

**TOWN AND PARISH STANDARDS SUB-COMMITTEE  
22 SEPTEMBER 2014**

**REPORT OF THE MONITORING OFFICER**

**A.1 HEARING TO DETERMINE OUTCOME OF EXTERNAL INVESTIGATION –  
FAILURE TO COMPLY WITH THE MEMBERS’ CODE OF CONDUCT**  
(Report prepared by Lisa Hastings)

**PART 1 – KEY INFORMATION**

**PURPOSE OF THE REPORT**

In accordance with the District Council’s complaints procedure, the Monitoring Officer has considered that it is appropriate to report the external Investigation Report to the Town and Parish Standards Sub-Committee to conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

**EXECUTIVE SUMMARY**

A complaint was received in December 2013 from a member of the public, Mrs Lee regarding the actions of an Alresford Parish Councillor, Simon Carlsson-Browne under the Members’ Complaints Procedure (**Appendix 1**), which was adopted by full Council on 26 November 2013.

The complaint is summarised as a lack of consultation and declaration of interests in relation to allocation of sites within the District Council’s Draft Local Plan. The public were not made aware of the St. Andrew’s Close site option which it is alleged was suppressed from consultation. The use of Cockaynes Lane was not communicated and Councillor Carlsson-Browne lives in St. Andrew’s Close. As the Councillor was chairman of the Planning Committee he had a responsibility to ensure consultation was undertaken with residents on the content of the draft local plan.

The Councillor responded that the Planning Committee’s meetings were held in November and December 2012, the first being inquorate therefore a second meeting was called to ratify the decision and approve the submission to by Alresford Parish Council to Tendring District Council. Meetings were properly advertised.

After considering responses from both parties, the District Council’s Monitoring Officer decided on 9 January 2014 that it was reasonable and appropriate that this matter merited further investigation (**Appendix 2**).

Both parties were informed of the decision to investigate and that the Council had appointed Tim Earl, Head of Legal Services at Suffolk County Council to undertake the investigation on the District Council’s behalf.

The final report was received on 29 July 2014, which concludes that there is evidence that the Members’ Code of Conduct has been breached (**Appendix 3**).

In accordance with the District Council’s procedures, paragraph 7.1.2, the Monitoring Officer has decided that this matter should be reported to the Town and Parish Standards Sub-Committee to conduct a hearing before deciding whether the Member has failed to

comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

In March 2014, the District Council's Standards Committee approved the Hearing Procedures which are to be followed by both the Committee and the Sub-Committee when holding a hearing (**Appendix 4**). Both parties have been provided with a copy of the Report and the Procedures.

#### **Consultation with the District Council's Independent Person:**

*The Independent Person has considered the report of the Investigator and found the same to demonstrate a thorough investigation has been undertaken and there is no reason not to conclude with the findings that breaches of the Code of Conduct have occurred. No representation was received in respect of the sanctions however, the Independent Person believes it is necessary for the Parish Council to consider how the Local Plan and impact on Alresford can be moved forward, and drawing a line in the sand and learning from the lessons of the last 12 months. It is understood that the draft Local Plan still requires some decisions in respect of Alresford and proper involvement of all parties is essential.*

#### **Monitoring Officer Recommendation:**

The Monitoring Officer agrees with the Investigators conclusion that the Parish Councillor Simon Carlsson-Browne has failed to comply with the Members' Code of Conduct (paragraphs 8.35 to 8.66 pages 75 to 81 of the Investigation Report) and reference is also made to the additional observations.

A summary of the findings post July 2012, are as follows:

- i. **Has there been any failure to disclose or act upon a non-pecuniary interest?**
  - No (paragraphs 8.35 and 8.36)
- ii. **Has there been a failure to disclose or act upon a pecuniary interest?**
  - Yes and No;
  - The failure to disclose a DPI until October 2012 is a breach of the obligation to disclose (paragraph 8.41);
  - There was no failure to act on a DPI (paragraphs 8.44 and 8.45).
- iii. **Has there been any other breach of the Code or of the 7 principles of Public Life?**
  - a. **Did SCB mislead fellow councillors or members of the public, whether actively or by omission?**
    - Yes (paragraphs 8.47, 8.50, 8.54, 8.56, 8.58, 8.60, 8.61 and 8.62);
    - There was no evidence that promises to contact TDC were carried out;
    - It took a reminder from TDC to resurrect due consideration of the Local plan;
    - The draft submission prepared was wholly inadequate and there is no evidence it was circulated at the meeting;
    - Proper discussions on alternative sites did not take place and

- therefore, not all options were considered by the Committee;
- Councillor Carlsson-Browne was not up to date with the current position regarding all the sites;
  - Reasons given for past decisions were not relevant;
  - Relying on information he knew to be wrong; and
  - Recklessly or deliberately providing flawed information to TDC and the public to justify and seek to prevent proper scrutiny of earlier decision making.
  - Breach of multiple elements of the code including Selflessness, Honesty and Integrity, Openness, Objectivity and Leadership.

**b. Did SCB seek to mislead or improperly influence officers of TDC?**

- No (paragraph 8.65)

The Sub-Committee must reach their decision after following the hearing procedure and considering the comments from the Independent Person and if the decision is contrary to the recommendation from both the External Investigator and the Monitoring Officer, the detailed decisions must be recorded and published within the Decision Notice.

If the Sub-Committee agree with the recommendation it must consider what action to take where a Member has failed to comply with the Code of Conduct and the available sanctions are referred to in paragraph 8 of the Council's Complaints Procedure. The Additional Observations made by the Investigator at paragraphs 9.1 to 9.9 are relevant in this regard.

**RECOMMENDATION**

**That the Town and Parish Standards Sub-Committee determine whether Councillor Carlsson-Browne has failed to comply with the Members' Code of Conduct and considers what action, if any, the Sub-Committee should take as a result of the failure, after considering all representations.**

**APPENDICES**

- Appendix 1 – Complaints Procedure
- Appendix 2 – Monitoring Officers Decision 9<sup>th</sup> January 2014
- Appendix 3 - Investigation Report dated 29<sup>th</sup> July 2014
- Appendix 4 – Hearing Procedures

## **TENDRING DISTRICT COUNCIL COMPLAINTS PROCEDURE**

### **1. Context**

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted member (with voting rights) of this Authority (‘Tendring District Council’ or of a Town or Parish Council within its area (see 1.3.below)) has failed to comply with the Member Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the Member Code of Conduct.
- 1.2 Under **Section 28(6) and (7) of the Localism Act 2011**, Tendring District Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the Authority (*or of a Town or Parish Council within the authority’s area*), or of a Committee or Sub-Committee of the Authority, has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Town and Parish Councils within the Tendring District are set out on the Council’s website.
- 1.4 Such arrangements must provide for the District Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation against a Member, which it has decided shall be investigated, and whose views can be sought by the District Council at any other stage. The Council has adopted an Independent Person Protocol which sets out some general principles.

### **2. The Member Code of Conduct**

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is available on the website or on request from reception at the Council Offices.
- 2.2 Each Town or Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council’s Code of Conduct, you should visit the website operated by the Town or Parish Council or request the Town or Parish Council Clerk to allow you to inspect the Town or Parish Council’s Code of Conduct.

### **3. Making a complaint**

- 3.1 If you wish to make a complaint, please write to or email:

The Monitoring Officer, Tendring District Council  
Corporate Services, Town Hall, Station Road  
Clacton-on-Sea Essex CO15 1SE

[standards@tendringdc.gov.uk](mailto:standards@tendringdc.gov.uk)

The Complaints Form can be downloaded from the website.

3.2 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of member misconduct. This information will be retained by the Council for a period of two years in accordance with its Retention and Destruction Policy. The Council has adopted a Monitoring Officer Protocol which sets out some general principles.

3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form which is available on request from the reception at the Council Offices or via the website. You must also include all relevant information relating to the complaint which you have to enable it to be fully considered.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. The name and address of a complainant will be provided to the member that is the subject of the complaint. In exceptional cases, we may agree to withhold your name and address from the member. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form along with the reasons why you feel it is necessary for your name and address to be withheld. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.

3.4 The authority does not normally investigate anonymous complaints, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct and there is a clear public interest in doing so.

3.5 Following receipt of your complaint, the Monitoring Officer will: -

- (a) acknowledge receipt of your complaint within 5 working days of receiving it;
- (b) notify, within 5 working days, the member that is the subject of the complaint that you have made a complaint about them and provide them with the information set out on the complaint form; excluding any personal information but including your name and address, unless this is to be withheld in accordance with section 3.3 above; and
- (c) keep you and the Member that is the subject of the complaint informed of the progress of your complaint.
- (d) Your complaint will be given a reference number which will appear on complaint documentation to preserve the privacy of the complainant and the subject Member until the complaint outcome is determined.

3.6 The Complaints Procedure Flowchart is set out at the end of this procedure for reference.

3.7 The Complaints Procedure follows the principles of natural justice and the presumption of innocence until proven otherwise.

#### 4. Will your complaint be investigated?

4.1 The Monitoring Officer will review every complaint received and, may consult with one of the Independent Persons before taking a decision as to whether the complaint:

4.1.1 Merits no further action

4.1.2 Merits early informal resolution or mediation

4.1.3 Merits further investigation.

4.2 In reaching a decision in respect of how to progress the complaint the Monitoring Officer will take account of the following factors where appropriate:-

- Was the Member acting in their official capacity?
- Was the Member in office at the time of the alleged misconduct?
- Is the complaint of a very minor or trivial nature?
- Is the complaint vexatious or malicious?
- Are there historical matters?
- Is there a potential breach of the Code?
- Assessment of public interest?
- Is additional information required prior to making a decision?

4.3 The decision as to how the complaint is to be progressed will normally be taken within 15 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria included at **Annex D (set out at the end of this procedure for reference)**.

Where the Monitoring Officer has taken a decision, you will be informed of the decision and the reasons for that decision. The Monitoring Officer may require additional information in order to come to a decision, and may come back to you for such information. In the absence of a response from you within 15 working days the Monitoring Officer may close the complaint. Information may be requested from the member against whom your complaint is directed to enable the Monitoring Officer to take the decision. In the absence of the subject Member's response within 15 working days the Monitoring Officer may proceed with the complaint.

Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer *may* also inform the Town or Parish Council of your complaint and seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.

Any failure to comply with the time scale by the Monitoring Officer or parties concerned will be notified to the Standards Committee or Sub-Committee together with reasons for the delay and the member subject of the complaint and the complainant will be kept informed of progress and reasons for the delay.

4.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally through informal resolution, without the need for a formal investigation. Such informal resolution may involve notifying the Group Leader and the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or

agreeing to mediation and/or other remedial action by the authority. Where the Member or the Authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

Where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required for informal resolution or mediation; this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.

- 4.5 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

## **5. Referral to the Standards Committee or Sub-Committee and how is the Investigation conducted?**

(The Committee and Sub-Committee Terms of Reference are included at **Annex C (set out at the end of this procedure for reference)**).

- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints a summary of which is attached as **Annex E (set out at the end of this procedure for reference)**.

The Council has a Town and Parish Councils' Standards Sub-Committee which has responsibility for dealing with complaints regarding the actions of a Town or Parish Councillor, reference to the Sub-Committee throughout this procedure relates to the Town and Parish Council's Standards Sub-Committee.

- 5.2 If the Monitoring Officer decides that a complaint merits further investigation without referral to the Standards Committee or Sub-Committee, he/she will commission the investigation to be undertaken by a suitably qualified investigator with requisite experience and may include another officer of the Council, a senior officer of another authority or an appropriately experienced consultant, ensuring that independence and impartiality is maintained.

When deciding that a complaint merits further investigation, the Monitoring Officer may, in exceptional circumstances, refer the matter to the Council's Standards Committee or Sub-Committee, with a recommendation together with any information received from either the complainant or member who is the subject of the complaint. The Committee or Sub-Committee, upon consideration of this recommendation and information, may decide that the complaint merits no further action, conciliation or similar resolution.

- 5.3 The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet you or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen and who needs to be interviewed.

- 5.4 As referred to in section 3.5, upon receipt of your complaint the member that is the subject of the complaint will ordinarily be informed that you have made a complaint about them and will be provided with details of the complaint. If an investigation is to be undertaken, the Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with full details of your complaint, (including your name and address but excluding any additional or sensitive personal information) and formally ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is felt appropriate to continue to keep your identity confidential or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay providing full details of the complaint to the member until the investigation has progressed sufficiently.
- 5.5 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will, in all cases, send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matters in that draft report which you disagree with or which you consider requires more consideration.
- 5.6 Having received and taken account of any comments which you, or the Member that is the subject of the complaint, may make on the draft Investigation Report, the report will be finalised. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer together with a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct.
- 6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
- 6.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer’s report and may consult with the Independent Person(s). If he/she is satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the member concerned (*and, if appropriate, to the Town and Parish Council, where your complaint relates to a Town or Parish Councillor*), notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigation Final Report. The Monitoring Officer will also notify the Standards Committee or Sub-Committee and the relevant Independent Person.
- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.



**7. What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either refer the matter for a hearing before the Standards Committee or Sub-Committee or in consultation with one of the Independent Persons seek an informal resolution or mediation.

7.1.1 Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with one of the Independent Persons and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or mediation and/or other remedial action by the Authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee or Sub-Committee (*and the Town or Parish Council*) for information, but will take no further action.

