an application. Such meetings may be necessary, particularly where, as here, TDC has what might be described as small management team. When such a meeting is needed care has to be taken to avoid conflict and to be open. In this context I note that the meetings were openly fixed and diarised, they involved the Planning Manager as the lead officer of the Department and did not involve his junior, who was acting as case officer, and at all times the Planning Manager was accompanied by his line manager at the request of the CE.
102. In my mind these are precisely the sort of transparent and open arrangements that one would wish to see in place should such meetings take place. The fact that such meetings took place is itself no more than a reflection of the nature of the modern planning process where interchange between applicant and authority is encouraged to seek positive outcomes and avoid unnecessary conflict.
103. This observation provides a context for the concern of HP that EKO was obtaining 'preferential treatment'. It may well have been getting better treatment than the average applicant for planning permission but in a context where there was no rival seeking planning permission for the same site or a rival scheme, there is nothing objectionable in the nature of the treatment they received. No doubt from EKO's perspective the treatment they received was nothing less than was due to them as a significant promoter of regeneration in the area.
104. Therefore the spotlight must fall on the content and conduct of the meetings and the communications surrounding them to see if any misconduct actually arose.

Discussion of email contact

105. I start with the note provided by ST to CE on 17 May 2013. In my view, this note provides a helpful insight into the assessment of the application by ST and his colleagues in the planning department of TDC.
106. It contains a clear exposition of the fact that the application was contrary to the Saved Policies of old Local Plan of 2006 because the residential element, which is the key driver of the application, is contrary both to the site specific policy, EC1, of the old Plan, and policy H1 which only allows residential development on sites not allocated for that use on brownfield land within the urban area. The note records the view that policy H1 was to be regarded as up to date in NPPF terms as the Council had an adequate 5 year land supply. However, the note also records this: *“The NPPF states that where there is no reasonable prospect of the site being used for the allocated purposes ...applications for alternative uses should be treated on their merits having regard to the market signals and the need for different land uses to support sustainable locations”*³.
107. This passage refers to the advice of the NPPF paragraph 22 to the effect that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of being used for that purposes and was among the few parts of the report which were emphasised by being in bold. I take that emphasis to be an acknowledgement that this aspect of the NPPF was causing the principal difficulty to the TDC officers as it was clearly of application to the site but to release the site on this basis would risk creating a precedent, as is noted at an early stage of the document: *“If we were to grant planning permission on this site a precedent for such an approach might also apply to other employment sites and sites that are not previously developed”*.
108. It is this concern with conflict with policy H1 in particular and precedent that appears to be at the core of the objection and leads to the adverse conclusions on the second page of the

³ I note from the Appellant’s Statement of Case on the appeal dated February 2014 that this objection was not long lived as in paragraph 5.14 it is recorded that the Council by then had confirmed that there was in fact a shortfall in the five year land supply of something in the order of 1,000 units leading to significantly reduced weight being attached to policy H1 in accordance with the policies of the NPPF.

note to the effect that it had not been demonstrated that the proposal would be acceptable and would justify a departure from policy.

109. One can see straightaway how frustrating this response could be to MH on the part of EKO, which was promoting this major application to secure the regeneration of the area. This was an objective to which both they and TDC were committed as the site specific policy of the old Plan acknowledged. The passage of time had revealed that the site specific policy was not going to yield the desired result and a new approach was required. That had been conceded by TDC in effect in the preparation of the Core Strategy and the proposals of EKO closely followed the site specific proposals for the site in the Core Strategy. There was clear advice in the NPPF which appeared to support the application and yet it was still being resisted on the grounds of precedent to the old Plan which was in the process of being supplanted by a 'new' Plan which was far more in tune with the application. From the perspective of the promoters of the application the issue of precedent was probably therefore seen as a negative response that failed to grapple with the realities of the situation as required by the NPPF.
110. There was no sustained analysis of this 'precedent' issue in the advice from the planning officers and I entertain seriously doubts whether it enjoyed strong intellectual foundations given the factual background and the terms of national policy. However, I do not need to come to any conclusions on the merits of the point.
111. However frustrating the precedent argument probably was for EKO, I accept that from the perspective of those responsible for day to day development management decisions in TDC, such as ST, the issue of precedent was one of very real concern. In other words, I find it to be a sincerely held concern and not a contrived objection.
112. It appears from the evidence about the meeting of 29 May that ST may have intimated to CE that no weight could be given to the emerging New Local Plan at that time and it would not have any weight until it became the submission document in the spring of 2014. That was accurate advice. But if it was also intended to give the impression that it would be better to defer the application until weight could be given to the new Plan, as it appears the CE may have understood it, that would also be the cause of substantial concern for EKO which was concerned to secure the regeneration of the area in a timely manner rather

than wait until all the development plan documents were in place, like ducks in a row, over a period of years extending into the future.