7.1.2 Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or the councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Standards Committee or Sub-Committee which will conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

At the hearing, following the Council's procedures, a copy of which will be provided, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Standards Committee or Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Standards Committee or Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Members of the Standards or Sub-Committee, after hearing all the evidence and information, may adjourn the meeting for a short period and deliberate together in private. The hearing will then be reconvened and the Decision will be announced in public. It is expected that this will usually be on the same day.

The Standards Committee or Sub-Committee, with the benefit of any comments or advice from one of the Independent Persons, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the decision is contrary to a recommendation from the Investigating Officer and/or Monitoring Officer, detailed reasons will be required to be published in the Decision Notice. The Decision of the Standards Committee or Sub-Committee will also be reported to the next meeting of Full Council.

If the Standards Committee or Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Committee or Sub-Committee will then consider what action, if any, the Committee or Sub-Committee should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Committee or Sub-Committee will give the Member an opportunity to make representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

## **8. What action might the Standards Committee or Sub-Committee take where a member has failed to comply with the Code of Conduct?**

8.1 The Standards Committee or Sub-Committee has the power to take action in respect of individual Members as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct. Accordingly the Standards Committee or Sub-Committee may:-

- 8.1.1 Publish its findings in respect of the Member's conduct on the Council's website;
- 8.1.2 Report its findings to Council (*or to the Town or Parish Council*) for information;
- 8.1.3 Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.1.4 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.1.5 Instruct the Monitoring Officer to (*or recommend that the Town or Parish Council*) arrange training for the member;
- 8.1.6 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that the Member be removed (*or recommend to the Town or Parish Council that the Member be removed*) from all outside appointments to which he/she has been appointed or nominated by the authority (*or by the Town or Parish Council*);
- 8.1.7 Recommend to relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the withdrawal of (*or recommend to the Town or Parish Council that it withdraws*) facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or

- 8.1.8 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the exclusion of (*or recommend that the Town or Parish Council exclude*) the Member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 8.2 In each circumstance, where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required, this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.
- 8.3 In each circumstance, where the Standards Committee or Sub-Committee recommend the Group Leaders take action, it is expected that the Group Leader will within 6 weeks of the referral to them, or as soon as reasonably practicable thereafter, submit a report back to the Standards Committee or Sub-Committee giving details of the action taken or proposed to comply with the Committee's direction.
- 8.4 The Standards Committee or Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' special responsibility allowances.

## **9. What happens at the end of the hearing?**

- 9.1 At the end of the hearing, the Chairman will state the decision of the Standards Committee or Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Committee or Sub-Committee resolves to take.
- 9.2 Within 5 days, the Monitoring Officer shall prepare a formal Decision Notice in consultation with the relevant Chairman of the Standards Committee or Sub-Committee, and send a copy to you and to the Member (*and to the Town or Parish Council if appropriate*), make that Decision Notice available for public inspection and, report the decision to the next convenient meeting of the Council for information.
- 9.3 Should a police investigation result in a Member being convicted of a criminal offence the Monitoring Officer in consultation with an Independent will determine whether it is in the public interest for the matter to be reported to Council for information. In such circumstances the Group Leader will also be consulted and notified of the decision accordingly.

## **10. Who forms the Standards Committee or Sub-Committee?**

- 10.1 The Standards Committee will comprise of 7 District Councillors;
- 10.2 The Standards Town and Parish Sub-Committee will comprise of 3 District Councillors and 3 Town and Parish Councillors (nominated by the Association of Local Councils);

- 10.3 At least one of the three Independent Persons must have been consulted on their views and taken into consideration before the Standards Committee or Sub-Committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

## **11. Who are the Independent Persons?**

- 11.1 The Council has appointed three Independent Persons to support the Standards Committee and Sub-Committee.
- 11.2 An Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.
- 11.3 Section 28 (8) of the Localism Act 2011 provides the definition and restriction of the Independent Person. The Council has adopted an Independent Person Protocol which sets out some general principles.

## **12. Revision of these arrangements**

The Council may by resolution agree to amend these arrangements, upon the advice of the Monitoring Officer where it is necessary, fair, proportionate and expedient to do so.

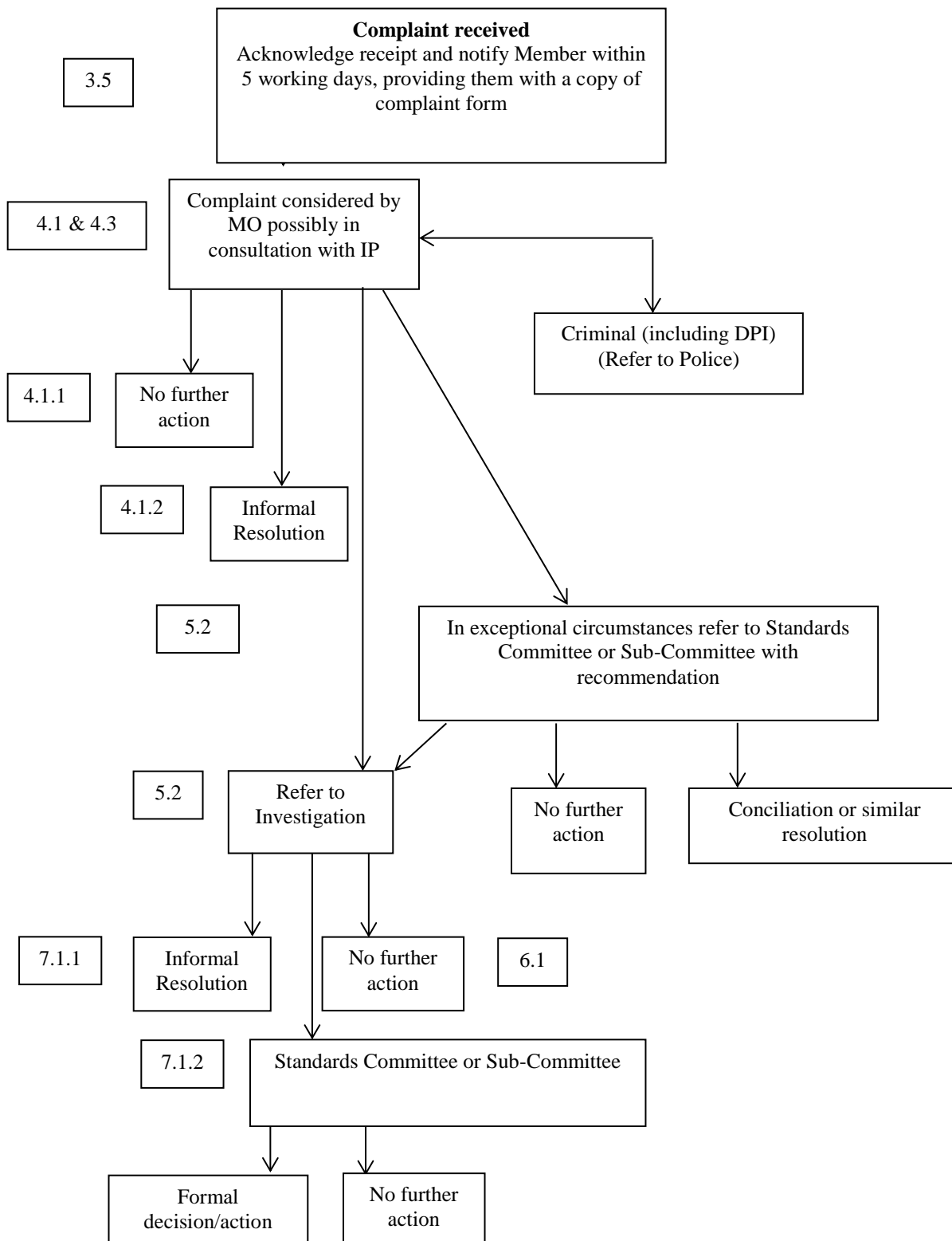
## **13. Appeals**

- 13.1 There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Standards Committee.
- 13.2 If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

## ANNEX B

This Flowchart is to be read in conjunction with the Tendring District Council's Complaints Procedure

(Reference is made to the relevant paragraphs of the Procedure in the boxes on the left hand side)



## **ANNEX D**

## **CONDUCT COMPLAINTS ASSESSMENT CRITERIA**

### **Complaints which would not normally be referred for investigation or to the Standards Committee or Sub-Committee**

1. The complaint is not considered sufficiently serious to warrant investigation;
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”;
3. The complaint appears to be politically motivated;
4. It appears that there can be no breach of the Code of Conduct; for example that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision;
5. It is about someone who is no longer a Councillor
6. There is insufficient information available;
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances, e.g. an allegation of bullying, harassment etc.
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out;
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Member Development and Conduct Committee;
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

### **Complaints which may be referred to the Standards Committee or Sub-Committee**

1. It is serious enough, if proven, to justifying the range of sanctions available to the Standards Committee or Sub-Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or
3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to consider; or
4. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to consider; or
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him/her to consider.

**Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers’ and Members’ time. This is an important consideration where the complaint is relatively minor.**

## **ANNEX E**

### **STANDARDS COMPLAINTS INVESTIGATION PROCEDURE**

#### **1. Planning Stage:**

Upon receipt of an instruction to carry out an investigation the Investigator should :-

- Acknowledge receipt of the instruction to conduct the investigation.
- Maintain a written record throughout the investigation.
- Assess whether any additional information is required from the complainant.
- Identify the paragraph(s) of the Member Code of Conduct that are alleged to have been breached.
- Identify the facts which will need to be determined to establish if the Member has breached the Member Code of Conduct.
- Identify the evidence that is needed to determine the issues.
- Consider how to undertake the evidence gathering.
- Identify how long it is likely to take to conduct the investigation.

#### **2. Evidence Gathering Stage:**

- Contact the complainant to request any supporting or documentary evidence relating to the complaint.
- Contact the subject member with details of the complaint and seek an explanation.

#### **3. Interview Stage:**

- Identify witnesses.
- Arrange interview dates.
- Conduct interviews (with complaint, subject member and witnesses).

#### **4. Report Stage:**

- Review evidence from interviews and any documentary evidence provided.
- Draft the report to contain :-
  - Agreed facts
  - Facts not agreed and corresponding conflicting evidence
  - Conclusions as to whether a breach has occurred.
  - Where a draft report is issued this will be supplied to both the complainant and subject member for comment.

In all cases the Investigator will issue a final report and the Monitoring Officer will then determine appropriate action to be taken in line with the report conclusion

## Monitoring Officer (Tendring District Council)

### Decision Notice

This Decision records the outcome of the Decision taken by the district Council's Monitoring Officer on 9<sup>th</sup> January 2014 in accordance with the Tendring District Council's arrangements for dealing with an allegation that an elected member has failed to comply with the Members' Code of Conduct.

These arrangements were approved by full Council on 26<sup>th</sup> November 2013.

<b>Councillor:</b>	Simon Carlsson Browne of Alresford Parish Council
<b>Complainant:</b>	Jane Lee
<b>Relevant Paragraph(s) of the Members' Code of Conduct:</b>	All paragraphs of the Code of Conduct are alleged to have been breached in addition to the interest provisions.
<b>Summary of Complaint:</b>	Lack of consultation and declaration of interests in relation to the allocation of sites within the District Council's Draft Local Plan. The public were not made aware of the St. Andrew's Site option which it is alleged was suppressed from consultation. The use of Cockaynes Lane was not communicated and Councillor Carlsson Browne lives in St. Andrew's Close. As the Councillor was chairman of the Planning Committee he had a responsibility to ensure consultation was undertaken with residents on the content of the draft local plan.
<b>Councillors Response:</b>	Planning Committee Meetings were held in November and December 2012, the first being inquorate therefore a second meeting was called to ratify the decision and approve the submission to by APC to TDC. Meetings were properly advertised.
<b>Monitoring Officer Recommendation:</b>	Due to the content of the complaint it is reasonable and appropriate that this matter merits further investigation.
<b>Relevant Paragraph of Complaints Procedure and assessment criteria:</b>	<b>4.1, 4.2 and 4.3</b>
<b>Reasons for Decision:</b>	Both parties' comments have been sought and it is necessary for an investigation to be carried out to ascertain whether interests were properly disclosed and subsequently declared at the relevant meetings where matters are being discussed. Additional information is required to assess the position and will



	<p>become available through an independent investigation. Due to the public interest and a potential breach of the Code of Conduct, it is not appropriate to take no further action or seek informal resolution, due to the nature of the allegation.</p> <p>The Independent Person has been consulted and agrees with the approach to be followed and decision of the Monitoring Officer that further investigation is required.</p>
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**Signed:**

**Dated:**

**Monitoring Officer**

# AN INVESTIGATION AND REPORT PREPARED ON BEHALF OF TENDRING DISTRICT COUNCIL

INVESTIGATING OFFICER – TIM EARL

29<sup>th</sup> July 2014

## **1. Introduction**

1.1 I am Tim Earl, the Investigating Officer in this matter. I am the Head of Legal Services and the Deputy Monitoring Officer at Suffolk County Council. I have no personal relationship with anyone employed by the Tendring District Council or any of the individuals interviewed or contacted as a part of this investigation.

1.2 I wish to express my thanks to all those who attended for interview, or provided me with a written account of their involvement or knowledge of the matters making up this investigation, albeit that in some instances those responses were delayed. That is not intended to be a criticism. The conclusions of this report could have important consequences for those involved and it warrants care and attention.

1.3 I have been provided with, or been able to locate, most of the documentation that I have requested. Where this has not been possible, it is referred to in the text. I am happy to review the matter should those documents become available.

1.4 I have been provided with the facilities of the Town Hall, Clacton-on-Sea to conduct interviews.

## **2. Key**

2.1. Initials have been used throughout the main body of the report:

APC: Alresford Parish Council

CAG: Cockaynes Action Group

CPB: Coastal Protection Belt

EO: Cllr Ernie Osborne, Alresford PC

DPI: Disclosable Pecuniary Interest

FB: Cllr Frank Belgrove, Alresford PC

GA: Gary Ashby, Planning Officer, Tendring DC

GG: Gary Guiver, Planning Policy Manager, Tendring DC  
GS: Cllr Gary Scott, Tendring DC  
JL: Jane Lee, Complainant  
JP: Jennifer Pettitt, Clerk, Alresford PC  
LH: Lisa Hastings, Monitoring Officer, Tendring DC  
MR: Martin Ricks, Assistant to Investigating Officer  
SCB: Cllr Simon Carlsson Browne, Alresford PC  
TDC: Tendring District Council  
TE: Tim Earl, Investigating Officer

2.2. Appendix 1 is a map of Alresford parish, to the extent necessary for this investigation. It sets out the areas of land proposed for development.

### **3. Scope of the Investigation**

3.1. On the 22<sup>nd</sup> November 2013 Jane Lee, a resident of the parish of Alresford, submitted a complaint against Councillor Simon Carlsson Browne, stating that he had breached the member's code of conduct for the Alresford Parish Council due to his dealings with the local plan and in particular the recommendation of land within the parish for potential housing development.

3.2. The complaint form gives the following as specific criticism of Councillor Carlsson Browne:

- a. *"In relation to the local plan. The consultation between Nov 12 – Jan 13 was not communicated to residents in any meeting in that period":*
- b. *"St Andrews Close Site option [was] suppressed and only [came] to light from FOI requests to TDC";*

- c. *“The use of Cockaynes Lane on the local plan was not communicated to fellow [councillors] or residents and therefore no objection [was] received in [the] consultation period”.*
- d. *“Cllr Carlsson-Brown lives in St Andrews Close – Pecuniary Interests?”*

3.3. These complaints were supported by a detailed analysis of the apparent issues, a timeline and a substantial amount of supporting documentation was attached. Having regard to that documentation, it is clear that the scope of the complaint is wider than it appears at first. At paragraph 3.15, I set out what I consider to be the totality of the complaint, which encompasses the concerns specified above.

3.4. On the 17<sup>th</sup> January 2014, I was commissioned by Lisa Hastings, the Monitoring Officer at Tendring District Council, to complete an investigation and report into a potential breach of the member’s code of conduct by Councillor Carlsson Browne.

3.5. Following contact with the police – to clarify only whether they had any intention of investigating matters – interviews and requests for additional information took place in March through to June.

### **The Law**

3.6. It needs to be noted at the outset that this report addresses matters that occurred both before and after the introduction of the Localism Act 2011.

3.7. On the 1<sup>st</sup> July 2012, the Localism Act brought in the requirements to adopt a new code of conduct for members of, amongst others, parish councils. On that date, the old code ceased to have any effect, even if a new code had not yet been formally adopted by a council.

- 3.8. Tendring District Council adopted its first version of a new Code of Conduct, under the Localism Act, in May 2012. It then adopted a revised and lengthier, version of the Code in November 2013. Usual practice is for parish councils to consider and adopt the code prepared by the District.
- 3.9. There is no reference to the Localism Act or the need for a new code in the minutes of Alresford Parish Council meetings around the Spring/Summer of 2012, as one might expect, though there is reference and material relating to Disclosable Pecuniary Interests in the July 2012 minutes.
- 3.10. Alresford Parish Council adopted the first (May 2012) version of the Tendring District Council Code on the 3<sup>rd</sup> October 2012. A copy is attached at Appendix 2.
- 3.11. Whilst the new code had not been formally adopted by 1<sup>st</sup> July 2012 and so there was a 'gap' of three months, I do not consider this to be a crucial point as a parish councillor would, in any event, still be subject to the law and the principles of public life.
- 3.12. To understand how a breach of the code might have arisen, it is necessary to explore the position before and after the Localism Act came into force.
- 3.13. Before the 1<sup>st</sup> July 2012, Alresford Parish Council operated under the 'model code', introduced in the Local Government Act 2000 and updated in May 2007. The relevant parts of that code, applicable to all councillors, are:
- i. The 10 Principles of Public Life. Of these, the most relevant to this investigation are those regarding 'disrepute' and 'improper advantage'.

- ii. Personal Interests. This is an interest over and above that of a member of the public but not one that is a prejudicial interest. Such an interest must be registered and declared, usually at the start of a meeting.
- iii. Prejudicial Interests. This is an interest in a particular matter that a member of the public, knowing of it, would consider so significant that it is likely to prejudice the councillor's dealings on the matter. The councillor must declare the interest and leave the meeting for that item, save that it is permissible to speak as a member of the public.
- iv. Dispensations to speak, where one had a Prejudicial Interest, are available in very limited circumstances.

3.14. After the 1<sup>st</sup> July 2012 the Localism Act simplified the code. Regardless of whether such was formally adopted, councillors are under an overriding duty to comply with the following:

- i. The 7 Principles of Public Life. These are: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- ii. Non-pecuniary interests. These are any interests that the council in question has decided should be disclosable, or that the councillor feels should be disclosed under the 7 Principles. Such interests should be registered and, if so, these need not be further disclosed at subsequent meetings.
- iii. Disclosable Pecuniary Interests. A specific list, covered by statutory instrument of business and wider financial interests a councillor may have. These must be registered. The councillor

must leave the meeting for that item, save that it is permissible to speak as a member of the public.

- iv. Dispensations to speak, where one has a Disclosable Pecuniary Interest, are available in limited circumstances.

3.15. Tendring District Council's Monitoring Officer has confirmed that under the Localism Act 2011 and commencement orders, only breaches which existed and had been investigated as at 1<sup>st</sup> July 2012 survived the change in legislation. Therefore, my investigation and analysis of any events pre-July 2012 are purely matters of background information, intended to present context to the elements of the complaint which are alleged to have occurred thereafter. It would be impossible to complete this investigation properly without full consideration of its historical aspects.

3.16. Having regard to all of the above, the questions I have considered are:

Before 1<sup>st</sup> July 2012:

- i. Was there any failure to disclose or act upon a personal interest?
- ii. Was there any failure to disclose or act upon a prejudicial interest?
- iii. Was there any other breach of the code or of the 10 Principles of Public Life? Specifically:
  - a. Did Councillor Carlsson Browne mislead fellow councillors or members of the public, whether actively or by omission?
  - b. Did Councillor Carlsson Browne seek to mislead or improperly



influence officers of Tendring District Council?

1<sup>st</sup> July 2012 to date:

- i. Has there been any failure to disclose or act upon a non-pecuniary interest?
- ii. Has there been any failure to disclose or act upon a pecuniary interest?
- iii. Has there been any other breach of the code or of the 7 Principles of Public Life? Specifically:
  - a. Did Councillor Carlsson Browne mislead fellow councillors or members of the public, whether actively or by omission?
  - b. Did Councillor Carlsson Browne seek to mislead or improperly influence officers of Tendring District Council?

3.17. I have applied the civil standard of proof to my investigation. The police have indicated that they do not intend to investigate these issues. Given the higher standard of proof the police operate under, their decision is of only passing relevance to this investigation.

#### **4. Interviews**

4.1. I have interviewed, or received correspondence from, the following:

- a. Alan Diggins, Resident, Alresford
- b. Cllr Simon Carlsson Browne, Alresford PC
- c. Cllr Ernie Osborne, Alresford PC
- d. Cllr Gary Scott, Tendring DC
- e. Gary Guiver, Planning Policy Manager, Tendring DC

- f. Gary Ashby, Planning Officer, Tendring DC
- g. Jane Lee, Complainant
- h. Jennifer Pettitt, (former) Clerk, Alresford PC
- i. Lisa Hastings, Monitoring Officer, Tendring DC
- j. Kevin Harkin, Acting Clerk, Alresford PC
- k. Russell Milburn, Resident, Alresford

4.2. With agreement of all interviewees and the Monitoring Officer I have tape recorded the interviews in order to assist me in the preparation of the report.

4.3. The parish clerk, Jennifer Pettitt, was not contacted until later in the investigation, due to her absence on sick leave and, when contact became necessary, restrictions due to arrangements for her leaving her role with Alresford Parish Council.

4.4 It has been clear throughout my dealings in this matter that there is a deep and bitter division between members of the parish council, not simply borne of this issue. These personal differences have been a distraction from the parish council's work at a time when the village itself was deeply divided over the housing proposals.

## **5. Documentation**

5.1. I have requested and/or been supplied with the following key documents, referred to within the body of the report. This is not an exhaustive list of all documents I have considered:

- a. The Complaint and all attached documentation
- b. The minutes of Alresford Parish Council (including Planning Committee) between 2011 and 2013
- c. Emails and written communications passing between various parties

- d. Map of Alresford
- e. Relevant parts of the (draft) Local Plan(s).
- f. Materials supplied to the Complainant under Freedom of Information Enquiries.
- g. Correspondence from the Monitoring Officer, including the decision to proceed to investigation.
- h. Both the old and new websites for Alresford Parish Council, found at:
  - i. <http://www.alresfordpc.com/notices/minutes/>
  - ii. <http://www.essexinfo.net/alresford/>

5.2. I have also considered guidance and statutory materials:

- a. Openness and Transparency on Personal Interests, DCLG 2013
- b. The Relevant Authorities Regulations 2012
- c. Tendring District Council Complaints Procedure
- d. Standards for England Website (archived).
- e. The Local Authorities (Model Code of Conduct) Order 2007
- f. Tendring District Council Code of Conduct 2012
- g. Standards for England Website (archived).
- h. The Localism Act 2011
- i. The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012

5.3. This latter is the provision for pre-2012 complaints to be concluded, referred to at 3.15, above. It means that, in this case, a committee considering this case can only address and impose sanctions for any breaches of the Code that occurred after the 1<sup>st</sup> July 2012.

5.4. These lists are not exhaustive.

## **6. General consideration – events before 1<sup>st</sup> July 2012.**

### **6.1 26<sup>th</sup> October 2011**

6.1.1 On the 26<sup>th</sup> October 2011 the minutes of the Planning Committee show that SCB chaired that meeting. At that meeting, 'Station Road' was chosen as the preferred option for new development. No declarations of interest were made by SCB and no dispensation was given. Given the very close proximity of his home to one of the proposed sites, I asked SCB whether he considered that he had a prejudicial interest in that discussion; whether he failed to declare it; and whether this represented a breach of the code?

6.1.2 SCB responded to me that this was, "*spuriously brought forward*". He went on that, "*APC were merely asked to comment*". This latter point is correct. The APC had no power to determine the housing allocation under the local plan. However, it was in a position to influence it. Given the time devoted to this issue, including subsequent public meetings and written representations, that ability to influence should be regarded as significant for the people of Alresford.

6.1.3 SCB went on to state that:

*"Were one to read the minutes in detail, it would become evident that the planning meeting was upgrading the request so a public meeting was arranged and the matter was discussed at the next meeting of the APC. I fail to see how a transparent action to engage more parishioners in the planning process could possibly breach the code. The relevance of any of the councillors' residences to such a decision is, in the true meaning of the word, an irrelevance"*.

6.1.4 I find this paragraph troubling, containing as it does either a lack of understanding of the duties and obligations of a councillor or a superficial analysis of the issues.

6.1.5 The Minutes themselves state the following, under the heading of "Future Housing Development in Tendring":

*"This matter discussed at length. [My underlining] It was agreed that a further meeting should be held early in November following a meeting with the Planning Advisor.....*

*..... future planning sites in Alresford were for 115 houses behind Station Road/Cockaynes Lane... .. and 48 houses on land at the end of St Andrews Close... [which was] designated as Grade 1 agricultural land.*

*.....the site at the rear of Cockaynes Lane/Station Road was the committee's preferred option....."*

- 6.1.6 What is clear is that neither SCB, nor any other councillor, considered it necessary to declare any interest in this item, notwithstanding that SCB lived very close by to the land at the end of St Andrews Close. SCB chaired the meeting that discussed this matter at length and owed, if anything, an enhanced duty to ensure that he and fellow councillors complied with the code. The issue of the councillors' residences is not irrelevant, but is in fact crucial to determining whether the code has been breached or not.
- 6.1.7 Further, the fact that the committee agreed to adjourn the decision to enable reconsideration or further public involvement does not override the basic duty to declare interests. This was a formal meeting, chaired and minuted and the outcome of an item cannot be used as a justification for the failure to follow basic procedure, after the event.
- 6.1.8 Whilst those present most likely knew where each other lived (that might not have been the case had any members of the public attended) that does not absolve them from declaring this, if the location of their residence meant that they had an interest in any item on the agenda.

6.1.9 It is helpful here to refer to an example of a prejudicial interest given by the Standards Board for England in its Guide for Members of 2007:

*“Example: you would have a prejudicial interest in a planning application proposal if a member of your family lives next to the proposed site. This is because your family member would be likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward affected by the decision (or authority, if your authority does not have wards) and this gives you a personal interest in the issue. The existence of the close family tie means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. It does not matter whether it actually would or not.”*

6.1.10 At first sight, this example of a planning issue seems to be directly applicable to the current case, only here the relationship between SCB and the issue is closer. As SCB lives very close to the land at the end of St. Andrews close, he has a personal interest due to proximity and potential impact on his immediate neighbourhood.