113. These tensions are also illustrated by the two notes of the meeting between EKO and TDC of 5 June 2013 from which it is plain that MH resented the suggestion that the application was a departure from the development plan and the parties could not agree on whether TDC had an adequate 5 year land supply or on the significance of the issues of prematurity and precedent to the application.
114. The CE states in her written note that she interpreted the note from ST of 17 May to the effect that although the application was contrary to policy, *“there could be sufficient mitigation given the much needed affordable housing element and school relocation....I took from this that it was important to make sure that the Planning Officers had the complete details of what was being proposed for the site, as it appeared to me feasible for an application to be legitimately supported by the Planning Committee even when it is contrary to policy H1, provided that there was sufficient merit, as was explained in the briefing note”*.
115. In my view, that conclusion as to how the application could legitimately be supported by the Planning Committee was a fair and reasonable reading of the note and also a fair summation of the issue generally. It largely accords with the explanation given to me by ST in interview.
116. In support of this conclusion I rely not only on the express terms of the note but also the committee report itself where members were advised that the Housing Services Manager supported the proposals as *“a key part of the urban regeneration of Newington”*. Later in the report the author observes that *“with the improved linkages between Newington and Westwood does have the potential for increased integration of the existing community into the wider area and in deciding this application such potential benefits should be considered and weighed against the policy objection in H1”*. This strongly suggests that by the time the report was written some although not all the concerns previously expressed by ST as to the quality of the linkages with Newington were overcome or were beginning to be overcome.

117. I turn to consider the conduct of the CE in this process especially in terms of arranging the meetings of 30 May and 5 June before I turn to consider the two meetings.
118. As is noted by the IP in her report at paragraph 3.3, there is no policy or guidance provided by TDC for members and officers sitting on outside bodies nor are officers or members given any advice as to these matters, in particular as to the identification of conflicts of interest, actual or perceived.
119. There is a relevant passage in the constitution of TDC applicable to officers, such as the CE, appointed to third party bodies:
- To represent the Council effectively on any outside body to which they are appointed, providing two-way communication between the organisations and reporting to the Council on the work of the body and its contribution to the District.*
120. I see no necessary conflict between EKO and TDC in this matter. Both bodies were committed to promote the regeneration of the area and that was the express purpose of the creation of EKO, an underlying purpose of the development plan and an express purpose of the application. Regardless of the position with the development plan, TDC had a general interest to secure the regeneration of this site and the wider area in any event. These were important matters generally for TDC, not solely in its capacity as planning authority. Moreover, the application was of such a scale and significance that it would be entirely reasonable in my view for the CE to be concerned to ensure that it was provided for consideration by the Planning Committee with a full and fair appraisal of all the relevant considerations. No conflict between EKO and TDC would arise unless and until the members of TDC decided to refuse the application. Moreover she had her duty to promote two way communication between the two bodies as identified above.
121. It was necessary for the CE both in her capacity as such and as a board member of EKO to ensure that the application was fully and properly appraised by TDC's planning department. The request that led to the production of the note of 17 May was therefore entirely reasonable and I do not regard as inappropriate in any way.
122. Likewise, the fixing of meetings between the relevant officers of EKO and those of the Council prior to the preparation of the committee report, was a legitimate and appropriate

response of the CE to the apparent conflict between them as to the appropriate assessment of the application under the NPPF, which would be central to the consideration of the application by the committee. The NPPF itself promotes discussion between applicants and planning authorities in all cases to reduce unnecessary conflict and misunderstandings. It exhorts local planning authorities to look for solutions rather than for problems and *“to work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area”*⁴.