6.1.11 However, is his also a prejudicial interest? Is SCB affected to a greater extent by this issue than the majority of the inhabitants of the parish? SCB might argue that the various pieces of land within consideration under the Local Plan meant that many parishioners would be affected, but within the minutes of this meeting there are only really two options considered that are of any real significance and, whilst they might impact upon everyone to a greater or lesser extent, the majority did not stand to be affected at the same level as SCB. Whilst he does not have to have a direct financial interest in the land in question, I am not satisfied that SCB would be able to rely upon this as an exemption from declaring a prejudicial interest.

6.1.12 As already stated above, the final choice of land for building was a decision for TDC not APC. However, APC was in a position to

influence it and to make a decision upon what was its preferred site. This is an important responsibility and I am satisfied that such a decision is subject to the requirements of the code.

6.1.13 The minutes state that the land at the end of St. Andrew's Close was designated as, "*Grade 1 agricultural land*". Grade 1 is the highest grade of land, most suited for agricultural purposes. This is dealt with further below.

6.1.14 I raised a number of enquiries with JP, including asking for copies of certain minutes. In response I received copies of two sets of minutes, one of which was a copy of the minutes from this meeting (which I had not requested as I already had a copy taken from the old APC website).

6.1.15 Whilst the minutes were very similar, they were not the same. Unlike the minutes from the website (Fig. A), those sent to me by JP (Fig. B) did not contain the following sentence:

*"The site at the end of St. Andrews Close was also designated as Grade 1 agricultural land".*

Fig. A:

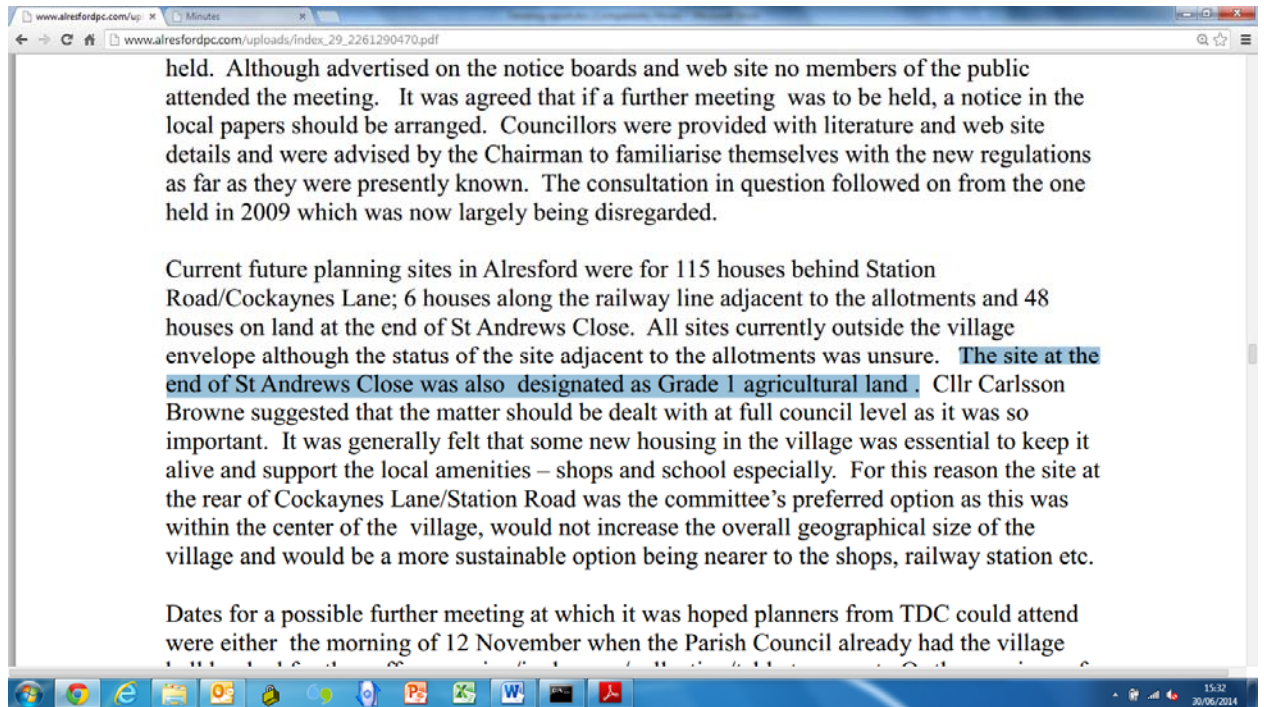
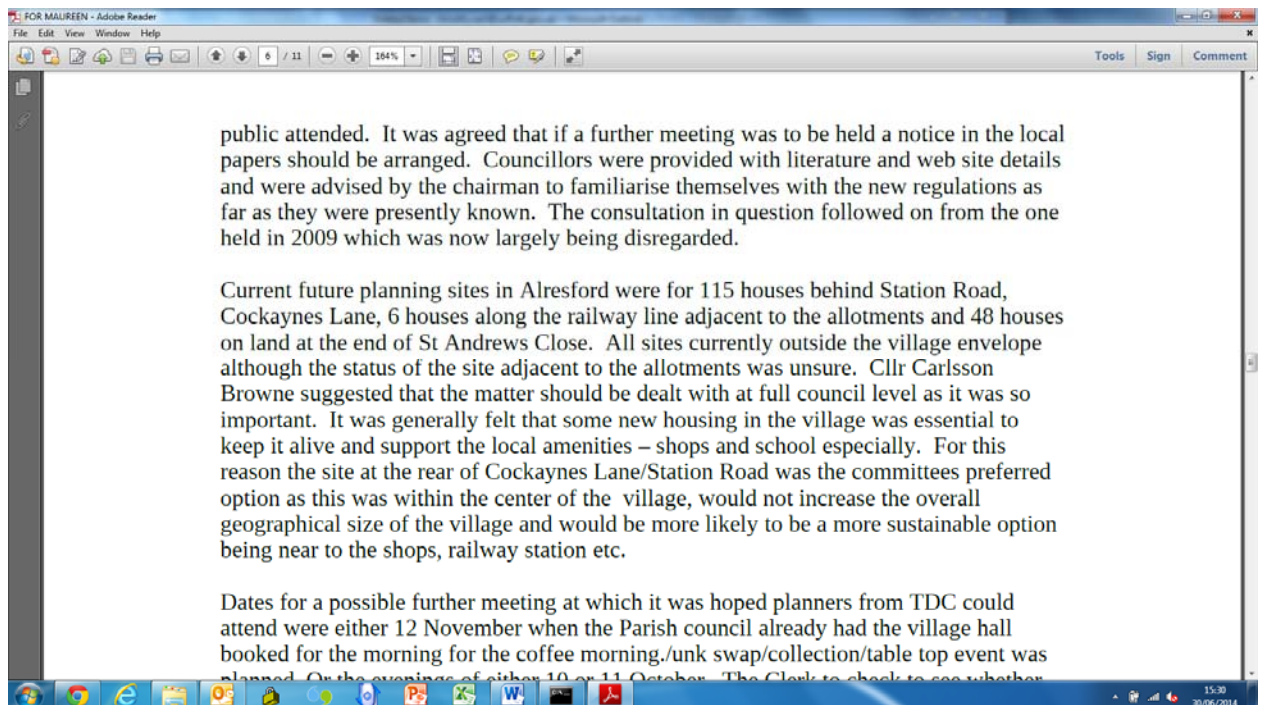


Fig. B:





6.1.16 JP did not suggest that the minutes she sent me were draft minutes, nor did she explain why they had been sent to me, when I had not requested them. There may be a number of explanations for the discrepancy. However, it is clear that the reference to Grade 1 agricultural land was considered of such significance that it was either added to, or removed from the minutes at some point.

6.1.17 What is perhaps surprising is that SCB was not more strongly dismissive of the St. Andrews Close option at the meeting on the 26<sup>th</sup> October 2011.

6.1.18 At this time, SCB appears to have been outwardly conscious of the importance of this matter. He stated, as is recorded in the minutes, that:

“.....the matter should be dealt with at full council level as it was so important”.

6.1.19 However, this approach was not applied consistently throughout APC's dealings with this matter and the issue was not regularly placed upon the full Council agenda.

6.1.20 The fact that there is further reference to St. Andrew's Close in these minutes, does not square with the complaint that it was suppressed as an option and only came to light following FOI requests:

*“Current future planning sites in Alresford were for 115 houses behind Station Road/Cockaynes Lane; 6 houses along the railway line adjacent to the allotments and 48 houses on land at the end of St. Andrew's Close”.*

6.1.21 That does not readily fit with the suggestion that SCB sought to limit awareness and subvert the process.

6.1.22 Further, choosing the land at the rear of Cockaynes Lane/Station Road as the preferred option would, all things being equal, be a perfectly reasonable decision for the Committee to have reached, for the reasons that are set out in the minutes.

## 6.2 **31<sup>st</sup> October 2011**

6.2.1 On this date there was a meeting at Weeley regarding the Neighbourhood Plan process under the Localism Act. A lot of the discussions were not directly on point, but they are suggestive of a planning system that was very much in a state of flux and one that for APC, or any other parish, meant that, whilst opinions were welcome, the process and the need for more or formal consultation would develop over time.

6.2.2 Present at the meeting were GA, SCB, EO, JP and APC councillors Coates (Chairman) and Housden. APC had expressed an interest in pursuing a Neighbourhood Plan but intended to find out all the facts before making a decision. The notes (of GA, not formal minutes) record:

*“GA gave a brief update on where TDC is with its Local Development Framework (LDF): TDC published its draft Core Strategy last October, which contained broad proposals for growth in Tendring. Alresford Parish Council had engaged in that process and TDC has its comments / formal representations on file.*

*These draft proposals generated much local objection – particularly the draft proposals around Clacton. TDC Members requested the current consultation to give local people the chance to comment on the main housing issues – including number of homes that need to be planned for, where these should be located and types of housing.*

*Following this consultation – and in light of the emerging national planning policy framework – TDC will need to decide whether to amend its housing strategy, or not. GA advised that this could reopen the debate around possible expansion of Colchester eastwards into Tendring, which is one of a number of possible sensible options the Council will need to consider”*

6.2.3 Importantly:

*“A new draft plan could be prepared and published for consultation towards the end of 2012 with further opportunity for public consultation.”*

6.2.4 GA, at paragraph 6 of these notes, provided the following advice on the possible housing sites promoted for development by third parties:

*“Three sites have been promoted for development in Alresford, by third parties. All three are outside the current settlement development boundary, as shown in the current Adopted Local Plan.*

*Whilst TDC has not formally expressed support for any of the three sites submitted, it is assumed the proposed level of planned growth suggested in the draft Core Strategy last October for Alresford would have been accommodated on land currently outside the settlement development boundary. As part of this current housing consultation TDC is keen to hear the Parish Council’s views on the three sites, or if there is any further land which could accommodate some planned growth. The Parish Council is advised to consider the potential benefits that could come from helping to plan for a small amount of growth through the plan-led process rather than simply responding to planning applications, where decisions about design and layout have already been made. Also consider possible benefits that could come from new development and the pressure TDC will be under to meet market demand.”*

6.2.5 Again, significantly, at paragraph 7 of his notes, GA concluded the meeting by providing the following advice:

*“It is suggested the Parish Council awaits the enactment of the Localism Bill, adoption of the National Planning Policy Framework and publication of the Essex-wide guidance. The Parish Council is advised to continue to engage in the LDF/district plan process (GA was keen stress that all previous comments and representations remain valid). The Parish could consider preparing a Village Design Statement instead of a Neighbourhood Plan – as this could achieve similar objectives but would be much easier to prepare. Contact Rural Community Council for Essex for more information or check their website ([www.essexrcc.org.uk](http://www.essexrcc.org.uk)). Contact GA at TDC for an update on the NP process early in 2012.”*

6.2.6 The importance of these comments is that, save for identification of possible sites, APC and SCB were very much given the impression that there was no need for immediate action, that they should await further developments and make contact early in 2012. Whilst the crossover between the Village Design Statement, the Neighbourhood Plan and the Local Plan is not always clear, in the light of this, it is my view that the expectations placed upon APC, the Planning Committee and SCB in particular were, at this stage, quite low and that full scale involvement of the community could have been considered as premature.

### 6.3 **2<sup>nd</sup> November 2011**

6.3.1 On the 2<sup>nd</sup> November 2011 the minutes of the 26<sup>th</sup> October were presented to the full Council. Again, no declarations of interest were made by SCB and no dispensations were given.

6.3.2 However, the discussions on this matter appear to have been limited to procedural matters around the need for a local planning meeting. The

date chosen was the 12<sup>th</sup> November, which did not allow much time for notices to be prepared and published. In my view, this was not a reasonable timescale. However, the minutes state that the reason for the alacrity was because the 12<sup>th</sup> November was,

*“.....the only day the TDC materials could be made available. Cllr Osborne to collect these and deliver them back to Weeley. Clerk to do local notices and put the event in the local papers”.*

6.3.3 So, again, it is difficult to be critical of SCB in this regard. He placed this issue before the full Council; the arrangements for the event appear to have been governed by TDC requirements; and the particulars for advertisement were appropriately delegated.