123. I also see no cause to criticise the CE for seeking information from MH of EKO prior to her meeting with ST and others on 29 May. MH was the officer who had responsibility for the detail of the application which was not something which CE had, or could reasonably be expected to have. He would be able to explain the issues as to policy that lay between TDC and EKO relating to the application from the EKO perspective. It was reasonable for her to seek the required information from MH so that she could ensure that the TDC officers understood the up to date position of EKO on these matters, which included the consequences of the replacement of the special needs school, the proposed likely amount of housing overall and the proportion of affordable housing.
124. However it would be illegitimate for the CE to direct the planning officers of TDC, including ST, or to use pressure on them, with the intent of making or persuading them recommend the application for approval to members against their own professional judgment in the matter.
125. The email of 29 May from CE to TB and MH does contain the key passage to which I shall return that states that she need the required information *“to illustrate the argument I want them (TDC officers) to use to support the application”*.
126. The attachment was supplied to me by ST on 13 August and he described in interview as *“a fairly insignificant side of A4”*. It is a brief resume by EKO of the application and the merits of the proposed amendments not dissimilar from the document prepared by MH for the meeting with TDC on 5 June. Given the position in the emerging Core Strategy when EKO prepared this application it is hardly surprising that they considered that it was likely to meet with the approval of TDC as local planning authority despite the formal position

⁴ Paragraph 187

obtained from the 2006 Local Plan which no longer represented a scenario likely to prove attractive to the market, if it ever did. After all, by the time of these meetings the Old Local Plan was seven years old and the site had been unsuccessfully promoted solely for employment development for 15 years, since the grant of the permission in 2007.

127. I see nothing sinister or improper in the direct involvement of the CE at this juncture. There was an apparent impasse between the two bodies and she was in an ideal position to broker meetings and try to promote understanding between them to try and resolve the issues if that was possible.
128. The issue is therefore whether her conduct in attending at and conduct of those meetings was in any way inappropriate so as to justify the complaint.

Discussion of the Meetings

(a) 29 May 2013

129. The meeting of 29 May was not a routine event, however this was not a routine application. Its size, scale and potential significance for the regeneration of the area made it one of some importance. As I have indicated, I consider it to have been an application in which it would be appropriate for the CE to take an interest to ensure that it was fully and properly assessed before it was put to members for their decision. Also, given the joint interest of TDC and EKO in seeking the regeneration of this needy area, it would be important to ensure that all reasonable attempts were taken to understand the application and to secure any necessary changes to the application to make it acceptable.
130. The critics of the CE regard the content of the email that referred to the argument that the CE wanted the officers to use to support the application gives the lie to any suggestion of innocent motivation by the CE. For HP is it a 'smoking gun' that convinces him that the whole exercise undertaken by the CE, with the support of MHO, was to bring improper pressure on ST to alter his professional judgment and to favour the EKO application.
131. I turn first to the words themselves understanding that an informal email, quickly dashed off in an unguarded moment could provide a helpful insight to the author's true state of

mind. The CE refers to the argument that she *wants* them to use. In other words, it is the argument that she wishes or desires them to use. She does not say that it is the argument she is going to make or direct them to use, nor does she say it is the argument they will use. There is no such mandatory or directory language used, which, if present, would be a sure indicator of a desire to try and overrule ST's professional judgment in the matter. To want ST to use an argument does not necessarily mean that the CE is prepared to apply pressure to him to use it; but I must consider with care what actually transpired at the meeting to see what the CE's conduct was *viz a viz* ST as a matter of fact.

132. In reaching this conclusion I note that I differ from HP who regards any attempt even to persuade ST to a favourable view would be wrong as he had already informed the CE in his note of the significant policy objections to the proposal. In my view, this interpretation of events makes more of the content of the note than either its contents or the explanation of the significance of its contents given to me by ST or CE will allow it to bear. ST was clear in his note that he reserved the opportunity for a more convincing explanation of the community benefits flowing from the application to alter the planning balance in favour of the proposal. That is also how it was interpreted by the CE. That is how ST intended it to be interpreted; either because it was part of his management of expectations strategy or because he believed it to be the case. I see nothing wrong in itself in holding a meeting to ensure that ST was fully conversant with all the potential community benefits and wishing thereby to convert him to a supporter of the application. That was only to take him at his word. Particularly so as the community benefit elements of the proposal were undergoing change at the time. As a member of EKO the CE did no doubt wish that TDC was able to support it because she believed, as a non-planner, in its merits. There is nothing improper in this in itself, what would be improper would be to use illegitimate means to try and obtain ST's support for the application.