6.3.4 In his written response to the complaint, SCB states,

*“It is quite wrong to say there has been no or inadequate consultation around the draft local plan. At least two public meetings were held in Alresford Village Hall during 2012 called by TDC relating to the draft plan. I attended both meetings which were poorly attended by members of the public. These meetings were advertised by APC in the usual way on the parish noticeboard by the clerk”.*

6.3.5 It is a moot point as to whether similar public meetings would have been arranged, had it been left to APC.

#### 6.4 **12<sup>th</sup> November 2011**

6.4.1 I have canvassed the views of various parties. There is no evidence that this scheduled meeting took place.

## 6.5 **24<sup>th</sup> November 2011**

6.5.1 The Planning Committee next met on the 24<sup>th</sup> November 2011, as recorded in the December 2011 minutes of the full Council. There is no reference in these minutes to the meeting on the 12<sup>th</sup> November 2011 having taken place. Furthermore, there is no reference to the matter of the Local Plan.

## 6.6 **7<sup>th</sup> December 2011**

6.6.1 SCB was not present at the December 2011 full Council, due to illness.

6.6.2 There is then a long gap with no reference in any minutes (either of full council or of the Planning Committee) of anything to do with the Local Plan until May 2012.

6.6.3 However, I cannot access the minutes of February 2012 – the new website simply says that the parish clerk has a copy of these. I have not been able to access a copy of these minutes.

## 6.7 **2<sup>nd</sup> May 2012**

6.7.1 On the 2<sup>nd</sup> May 2012 the minutes of full Council show that SCB declared an interest in a matter relating to outline planning permission for a property in St Andrews Close. This confirms that SCB understood the need to make declarations in some circumstances.

6.7.2 However, he did not disclose an interest in the subsequent item regarding the Local Plan. This item followed an email from GA regarding further proposed sites for housing. I set out the email in full (it appears at Appendix 4 of the minutes of the 2<sup>nd</sup> May 2012, which I located on the old website (which is still available)). There is no evidence of further contact made by APC prior to this, following the meeting of the 31<sup>st</sup> October 2011.

*“From: Gary Ashby*

*Sent: 18 April 2012 03:36*

*Subject: Further possible housing sites promoted by third parties*

*Dear Parish Clerk,*

*As part of the preparation of a new Local Plan for the Tendring area which, amongst other things, will need to identify sites for housing development to meet the needs of a growing population, the Council invited third party landowners and developers to put forward their ideas and suggestions for which sites could be earmarked for housing or mixed-use development.*

*As I am sure you will recall, as part of last year’s housing consultation exercise we published a document showing the sites that had been put forward by third parties for the Council to consider for inclusion in the new Local Plan (I emailed you a link to this last October but if you wish to view this document again please click [here](#)). Since last year’s consultation, we have received another 59 suggestions to add to the 167 sites we had on our original list. These additional 59 sites are included in a ‘Volume 2’ document which can be viewed using the following link:*

*Possible Housing Sites Volume 2.*

*It is very important to point out that these sites have been promoted by third parties, not the Council. At this stage, the Council has not approved any of these sites for inclusion in the new Local Plan, but it is highly likely that some (but certainly not all) will be needed to deliver the number of new homes needed over the next few years.*

*If your Parish/Town Council has any comments on these further 59 sites please respond by Friday 11th May 2012 either by email or in writing to me at the address below.*

*Kind regards,*

*Gary Ashby BSc(Hons) PGDip*

*Planning Officer*

*Planning Department*

*Tendring District Council”*

6.7.3 A number of things can be drawn from this:

- i. Firstly the email reinforces the limited authority of APC in any matters concerning the Local Plan.
- ii. Secondly, the timescale for a response was tight.
- iii. Thirdly, the matter had been brought to full Council, not dealt with in Planning Committee, as one might expect had SCB been attempting to subvert due process.
- iv. Lastly and most significantly, this appears to have been the first dealings that anyone at APC had with regard to the Local Plan for some time.

6.7.4 The actual time spent on this matter appears to have been very limited and is recorded thus:

*“Please see email from Gary Ashby at Appendix 4 re new sites. Councillors and Gary Ashby were to have an informal meeting regarding the draft revised TDC Local Plan on 8 May.”*

6.7.5 It appears that SCB was unaware of the need to declare an interest in this matter, at all, during this period. However, I have no reason to



believe that SCB was purposely failing to disclose an interest, rather this was due to the attitude demonstrated at paragraphs 6.1.2 and 6.1.3, above.

## 6.8 9<sup>th</sup> May 2012

6.8.1 This is where the timeline and history begins in the complaint. As stated above, it does not take into account the previous dealings on this matter and as such, does not have the benefit of considering the earlier actions of SCB.

6.8.2 On the 9<sup>th</sup> May (not 8<sup>th</sup>, as anticipated by the minutes of the Council meeting on the 2<sup>nd</sup> May), the following met with GA at JP's home; SCB, EO, JP and APC councillors Wiggins and Housden.

6.8.3 Two sets of notes exist for this meeting, one for TDC (which appear to have been drafted with the benefit of sight of the APC notes) and the other for APC. Both refer to the meeting as "informal". The APC notes suggest the meeting was called by GA, though it is not clear why this would be.

6.8.4 JL states that the two sets of notes conflict in terms of what was agreed.

6.8.5 I have looked at the minutes. The most significant difference appears to be the references, or lack of, to St. Andrews Close.

6.8.6 From the TDC notes;

*"It is noted that vehicular access would need to be [agreed for the Station Road/Cockaynes Lane site] in advance. If this cannot be provided it was agreed that this site should be discounted. If this happened, the next best site might be land south of St. Andrew's Close*

*– which does have vehicle access and is close to key services and facilities”.*

6.8.7 From the APC notes;

*“The councillors attending felt that the proposed development between Station Road/Cockaynes Lane would be a good site and a good opportunity to develop the village ..... There might be problems with access – access from Cockaynes Lane was not really an option. Other sites in the village mentioned, but this particular site was thought to be the best option”.*

6.8.9 There is a clear difference in the recording here, with the APC notes, failing to mention St. Andrew’s Close as a “next best site”.

6.8.10 It must be noted that these are not formal minutes and should not be relied upon as such.

6.8.11 There is a question mark about whether SCB should have been conscious of his interest in these issues and ensured that any meeting was properly constituted and formally minuted, with declarations as necessary.

6.9 **10<sup>th</sup> May 2012**

6.9.1 An email sent to JP, by GA, states;

*“If [the Station Road/Cockaynes Lane site is discounted] does the Parish have any views as to where the 47 new homes could be provided? The next best site in our view is land south of St. Andrew’s Close – which does have vehicle access and is close to key services and facilities. I await your views on this.”*

6.9.2 This mirrors the TDC minutes. GA was, understandably, unable to recall the exact conversations of the 9<sup>th</sup> May, but commented to me:

*“.....at that stage, I think we flagged that it [St. Andrew’s Close] could be a potential site but there were these other designations on that site that we picked up that ruled it out but it would have flagged up that it could have been looked at it more closely as an option, I guess.”*

6.10 **17<sup>th</sup> May 2012**

6.10.1 JP sends an email to GA in response to his of the 10th. She says:

*“....since the meeting we have heard that access to the land behind Station Road would be in Cockaynes Lane, and I am not sure this would be agreed, as it is a very quiet country lane and quite unsuitable. The land at the end of St. Andrew’s Close was disregarded previously as it is “Coastal protection” I think. Anyway, I will get the views of the others and pass these on.”*

6.10.2. The next day, GA says:

*“.....whilst the St. Andrews site is within the coastal protection belt at the moment, this is of course the appropriate time to review that designation.....”*

6.11 **29<sup>th</sup> May 2012**

6.11.1 There was a meeting of the Planning Committee on this date.

No minutes are available. It is not known if any interests were declared. However, from consideration of the minutes of the next full Council meeting it does not appear that there were any further significant discussions on the Local Plan at that meeting. By this time, SCB must have been aware of, at least, the proposed choice of Cockaynes Lane as, see paragraph 6.12.2 below, he promised to contact GA to discuss

the matter.

## 6.12 6<sup>th</sup> June 2012

6.12.1 Save for what is quoted below, it appears that no further action was taken, prior to the matter coming before full Council on the 6<sup>th</sup> June. That is not unreasonable of itself, given the apparent importance of the matter and the previous similar decision.

6.12.2 Once again, SCB did not declare any interest in the item regarding the Local Plan, which is recorded in the minutes as follows:

*“(ii) Please also see report on informal planning meeting with Gary Ashby of TDC on 9 May. Cllr Carlsson Browne advised that he had tried to contact Gary Ashby regarding access to the proposed site from Station Road and that he would report back in due course regarding this.”*

6.12.3 Whilst I am not certain exactly when SCB became aware that TDC were likely to propose Cockaynes Lane as the potential access point for the Station Road/Cockaynes Lane option, it does seem clear from all of the above is that APC maintained an open opposition to that possibility. However, did SCB properly pursue this with GA, as promised?

6.12.4 Whilst the appendices to the 6<sup>th</sup> June minutes are not correctly numbered, what is significant is that it is the TDC notes that appear as the unnumbered appendix to these minutes, not those of APC. See the screen-prints from the APC website (Figs. C and D). This means that the minutes record that St. Andrew's Close was discussed as the next best site. There is no evidence that these were added after the event.

Fig. C:

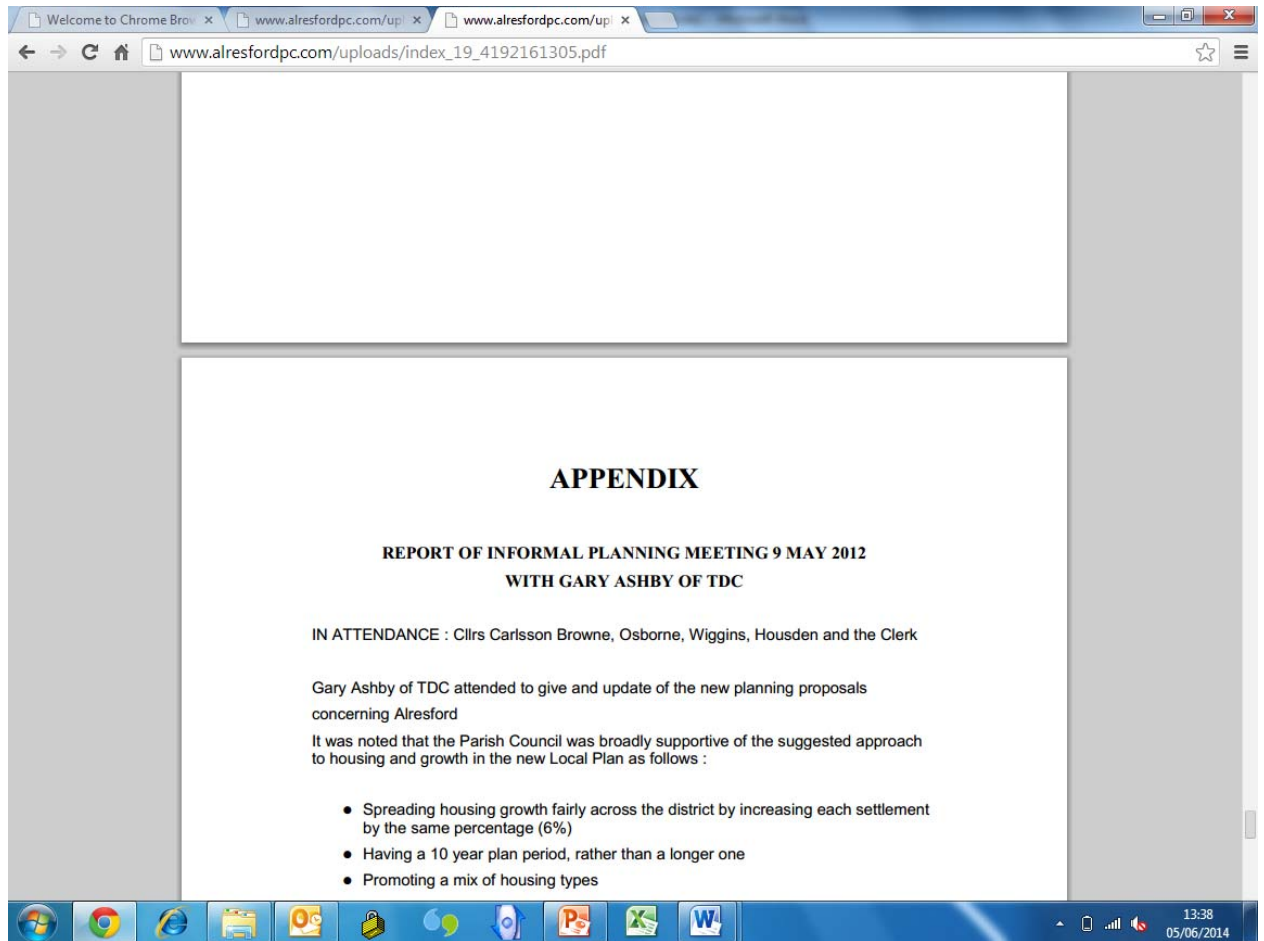
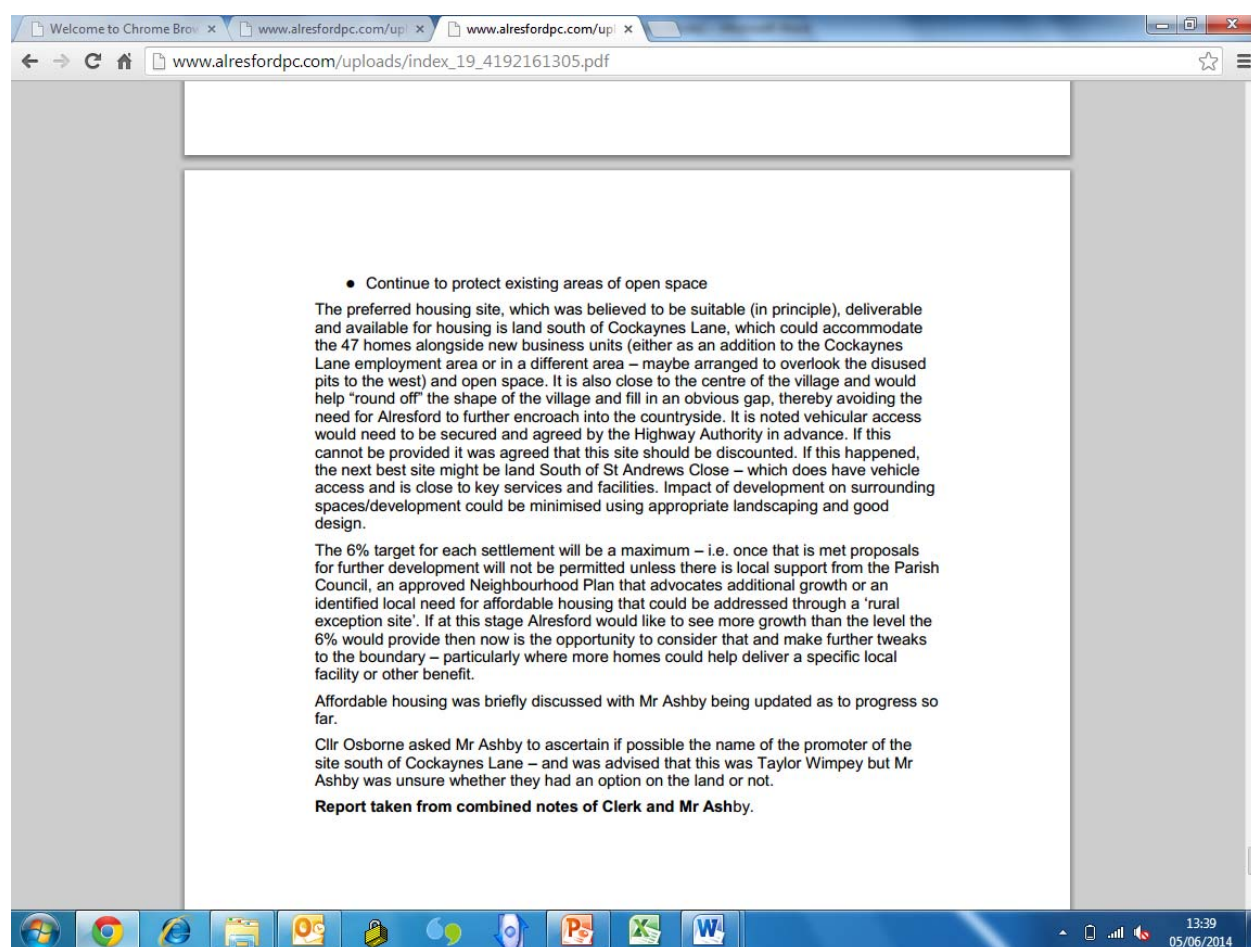


Fig. D:



6.12.5 This is not what would be expected if SCB had been attempting to suppress the St. Andrew’s Close site as an option.

6.12.6 The minutes record that the question of access is then left to SCB to speak to GA and that he would report back in due course regarding this. I can find no evidence that he did so, at this time.

### 6.13 12<sup>th</sup> June 2012

6.13.1 The paperwork supplied by JL shows the following:

- i. 12<sup>th</sup> June 2012. GA emails JP to chase APC’s response to the Local Plan. He specifically refers to land off St. Andrews Close as a “*possible alternative site*”.

- ii. 12<sup>th</sup> June 2012. JP responds that *“the land at the end of St. Andrews Close is part of the Coastal Protection Zone (we don’t know why, but apparently it is)”*.
- iii. 12<sup>th</sup> June 2012. GA emails JP and says that the coastal protection can be altered and again asks what about St. Andrew’s Close if the first option cannot go ahead.
- iv. 13<sup>th</sup> June 2012. JP responds saying she’ll check with all - says SCB is *“away (at Le Mans!)”*.
- v. 14<sup>th</sup> June 2012. GA emails JP again and says that land off St. Andrews Close is *“a good sensible second choice”*.

6.13.2 In his written response to LH and in his interview with me, SCB confirmed that he had not opened the subsequent email from the clerk as his father had just died and he had been caring for his mother. Therefore his, “plate was well and truly full” and this was not at the top of his agenda.

6.13.3 When subsequently asked about this as follows,

*“You confirmed that you had not opened the subsequent email from the clerk as you had been caring for your mother. Given the significance of this matter and your Chairmanship of the Planning Committee, do you accept that, personal circumstances notwithstanding, this was a significant failing?”*

6.13.4 SCB replied,

*“I don’t consider this an issue. I had explained my circumstances to the clerk and that I was taking a limited role.....”*

*....there were other planning committee members circulated. I don't know whether they replied.....*

*With due respect, I think it impertinent to ask the question as phrased. For the record, my father had died, I had to deal with his estate and transfer a mother with dementia to a safe environment. I was not in the least interested in the petty considerations of the complainant, nor indeed, had I been aware of them, were they on my priorities of matters to be dealt with. Having spoken to the clerk I would have expected Cllr Osborn, as the chairman of APC to have taken up the task, such as it was."*

6.13.5 One might question how these difficulties fit with the 13<sup>th</sup> June response from JP – that SCB was in Le Mans (at the 24-Hour race) – but the two things are not necessarily mutually exclusive. However, there is nothing in the emails from JP that points to the personal circumstances of SCB requiring the other councillors to give closer attention to this matter.

6.13.6 It is clear from this exchange that GA was specifically raising a question about the possibility of St. Andrew's Close being included in the Local Plan as, at least, an alternative option.

6.13.7 If SCB was dealing with personal family matters then it is understandable that the Local Plan and indeed his duties as a councillor took a back seat. This would also explain why he failed to contact GA, as agreed.

6.13.8 However, he was under a residual duty to ensure that matters were properly dealt with in his absence. SCB says that he spoke to the clerk about this, so it may be that he considers he made alternative arrangements. JP confirms she was aware of his personal circumstances and that other councillors should have been more proactive. It would have been more sensible and appropriate to have



spoken to Cllr Osborne directly to ensure this important issue was addressed. I am not convinced that it was sufficient to simply expect this matter to be picked up by other councillors, nor am I convinced that SCB made suitable alternative arrangements.

6.13.9 In isolation, under these circumstances, failure to respond would probably not be a breach of the code. However, the point made by JL is that this fits into a pattern of conduct by which SCB has avoided the consideration of St. Andrew's Close as a potential option. Furthermore, in the absence of any response, these issues should have been placed on the APC agenda at the next possible opportunity. However, it is not the purpose of this investigation to consider why this was not done by, ostensibly, the clerk.

6.13.10 It is worth noting that by this time APC councillors are aware that there will be a public consultation on the plans in the autumn of 2012, according to the APC notes of the 9<sup>th</sup> May.

## **7. General consideration – events after 1<sup>st</sup> July 2012.**

### **7.1 1<sup>st</sup> July**

7.1.1 Localism Act 2011 comes into force.

### **7.2 4<sup>th</sup> July 2012**

7.2.1 Whilst there is no discussion about the Localism Act and the new code is not adopted at the Council meeting on this date, the Chairman does remind councillors of the importance of declaring interests.

7.2.2 There was also a motion that meetings should be recorded. This was defeated on the basis that it was considered unnecessary and unhelpful.

- 7.2.3 There is a question mark here about when and how the new Register of Interests comes into being, having regard to the change in the type of interests to be registered. SCB would need to declare his home on the new register as a Disclosable Pecuniary Interest (DPI).
- 7.2.4 Once so registered, SCB was, unlike previously in terms of a prejudicial interest, not required to disclose it as an interest at any meeting considering the matter of the Local Plan, as a matter of course.
- 7.2.5 That means that from hereon, there cannot possibly be any case against SCB for failing to declare a DPI, unless the Register of Interests did not properly reflect his residence in the parish.
- 7.2.6 Unfortunately, the new code was not adopted by APC until October 2012. Further, the new Register of Interests was not created and then published until much later.
- 7.2.7 The old register would have remained available. Further, all councillors would have been in the same position. However, this is an investigation concerning SCB.
- 7.2.8 On balance, I do not believe that there was any attempt by SCB to 'hide' the fact of his residence in Alresford. However, this does amount to a technical (yet fundamental) breach of the code, made more significant because of the role played by SCB in the important matter of the Local Plan. A newcomer to the village might not have known where SCB lived and thus be disempowered, so the absence of the Register is of concern.

### 7.3 **24<sup>th</sup> July 2012**

- 7.3.1 The minutes of the Planning Committee meeting on this date are not available.

7.4 **5<sup>th</sup> September 2012**

7.4.1 There being no August meeting, the next full Council meeting was on the 5<sup>th</sup> September. SCB was not available as his mother had been rushed into hospital. JP simply confirms for the record that there was a Planning Committee meeting on the 24<sup>th</sup> July and the minutes are approved.

7.5 **3<sup>rd</sup> October 2012**

7.5.1 Nothing further happens until the October full Council meeting.

7.5.2 The minutes record that during the public forum:

*“Commenting on the Draft Local Plan with possible development behind the houses in Station Road and with possible access onto Cockaynes Lane, Mr Milburn was advised by Cllr Carlsson Browne that a meeting had been held in May with Gary Ashby, a planner from TDC, who had been advised that the entrance to the site from Cockaynes Lane was inappropriate and there was potential access near to the old Crossways shop. This land was unregistered so identification of the owner was not possible but residents and Councillors felt that they knew who this was. Mr Ashby had agreed that Cockaynes Lane was a wrong place for the entrance. An alternative preferred option site was the field at the end of St Andrews Close but parking in this area would be a problem and the presence of glow-worms rendered the site unlikely for development.”*

7.5.3 A number of points arise.

- i. This appears to confirm that the last discussions of any relevance, concerning the Local Plan, happened in May 2012,

as it is those SCB refers to. There is no evidence that SCB had contacted GA in the interim.

- ii. Secondly, it is made clear (as it always has been) that access along Cockaynes Lane is not appropriate.
- iii. It also highlights St. Andrew's Close as an, "*alternative preferred option*" (which, in actual fact, may have stated the position too highly).
- iv. There is not, anywhere in the documentation, any suggestion that the concerns regarding the wildlife no longer existed, thus APC was correctly appraised of the position.
- v. There is no mention of the CPB, nor of the agricultural grade of the land at this time.
- vi. The reference to parking simply states it might be a problem. Anyone looking at the access road would see the potential for this to be the case, so it is a relatively uncontroversial point.
- vii. Finally, no other councillor present takes issue with the summary as given by SCB.

7.5.4 In his interview with me GG confirms that the minutes accurately reflected the position at that time,

*"At that stage, I'd have probably written it off on the basis that if you've got alternative sites that don't have wildlife, the logic is that you try and bring those forward. So, as soon as I realised that this had been suggested for a local wildlife site, I would probably not thought of that as an alternative at that point. It was only when we started to get the lobbying and the pressure when we started to look at this more closely."*

7.5.5 I consider that if the officers of TDC were of this mind then the position taken by SCB was, assuming good faith, entirely reasonable. Both have confirmed to me that they did not feel influenced by SCB and came to their position against the St. Andrew's Close site, entirely on the facts as they saw them.

7.5.6 There is further reference to the Local Plan later in the minutes, in the report from the District Councillor, Gary Scott.

*“Cllr Scott had had a meeting with Planner Gary Guiver at TDC who was under the impression that Alresford had not commented on the proposed Local Plan. The Clerk to write to Mr Guiver and advise him of the meeting with Mr Ashby and send the reports of that meeting to him. Cllr Carlsson Browne asked Cllr Scott to speak to his contact at TDC and ask him to contact the Parish Clerk if they wanted to have contact with the Parish Council. Cllr Scott agreed to do this. Cllr Scott said that he should be part of the interface on any follow up meeting and that he felt that the consultation period was far too short. Meanwhile, he would try to arrange a further meeting with Mr Guiver if necessary so that members of the public could learn what was proposed. If access to the site was to be via Cockaynes Lane it would be necessary to consult with ECC Highways. The road surface would have to be improved and the speed limit lowered. Cllr Carlsson Browne asked Cllr Scott to set up a further meeting with Mr Guiver asap.”*

7.5.7 In my view, GG's understanding was correct. There had been no response from APC to the emails of June (above). Remedial action was proposed by SCB, though without seemingly understanding or accepting this omission – that action should have been taken much earlier and not have waited for GG to remind APC, via GS.

7.5.8 The TDC code of conduct was also adopted at this meeting, as seconded by SCB. Councillors were advised of the need to sign the new Register of Interests.

7.6 **7<sup>th</sup> November 2012**

7.6.1 There was no reference to the Local Plan at the full Council meeting on this date. Further there is no evidence of any Planning Committee meetings taking place between 24<sup>th</sup> July and this date. Certainly none is referred to in the full Council minutes.

7.7 **9<sup>th</sup> November 2012**

7.7.1 TDC publishes the Local Plan. It should be noted that this had been approved for publication by TDC in September 2012. The land proposed for development is the Station Road/Cockaynes Lane site, with vehicular access off Cockaynes Lane.