133. I have had the advantage of hearing the explanations in interview of the chief actors in this drama aside from MH. In my view, on the balance of probability, the principal role of this meeting was for the CE to inform herself as to the position being taken on the application by the planning department and for her also to ensure that the planning department was fully appraised to the important changes that were afoot with respect to the application to improve its overall sustainability and to ally itself better with the concerns of the members.

Plainly there is nothing wrong in adopting what I would consider to be these laudable objectives to avoid unnecessary conflict between two bodies both devoted to the cause of seeking the effective regeneration of the area and to avoid unnecessary delays and the potential for the need for planning appeals to resolve conflicts of view. Ultimately I find no reason to reject the explanation given by CE, supported by MHO and ST, that she was primarily concerned with understanding the policy issues surrounding the application and seeing that the application had been properly assessed in policy terms by TDC given the criticism of their conduct made by MH to EKO.

134. The language used by the CE in the email of 30 May was clumsy and ill considered, as she appears to accept from the beginning of this complaint. But all said and done, emails are an instant form of communication and their terms are not to be construed with the precision of a statute or a contract. I also note that the phrase in question was not in an email direct to TDC officers. In fact it seems to have fallen unwittingly into their hands through the simple activity of forwarding an email chain as opposed to a single message. HP invests this with sinister significance as in his note to me he suggests that it was done *“to make clear to Simon the purpose of the meeting and her intentions”*. I disagree, there is nothing to indicate that this was a carefully contrived communication as he suggests, in fact it has all the hallmarks of a rapidly formed email chain.
135. I have looked beyond the language, capable as it is of more than one meaning, to see if the interpretation urged on me by CE’s critics is borne out by events. HP says I should draw that inference from the list of events he sets out which he asserts that the CE and MHO were acting in concert to improperly pressurise ST. The difficulty I have in following that line is that I do not have to draw inferences when I have the direct evidence of not only CE and MHO, but also of ST that no such pressure was placed upon him.
136. I have asked myself the question whether CE and MHO are lying to me and that ST is joining in the exercise from fear or some other motive. MHO’s memory of events may be poor. Given HP’s allegations I have had to consider whether it was selective, but I find that this was not so and she did not seek to be deliberately vague or misleading in her interview or other evidence to the investigation. The CE had a fair memory of events, she was direct and straightforward in her evidence. She plainly bore no grudge with ST, although she was

scornful of HP. I find her to be a truthful witness doing her best to assist the investigation despite the personal anguish it is clear that these charges have brought upon her. ST presented as both honest and careful; he could be fairly be described as scrupulous in his approach. I see no reason to believe for one moment that ST, who is a senior and responsible, adult, experienced professional should seek to lie to me for some ulterior purpose so as to allow his colleagues off the hook for bringing improper pressure to bear upon him. A man as careful of his professional integrity as ST would not hesitate to complain if he was of the view that his integrity had been compromised, whether or not those who did so were his seniors in the hierarchy.

137. I have no doubt that he had genuine concerns as to his position at the time. He was exposing himself as the officer taking the lead in opposing the application because of the policy conflict. This has led to the need to explain the policy position to CE on 29 May. He then reads the email which appeared to show that the meeting arranged with MH was to demonstrate to him the points the CE wanted him to use in support of the application. He was worried by this and decided to take a course of action which made his professional position perfectly clear to all parties. He suggests that he may have been overcautious. I would prefer to say that he displayed a degree of prudence in protecting his professional position that was probably characteristic of him. Whilst he may have enjoyed the intellectual challenge posed by this application he wanted to ensure that when it came to assessing its planning merits he was and remained in control.
138. None of the actors directly involved in this part of the drama, ST, CE or MHO consider that the CE was in fact seeking to exert pressure on ST to change his views or to use particular arguments against his own professional judgment. I note that on reading the email ST checked on the proper approach with HP, but never then or since has approached either HP or SB, his successor as monitoring officer, to make a complaint of improper conduct against the CE or to raise any grievance against her conduct of the matter. I can understand why ST was wary of the CE's potential motivation on reading the email and that he conveyed such concern to HP, but I find that there was nothing in her conduct of the meeting of 29 May to suggest that she was in fact so motivated. In the event ST's concerns were unfounded but it was perhaps understandable that he entertained them at the time and the way in which he handled those concerns was in an entirely responsible manner.

(b) Meeting of 5 June 2013

139. This stemmed directly from that of 29 May. It was intended by the CE to be used by both parties so that there was a full and mutual understanding of the positions being taken by each other; to allow ST to fully understand the changes made or proposed to be made to the application and for MH to demonstrate the regeneration benefits of the scheme. It was also for MH to better understand TDC's position on the application and either respond to it or to prepare to respond to it at the committee meeting considering the application, whenever that might be in the event that TDC's position remained constant.
140. I accept the CE's explanation of her motivation which appears to me to be a perfectly rational and reasonable explanation for her conduct and I find that there was no improper purpose clouding her motivation for arranging it. Indeed it would be difficult to find otherwise given her recollection of the meeting which is largely supported by the accounts given by ST and MHO.
141. The suggestion made by her critics is that the fact of holding the meeting itself was a sign of granting exceptional favours to EKO as an applicant for planning permission. I reject this criticism. Given the scale, potential importance and intended regeneration properties of the application I can see nothing wrong with the CE meeting the applicant to see if differences between the parties are capable of overcoming any of the issues that lay between them. I would expect any responsible local planning authority to have such a meeting on an application of this scale and significance whatever the identity of the applicant. She had a further legitimate reason for attending this application in that she had a legitimate need from both her standpoints to understand the nature of and the reasons for the divergence in views between TDC and EKO over the merits of the application and a desire to see if she could broker a positive exchange of views between MH and ST.
142. I am also satisfied that the CE did not confuse her role as CE of the local planning authority with that of being a member of the applicant body. Her role in this meeting was essentially that of an honest broker seeing that each side understood and respected the position of the other and took steps to narrow their differences when it was appropriate to do so. She did not use them to act as an advocate for EKO or to browbeat or otherwise seek to

influence improperly ST's professional judgment on the merits of the application. It was clear from her interview that she was very conscious of the difficulties inherent in 'wearing two hats' as she put it and was careful to avoid any position of conflict. This is clearly supported by ST's contemporaneous note of the meeting where her introductory remarks address this point and the rest of the note confirms how she remained in the background through most if not all of the debate.

143. Part of Councillor Driver's complaint rests on the suggestion that it would be improper for the CE to seek to persuade ST to a different view on the application after he had concluded that it was contrary to policy. That is with respect a proposition which I cannot accept. To the extent that this allegation rests on the note produced by ST for CE in May, I have discussed it above. It may be helpful though to look also at the wider picture. First, as a matter of law, the terms of the development plan carry a particular or special weight but are not necessarily conclusive. Section 38(6) Planning and Compulsory Purchase Act 2004 is in these terms: *If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.* (my emphasis)
144. There were several material considerations in this case which were of potential significance that would have to be weighed in the balance against the policy considerations arising from policies EC1 and H1 of the 2006 Local Plan. In no particular order they are; the poor take up of employment land on the site since the grant of permission in 1997, the additional support given to this feature by paragraph 22 of the NPPF, the Council's own promotion of a mixed use allocation for the site, the need to secure the timely regeneration of the area of the site, the potential of the proposals to benefit the area of Newington, and the support for the social benefits of the scheme in terms of the provision of family and affordable housing identified by the Council's housing department. There may be others. One does not have to be a professional planning officer to legitimately hold a view as to their relative public benefit and I see no reason why the views of other officers as to their respective value cannot be conveyed to the planning officer with ultimate responsibility for advising members on the application. In fact, as I have found, the CE did not seek to persuade ST to change his view but merely sought to ensure that his view

stemmed from a proper understanding of the proposals and their merits which is no more than that which any applicant ought to be able to expect from the system.