7.8 **28<sup>th</sup> November 2012**

7.8.1 The Planning Committee met on the above date. However, it was not quorate, only SCB and EO being present, supported by the clerk.

7.8.2 The submission to TDC concerning the Local Plan is referred to at paragraph 4. Looking at the minutes of the 28<sup>th</sup> November 2012, I sought clarification of exactly what was meant by the statement, “.....*all the points raised at [the meeting with Gary Ashby] had been included in the submission draft*”? (The underlining is mine). In particular, I wanted to know:

- i. Who was this statement made by?
- ii. Was the ‘submission draft’ circulated at the meeting?
- iii. If so, who had prepared it?

7.8.3 JP states:

*“From memory and based on my usual practice, the statement in question would have been made by the Planning Committee and when it was something that needed to be very clear, I would have asked for the matter to be dictated so that I could record exactly what they required me to say. I would then read this back. I would then send a draft of the document for approval before sending it out”.*

7.8.4 This suggests a high level of accuracy when preparing the minutes.

7.8.5 What SCB says about this, in his written response to the complaint is:

*“...it was agreed that the points raised at the meeting with GA in May should be included in the submission draft to TDC”.* [My underlining]

7.8.6 This is a conflict of evidence. I am satisfied (see also below) that the draft submissions had not been prepared at that time and therefore the minutes were inaccurate, in this respect. But how did this inaccuracy arise? It is possible that JP has, perhaps understandably so far after the event, only a limited recollection of events. It is also possible that an impression was created that matters were rather more in hand than they actually were. Or there might simply have been confusion over the brief response given by JP in her emails of May and June 2012. In terms of the complaint, it is reasonably clear that the ‘consultation’ and the need for responses were live issues for this meeting, had the public attended.

7.8.7 Did the public know to attend? It has been suggested by JL that some of the meetings were not advertised properly to the community, in particular, the meeting of the 28<sup>th</sup> November 2012. This would mean they would have been disadvantaged in responding to the draft Local Plan.

7.8.8 JP confirmed:

*“All public meetings (including committee meetings) were advertised by me – we have two village notice boards and the meeting notices were always posted on them in the correct time scale. One notice board is outside the railway station – opposite the shops and Post Office. The other is on the wall of the village hall.*

*We have several residents who do not use the local shops and do not attend anything in the village hall. The village hall is in Ford Lane, as is the school and church, so anyone going to either of these places, as well as the hall itself, of course, goes past the noticeboard. These residents always complain that they do not see notices. We also put dates of meetings in the Alresford Advertiser which is delivered bi-monthly to every house in the village. Again, there are those who say they do not read it so do not see the notices. We did start about this time to put things on the web site – one of the councillors was doing this but it was extra work and pressure for us all and did not always happen - but the proper notices ALWAYS went up in the proper places.”*

7.8.9 Alan Diggins, a resident of Alresford, mirrors the comments from JL (at 7.8.7, above). He says:

*“The notice of the meeting was poorly worded and did not make it clear that the meeting was arranged to highlight the proposed developments in Alresford. The notice did not specifically note that the public were invited to attend.”*

7.8.10 I am not convinced that the advertisement of meetings is the direct responsibility of SCB, on the basis that this was something that the clerk would attend to and that it would not be usual for SCB to have to ascertain that this had been done correctly.



7.8.11 On balance, I am satisfied that the meetings were advertised, in so much as this was done by the posting of a notice on the APC noticeboard. I cannot find that there was an attempt at suppression at this time. More could have been done to advertise meetings more widely and more clearly. As JL points out, the simple reference to, “...and to consider the response to the Tendring District Local Plan”, might not have been understandable to local residents and they would not have been readily aware of the importance or of the consultation. However, I do not consider that any ‘failings’ in terms of advertising were a breach of the code by SCB.

## 7.9 **5<sup>th</sup> December 2012**

7.9.1 I asked SCB exactly how the decision of the 28<sup>th</sup> November had been ratified at the Planning Committee meeting on the 5<sup>th</sup> December. He said:

*“I think it was just, from what I recall, you know, “We discussed this. Is this alright with everybody? Fine”.”*

7.9.2 This was not appropriate. As SCB now accepts:

*“In retrospect, it may well have been unwise to have discussed with the current chairman of the APC, Councillor Osborne, the local plan at a meeting that was not quorate.”*

7.9.3 It was not simply unwise, it was procedurally wrong, especially having regard to what followed (see below). The meeting on the 28<sup>th</sup> November should properly have been adjourned without discussion on this issue. The discussions cannot have been lengthy as the minutes show that the whole meeting lasted only 35 minutes.

7.9.4 The outcome of the non-quorate meeting on the 28<sup>th</sup> November, including the submission, was dealt with in a purely perfunctory way at

the subsequent meeting on the 5<sup>th</sup> December, by way of ratification. In my view, this was not the right way to deal with this matter, as there is no evidence of proper discussion or consideration of this matter on the 5<sup>th</sup> December. It simply rubber-stamped the actions of the non-quorate meeting.

7.9.5 Councillors Housden and Belgrove, who were present at the ‘ratification’ Planning Committee meeting on the 5<sup>th</sup> December, had not been at the meeting with GA in May 2012, nor at the 28<sup>th</sup> November meeting. It is unfortunate that the minutes do not properly record how they were properly appraised of the issues, in order to ensure the decision made on that date was not flawed due to lack of understanding. However, a simple error of this nature, as opposed to something more purposeful, is highly unlikely to amount to a breach of the code on the part of any member. Rather it is a wider issue for training within APC. In any event, the remedy against simple flawed decision making would be to seek review and the question of the Local Plan has clearly been subject to that already.

7.9.6 At the full Council meeting on the same date, there was a question from a member of the public. The minutes record:

*“[The member of the public] also had issues relating to the TDC draft local plan and wondered which was accurate, the report in the Brightlingsea and Wivenhoe Chronicle or the report in the Alresford Advertiser. Cllr Carlsson Browne advised that the only proposals discussed by the planning committee at a meeting with planners from TDC in May 2012 were those reported at Parish Council meetings but he would find out if there was a cause for the discrepancy between the two reports.”*

7.9.7 There is no subsequent report on this aspect of the matter. It is clear that the principle of the matter being dealt with fully and openly at full Council had, by this time, lapsed.

7.10 **7<sup>th</sup> January 2013**

7.10.1 This is the closing date for submissions from APC on the Local Plan.

7.11 **Unknown date, but before 9<sup>th</sup> January 2013**

7.11.1 A meeting took place between GG, GS and SCB. It is not clear exactly when this happened as no one has been able to confirm the date. However, all recall the meeting taking place. SCB states it was in January 2013. The meeting is referenced in the minutes of the 9<sup>th</sup> January 2013:

*“Cllr G Scott reported that he and Cllr Carlsson Browne had had a meeting at Weeley with Gary Guiver of TDC Planning and had expressed concern...*

*The draft scheme on the whole was for a development behind properties in Station Road, but Cllrs Scott and Carlsson Browne had emphasised that this should only be accessed via Station Road and not via Cockaynes Lane. A further small business development could be sited adjacent to the business units already in place in Cockaynes Lane and they would only be accessed via Cockaynes Lane to keep them well separated from the domestic development.”*

7.11.2 GS comments on the meeting as follows:

*“There was a recommendation [it is not clear when or from whom] that the Chair of the Planning Committee at Alresford Parish Council, Councillor Carlsson Browne, would then meet with Gary Guiver with myself at Weeley to discuss land allocations. If I remember correctly, Simon Carlsson Browne knew that the land allocation at St. Andrew’s Close is near his property, so he declared an interest to say that, “I*

*have to declare an interest”, first because his property is near one of the sites”.\**

[\*Compare with comments of GG at 7.14.29 (below)]

7.11.4 Some discussion followed regarding both sites, culminating in the exchange of views regarding how the Station Road/Cockaynes Lane site could be made to work. GS is clear:

*“Simon and I agreed that no access should be off Cockaynes Lane.”*

7.11.5 This is not quite right, as GS and SCB did not oppose access to the business premises from Cockaynes Lane. GG’s recollection of the meeting is as follows. He does not put SCB’s opposition to access from Cockaynes Lane as highly:

*“Mr. Carlsson Browne and Councillor Gary Scott... ..did come to see me and they suggested that, if this [Station Road/Cockaynes Lane] was to be the allocated site, they reiterated their preference for access by Station Road”.*

7.11.6 The St Andrew’s Close site was clearly discussed at some level, but, for his part, SCB maintains that the St. Andrew’s Close site was still not a serious consideration for TDC:

*“I went to see Gary Guiver with our district councillor and he [GG] then said, ‘Ah, no, because I regard it as a sort of conservation area’.”*

## 7.12 **9<sup>th</sup> January 2013**

7.12.1 SCB appears to have prepared the submission for APC on this date and submitted it the following day. Whilst late, it was accepted. However, it should clearly have been submitted on time and in good order.

7.12.2 I set out the text of the submission in full:

*“Tendring District Local Plan Proposed Submission Draft*

*Response from Alresford Parish Council*

*Policies map inset 7 Alresford*

*In relation to the area in green marked key 1 the area below datum line 16 is acceptable for development, however access should only be from Station Road and specifically not from Cockaynes Lane.*

*Any development of the area coloured purple on the same plan should solely be accessed from Cockaynes Lane and such development should only be within the current use class B1 A user (office).*

*In relation to the policies map insert in relation to Elmstead Heath, the Parish Council thinks that the allocation of 2 properties to this area is ill-advised. The area is not located near the Alresford village centre and the location on a busy main road whose speed limit is not usually kept to provide a serious issue to road safety.”*

7.12.3 The submission was not on headed paper, was unsigned and undated (though it was attached to an email). The submission does not deal with the issues, of the unsuitability of access from Cockaynes Lane, in sufficient detail and does not contain all of the points raised in the meeting with GA in May 2012. Further it does not deal at all with the potential for the land at St. Andrew’s Close to be a second option.

7.12.4 SCB stated in his written response to the complaint,

*“There was then only a short time, with Christmas and New Year intervening, [to] submit APC’s submission to TDC. I did this by email in*

*early January 2013 to meet the deadline. The submission was short, but to the point that APC agreed that the Station Road site was suitable for development but it was again stressed that access should only be from Station Road.”*

7.12.5 In his discussion with me SCB said:

*“I drafted it and I put it to the full council meeting and, after a discussion took place, it was ratified as this being the response from the parish council”.*

7.12.6 And in a written response to further questions, SCB said:

*“The response was sent to Gary Guiver on 10<sup>th</sup> January 2013 by myself by email following the full APC meeting of 9<sup>th</sup> January 2013. I draw your attention to item 01.13.7. I circulated the response round the meeting, but I note that no formal acceptance is minuted.”*

7.12.7 This directly conflicts with the recollections of EO:

*“I wasn’t aware of that document and I wasn’t aware it was sent. It was only brought to my attention by the action group”.*

7.12.8 It also conflicts with the comments made to JL by two other councillors. The minutes of the Council meeting on the 9<sup>th</sup> January 2013 record the discussions regarding the Local Plan. There is no mention of the draft submissions being circulated or discussed.

7.12.9 What JP says about how this would usually be done is as follows, which did not happen in this instance:

*“...this would have been prepared by me in consultation with the Planning Committee and subsequently circulated to the rest of the councillors.*

7.12.10 In this regard SCB said:

*“...on reflection I should have had the minutes amended to reflect the fact that I was authorised to submit the agreed response. I suggest you raise this with our clerk”.*

7.12.11 I am not satisfied with SCB’s response in this regard. The minutes are very detailed and specific on this point and, on balance, I accept their accuracy. In any event, it is an overriding duty of a councillor to ensure the accuracy of minutes at the time and at the next meeting. SCB attributes his failure to correct the minutes at that time to:

*“...a former basis of trust between the councillors, which no longer exists”.*

7.12.12 The minutes clearly record that the only actions agreed on this issue were:

*“...Cllrs Scott and Carlsson Browne had emphasised that [any development behind Station Road] should only be accessed via Station Road and not via Cockaynes Lane. A further small business development could be sited adjacent to the business units already in place in Cockaynes Lane and they would only be accessed via Cockaynes Lane to keep them well separated from the domestic development. The clerk to write to Gary Guiver confirming these suggestions”.*

7.12.13 And:

*“The clerk was asked to add Village/Neighbourhood Plan/Consultation to the February Agenda for further discussion”.*

7.12.14 I have looked carefully at a particular document, which was supplied by JL as a part of her complaint. This document contains a screen print of information that has been gleaned from the systems data relating to the submissions document prepared by SCB, when it was subsequently sent on to Alan Diggins, a local resident. That screen print shows that this document was first prepared by SCB at 18.23 on the 9<sup>th</sup> January 2013 and saved 17 minutes later at 18.40. This is 50 minutes before the scheduled start time of the 9<sup>th</sup> January full Council meeting.

7.12.15 Assuming these timings are correct, it is reasonable to conclude that SCB had drafted these submissions before the meeting and that he could have relied upon them at the meeting. It is of note that they closely match the submissions that the clerk was ultimately authorised to make.

7.12.16 However, there remains no evidence that they were formally distributed to all present.

7.12.17 What is clear from the minutes is that although the draft prepared by SCB closely mirrors the submissions that APC agreed should be made, SCB was not given explicit authority to make any submissions to TDC. Rather this was specifically a matter for the clerk, who, if her usual protocol was to be followed, would have drafted and circulated them before submission.