Overall Conclusions

145. This complaint was not made by any of the parties to the meetings in question and no officer taking part in these events, aside from HP, has suggested to me that the CE was guilty of any misjudgment or any misconduct in the course of her dealing with this application. The contemporaneous notes of these meetings do not suggest any improper conduct on the part of the CE or any other officers for that matter. The complaint arises from Councillor Driver reading, after the event, the email of 29 May that contained the admittedly clumsy language used by CE to the EKO officers that was ultimately transmitted to ST as part of a longer email chain which he happened to read. HP has observed that its terms *“leave little room for misinterpretation as to motivation and intent”*. That is not my view. To wish the planning officers would support the application on an identified basis is entirely understandable and legitimate. What would not be understandable or legitimate would be to apply pressure on the professional officers to override or undermine their professional judgment in the matter. At best the email gives rise to the potential for misconduct to have occurred *if and only if* the CE had used her influence to persuade or otherwise cause ST to hold to a view contrary to his professional judgment. There is no evidence of that whatever either from the documents or from the evidence I have received by way of interview. In fact, to the contrary, ST was always careful of his professional position and at pains to stress his independence in such matters. The CE is an experienced and thoroughly professional officer in my judgment and was therefore well aware of the appropriate boundaries to follow and that is what she did.

146. HP asserted to the IP after he had received her report⁵ that he genuinely considered *“there has been collusive conduct to bring improper pressure to bear on Simon Thomas”*. I have carefully considered his views coming as they do from an experienced legal officer and past MO of the authority. However, I note that at the time of these events he took no steps to warn or caution the CE, whether informally or as MO, despite knowing some of these matters at the time as a result of his meeting with ST. At his meeting with ST on 3 June he

⁵ Letter to IP 13 March 2014

advised ST to attend the meeting called for 5 June as a reasonable management instruction. Had he had real concerns at this stage about ST's professional position I would have expected him to have alerted the CE to be more careful in her dealing with the planning department to avoid any potential or apparent conflict of interest. His judgment is reached after the events, on reading the IP's report, and after his relationship with the CE appears to have been substantially damaged by reason of the decisions made or in train as to his future employment.

147. His notes to me attest to his strong feelings in the matter. They read more as pieces of advocacy rather than objective analysis. He does not maintain the boundaries between evidence and submission, but combines the two in an attempt to persuade me to his point of view. His role in this affair was on the side lines since, save for the meeting with ST on 3 June 2013 and his subsequent role in sanctioning the meeting between members and EKO in October, he took no part in the key events. He did have a 'one to one' meeting with the CE a couple of weeks after the decision was taken to refuse the application in October 2013 but this did not relate to her earlier conduct in the preceding June and May which is the focus of my interest. He explains that at the time he did not have a full picture of events and that is so, however it does make it clear that he is operating principally from his interpretation of events as conveyed to him by the documents rather than by direct experience of the meetings of 29 May and 05 June, unlike the witnesses CE, MHO and ST who were present. I will not refer to the full catalogue of argument put to me in HP's submission since I consider it only necessary to touch on the principal points as I have preferred to reach my conclusions in reliance on the evidence I have heard and read.

148. At the end of the day I find that HP's support of the complaint is not substantiated by the material disclosed to me through my investigation. In fact both MHO and CE were at pains to stress the independence of ST and how any such course of conduct would be counterproductive. From my meeting with ST I do not doubt this assessment of him as an experienced professional officer. Indeed it is notable how he stuck to his guns on the precedent argument through thick and thin. I also noted the open and frank demeanour of the CE throughout her interview and in the statement which she provided to me beforehand. As I have already indicated, MHO was a less satisfactory witness in light of her memory lapse over these events; but I do not think that this was contrived, it is more likely

to result from the fact that she regarded these transactions about the application to be an ordinary part of her busy working life and they have simply been erased by the passage of time.

149. Some of the criticism of CE by others may stem from other causes of a personal nature of which I am unaware and cannot comment. Likewise there may be some strong political element to the proposals of which I am unaware. However these are matters extraneous to my inquiry and on which I need not form a view. The duty of the planning officer was to tender to members his professional assessment of the application untainted by political or personal considerations and that is what he attempted to do. His loyalty to the policies of the Old Plan, even when they were looking distinctly outdated in respect of the application site, were no doubt genuinely held and he was entitled to his view. A different CE, with a stronger planning background, might have challenged ST's conclusions far more robustly without acting improperly. Senior officers of the authority should be able to have robust discussions about the merits of such application without any hint of misconduct arising. In fact the debate was left to MH as the case officer for EKO and his opposite number for the Council. I can see no harm or impropriety in that.
150. ST's notes are of considerable assistance to me as they are contemporaneous in the sense of being written up shortly after the events they describe and they are the only such records that were made. They are a brief record of the main topics of conversation. They contain no suggestion that the CE used any coercive methods to convert ST to her point of view. Perhaps the strongest expression of her view is found towards the end of the note of the meeting on 6 June when she *"pointed out the benefits of family housing and 30% affordable and links to Newington which she felt members would find attractive"*. That seems to be aimed at both ST and MH. To the former as a reminder that members were, in her judgment, likely to find those features of the revised application attractive and to the latter as she foresaw that he would be addressing the meeting of the Planning Committee on behalf of the applicant and this was an area on which he should concentrate. Certainly it was the area on which ST felt MH should concentrate and he was throughout this period disappointed by his perceived failure to do so.

151. The notes contain no other hint of persuasion and none whatsoever of direction, coercion or any form of pressure being exercised by CE on either ST or MHO. I think it likely that had she done so it would have faithfully been recorded here by ST as a significant part of the meeting and evidence of the happening of the event the likelihood of which caused him concern when he read the email of 29 May. Moreover, if anything untoward had occurred at these meetings I think it likely that he would have then and there reported it to HP as something of concern. Instead, he recalls that he *“probably popped in [to HP] said ‘Yes it all went fine’ and that was the end of the matter. I don’t remember but I’m sure I would have done that”*. Consistent with this recollection he expressly confirmed to me that the CE had not told him of any particular argument she wanted him to use to support the application nor was she trying to persuade him to a particular point of view.
152. I also take comfort from the fact that both MHO and the CE consider it inherently unlikely that anyone who knew ST would be unwise enough to try and pressurise him into adopting any particular point of view. Both of them confirmed the independence and integrity of his professional view, to the point of, as it happens, welcome, rigidity on matters of policy in the assessment of the CE.
153. At worst what has happened here is that the CE made a misjudgment in forwarding the email train to ST as it gave rise to a concern on his part that would not have arisen had he not read the content of that EKO email. It was the result of failing to re-read the email train before it was forwarded and in using sloppy or clumsy language in the first place. These are hardly heinous matters. They result from an assumption that the proprieties in the matter were well understood and as a result of using an instant form of communication. This cannot justify a charge of misconduct or warrant the lengthy disciplinary procedures to which the CE has been subjected.
154. The allegations made by Councillor Driver and the support given for them by HP were made without the benefit of a sight of ST’s notes as he revealed them only in the course of my investigation.
155. I have already said that I can find nothing improper in having a meeting with an applicant, whether it is EKO or any other third party, so as to be better informed as to the differences between the parties and to seek satisfactory solutions to those difficulties where

appropriate. To suggest otherwise seems to misunderstand the positive enabling role cast on local planning authorities by the advice of the NPPF.

156. Finally, HP states in his note to me: *“it is my view that Madeline Homer's role in all this cannot be divorced from the actions of Sue McGonigal and that realistically Madeline could only have been acting with the knowledge and at the direction of her line manager, Sue McGonigal. Accordingly, in my view there is a clear pattern of events and evidence that fully supports Cllr Driver's allegation.”* Whilst I have weighed his views most carefully, they are views as opposed to evidence. I alone have interviewed the main actors and for the reasons set out above have come to a contrary conclusion. Moreover, I note that ST's note of the meeting has MHO taking his part in the arguments with MH rather than taking the part of EKO. This late aspersion on the conduct of MHO, long after the events in question, is not justified.

157. The result of my investigation is therefore to recommend to the Council following my independent examination of the matters pursuant to LASO to dismiss this complaint as unfounded. In terms of my reference I have found that the purpose of the meeting(s) was not to direct officers as to what recommendation to make but to ensure that both parties had all the relevant information before them before the application was determined. I make no finding of misconduct against the Chief Executive.

158. Therefore I need to make no recommendation with respect to the Chief Executive.

05 September 2014

Mark Lowe QC
Cornerstone Barristers