7.12.18 So, why did SCB make those submissions? He suggests that the minutes are also wrong in this regard, in that he was given express permission to submit the agreed response.

7.12.19 There has been criticism levelled regarding the submissions and it is the case that they were weak, limited and poorly formulated. However, they did not try to manipulate the position adopted by the APC in SCB's



favour. Had SCB being trying to do so, he could have made a distinctly better job of it.

7.12.20 JP had addressed this issue before, in a memorandum to Frank Belgrove, another APC councillor, of the 11<sup>th</sup> November 2013. This was one response following a number of questions asked by FB.

7.12.20 JP states:

*“Why this was done? – I don’t know the answer to this. Again I have asked Simon about this. We had to get the proposed response reported to full council again – remember that we had already done this after the May meeting and advised TDC of our views at that point – but TDC wanted any further responses. And we had very little time – I have emails here recording my complaints about the lack of time. Simon sent an email because it was imperative that something went quickly to TDC”.*

7.12.21 So, JP is clear that SCB submitted the document, in haste. This probably explains the apparent limitations of the submissions, although of course they did cover the two points the clerk was asked to put to GG. However, the original delay was caused entirely by the failure of SCB to deal with matter in a timely fashion.

7.12.22 That said, there were clearly other issues that could have been raised within the submissions. SCB appears to have closed off critical discussions quite quickly (see the passage from the minutes, at 7.12.23, below) suggesting, perhaps subtly, that the residents own apathy, in not attending meetings, was responsible for their lack of understanding of the issues. This is certainly a theme he impressed upon me in his submissions:

*“I would suspect that in many ways, bearing in mind the previous success rate of the Tinnevald estates regarding the land at the end of*

*St Andrew's Close, the complainant should open a betting account on development behind her property taking priority. Always be certain what you ask for? Alternatively, turn up to public meetings. If you don't, you shouldn't complain."*

7.12.23 It is notable also that there is no reference in the minutes to the St. Andrew's Close site, which had been a part of the discussions with GG:

*"Cllr Scott reported that he had had complaints from residents who felt that an overall 6% increase in properties in the village was too much. Others felt that it was not enough. Cllrs L and F Belgrove asked for consideration to be given to a further survey as part of a Village Plan. Cllr Thompson also spoke in favour of a further survey and Cllr F Belgrove agreed that a village consultation should be undertaken. Cllr Carlsson Browne explained that the plan produced by TDC was a draft plan which had already been open to public consultation and an opportunity for residents to express their views had been made available both by the Parish Council at a planning meeting and also by TDC at various venues and on their web site. Cllr Housden referred to the requirement for a percentage of new building to include affordable housing and said that in his experience this only served to reduce the size of any new developments in order for the developers to escape the obligation to build affordable houses which made less profit for them. The clerk was asked to add Village/Neighbourhood Plan/Consultation to the February agenda for further discussion."*

7.12.24 In relation to the subsequent document sent on behalf of APC much later in 2013, which sets out its support for the St. Andrew's Close site in three and one half sides (but again is undated, unsigned and not on APC headed paper) JP says:

*"I do not know anything about this document. If it is one that I have heard spoken about that was sent with no letter heading on it, then it*

*certainly did not come from me and I have no idea how it came to be submitted or from whom.”*

7.12.25 This was (another) deviation from agreed procedure.

This document was clearly not sent by SCB, but has the same flaws, albeit is significantly longer.

7.12.26 It should also be noted that the minutes record that:

*“Cllr Carlsson Browne declared an interest in planning related matters referring to St Andrews Close.”*

7.13 **6<sup>th</sup> February 2013**

7.13.1 The minutes of full Council record the following:

*“Members of the public were invited to address the Council. Mr and Mrs Diggins expressed concern at the proposed housing development behind the houses in Station Road. Planning Committee Chairman Cllr Carlsson Browne, said that he and DC Gary Scott had recently met with Planning Officer Gary Guiver at TDC and had taken the letters from Mr Diggins along to that meeting. It had been stressed to TDC planning that if the area was developed for further housing the entrance should be from Station Road, next to Crossways Shop. and not from anywhere in Cockaynes Lane. It had been suggested that a further small development of business units could be sited alongside the existing units in Cockaynes lane, accessed only from Cockaynes Lane. This would reduce the number of houses built to fulfill the 6% development quota. Mr Diggins said that he did not see the need for further “industrial development” in the village. He still felt that if further housing was to be built, the field at the end of St. Andrews Close would be preferable. Cllr Carlsson Browne pointed out that this field was part of the Coastal Protection Zone and also a protected site because it was an area where considerable numbers of glow worms were to be found.*

*However, Mr Digger's comments re this had been passed to TDC. Cllr Scott further advised that all comments from residents received by TDC about the proposed housing development had been noted and taken into account. Cllr Thompson asked for confirmation that a suggestion that half the proposed number of new houses would have been adequate had been put forward at the meeting. This was confirmed. After discussion, Cllr Osborne asked Mr Diggins what he would like the Parish Council to do. Mr Diggins said that he would like to be able to find out more about the planning proposals and for consideration to be given to the St Andrews Close site. Cllr Scott advised that when Gary Guiver and the planning inspectors had reached their conclusions, these would be discussed in cabinet and then go to full Council for approval (or otherwise) later in 2013. Cllr L Belgrove suggested that Mr Diggins be given the dates of the public meetings so that he could attend and put his views forward if there was an opportunity to do so. Cllr Scott said that he would pass these dates to Mr Diggins once they were known*

*Mr Millburn said that, in view of the comments from Mr and Mrs Diggins, perhaps now was the time to start a Village Plan and perhaps Gary Guiver from TDC could come and speak on the subject. He (RM) would be willing to help with any leaflet drops associated with this."*

7.13.2 SCB did not declare an interest at this meeting, unlike at the 9<sup>th</sup> January meeting. The reality was that it was not necessary for him to do so.

7.13.3 SCB refers to both the CPB (Zone) and the glow-worm problem as reasons why the St. Andrew's Close site was not viable. See further discussion on this point, below.

7.13.4 There is also reference to letters from Mr. Diggins, a resident, being taken to the January 2013 meeting between SCB, GS and GG and that the comments about St. Andrew's Close had been passed on.

7.13.5 There is no evidence that the letters were passed on, nor is it evident that the views of Mr. Diggens were expressed to GG in the terms Mr. Diggens might have anticipated. SCB might say that this was irrelevant, because TDC were of a very clear mind at that time, which was remaining opposed to the option of the St. Andrew's Close site. Further, it had been made clear that submissions could be sent separately.

#### **7.14 13<sup>th</sup> February 2013**

7.14.1 A meeting of the Planning Committee took place, chaired by SCB, with 22 members of the public in attendance.

7.14.2 The Local Plan was not on the agenda. This is very surprising, especially given the attention it had been given at the 6<sup>th</sup> February meeting. However, it quickly became the subject of discussions. JL, in her complaint, states that:

*“APC were asked by members of the public what they were doing about the Local Plan and what their response had been. Main area of discussion was that land rear of Station Road was not suitable and that St. Andrew's Close site was a better option.”*

7.14.3 Whether the St. Andrew's Close site is a better site remains a matter of intense debate. There are always likely to be personal interests at play over such a sensitive issue, including among those who do not have civic responsibilities. SCB feels that he has been blamed unfairly, if not scapegoated, for taking a position that had the potential to impact upon many residents:

*“I suspect the complainant was peeved because she didn't sufficiently investigate the property she currently occupies before buying it”.*

7.14.4 During the discussion, SCB stated that the St. Andrew's Close site had not been put forward by TDC as an option site because,

*".....it had already been designated part of the Coastal Protection Zone, was Class 1 agricultural land and also a wildlife conservation area".*

7.14.5 Having regard to the comments of GG (below) it is clear that only one of these reasons was correct at that time.

### **Agricultural Land**

7.14.6 The land was not (and never had been) Class 1 agricultural land.

7.14.7 In his written response to the complaint, SCB states, when dealing with the reasons why TDC had not put St. Andrew's Close forward as the preferred site:

*"...because of its Coastal Protection Belt designation, its status as Grade 1 agricultural land and it being a wildlife conservation area, all of which were told to me by Gary Guiver of Tendring District Council and which I believed to be true, having been told this by a professional planner".*

7.14.8 However, in his interview with me, Gary Guiver said,

*"I don't recall advising Councillor Carlsson Browne it was Grade 1 agricultural land and, in fact, one of the strong arguments that has been made by the landowner is that they can't cultivate it for agricultural, because it's such a small parcel and the fact that it's been left to turn into a wildlife site – it's not really cultivated in an agricultural sense".*

7.14.9 This clearly presents a difficulty and one that could be suggestive of SCB having taken this view as it best suited his interests.

### **Coastal Protection Belt designation**

7.14.10 SCB gives CPB designation as a reason for the St. Andrew's Close site not being considered as the preferred option at both February meetings.

7.14.11 I explored this issue in my interview with GA. Firstly, due to the wildlife at the St. Andrews Close site (see also below) he stated that the CPB, "*didn't really have any bearing*" on the decision to discount the St. Andrews Close site at that time. He explained that whilst the St. Andrew's Close site was part of the CPB in October 2011, the plan was to change the range of the CPB as it was felt that it was not necessary to have that designation so far inland.

7.14.12 The first formal communication of such a possibility appears in the email from GA to JP of the 18<sup>th</sup> May 2012. See paragraph 6.10.2, above. In response to JP's suggestion that she understood that the land at St. Andrew's Close had been disregarded as it had CPB status, GA says:

*".....whilst the St. Andrews site is within the coastal protection belt at the moment, this is of course the appropriate time to review that designation....."*

7.14.13 Gary Guiver stated,

*"So, although [the St. Andrews Close site] was coastal protection belt in the adopted local plan, we were mindful, and I think we did in the 2012 draft local plan take it out".*

7.14.14 In my view, up until it was removed from the Local Plan in November 2012, it was reasonable for SCB to assume that the CPB was a factor against St. Andrew's Close being the preferred site, albeit not a definitive one. He should have known that removal was a possibility, following GA's first intimation of this on the 18<sup>th</sup> May. I find it difficult to accept that the contents of that email were not made known to SCB.

7.14.15 In addition, GA had, in his emails of June 2012, sent a number of requests for a decision to be made on the St. Andrew's Close land. Whilst SCB states that he never opened the clerk's email asking him to contribute and, assuming for a moment he was unaware of the content of the email of the 18<sup>th</sup> May, there must be a question about whether by that time he should have made efforts to ensure he was up to date with planning issues and that the CPB was no longer the significant issue that he was suggesting. Not to do so was to seriously limit his effectiveness as a councillor and as Chair of the Planning Committee.

7.14.16 However, neither JP nor other councillors (who would not, unlike JL's complaint against SCB, have any basis for avoiding discussion of the St. Andrew's Close site) corrected him on the CPB point, when the prospect of the St. Andrew's Close land was brought up as an option.

7.14.17 At this stage it is worth considering JP's response to FB's (pointed) enquiry on why neither she nor SCB had been forthcoming over the CPB at an early stage. Her response dated the 11<sup>th</sup> November 2013 says:

*"I was not aware that the Coastal Protection Zone could be moved until Gary Ashby said that it could be at the April 2013 meeting. I do not remember hearing this referred to as moveable until that time. We could not therefore reveal that it could be moved prior to this and everyone at the April meeting would have heard about this, presumably for the first time, at that meeting. I have asked Simon about this as well and he said the CPZ was raised at a meeting that he had with Gary*



*Guiver and Gary Scott and the reason it was not mentioned again was because both Simon and Gary Scott had been given to understand that Crestland Wood Meadow [the St. Andrew's Close site] would not be an approved option site due to environmental considerations – glow beetles. He was also surprised to hear that the CPZ could be moved”.*

7.14.18 JP is clearly wrong. She had been aware of emails as long ago as May 2012 that specifically deal with the matter of the CPB. In May 2012, she had also copied a number of councillors, including SCB but not FB, into emails that noted the potential to review the CPB. JP has clearly fallen into error in this regard, though how that occurred is beyond the scope of this investigation.

7.14.19 It will have been noted that in the above passage, JP quotes SCB as saying that the issue of the CPB was raised in the meeting with GG. Assuming that was the case, it could not, having regard to all of the above comments of GG and the change of designation in the draft Local Plan in November 2012, have been discussed in such a way that would lead SCB to believe that the CPB was still an issue. Again, the failure of anyone to correct SCB, as noted at paragraph 7.3.16, above, is of concern.

7.14.20 It is not clear from the collective recollections of the meeting between GG, GS and SCB that the CPB was specifically discussed. However, even JP has wrongly quoted SCB, I would expect that anyone with more than a passing interest in these issues would have fully informed themselves from a thorough reading of the draft Local Plan and associated documentation before making such pronouncements at the February meetings.

7.14.21 At the very least, as Chair of the Planning Committee, SCB had not made himself aware of the possibility of the CPB being removed, nor of the change in the draft Local Plan. This meant that when he (i) sent the submission to TDC on the 10<sup>th</sup> January 2013 and (ii) spoke at the

meetings on the 6<sup>th</sup> and the 13<sup>th</sup> February 2013, he may have discounted the St. Andrew's Close land more readily than he should have done, relying wrongly upon the CPB point.

### **Wildlife Conservation Area/Glow-worms**

7.14.22 In the mind of GA and GG, the presence of glow-worms/glow-beetles appears to have been the real issue with the St. Andrews site, the points above being of limited significance to them.

7.14.23 Whilst JL told me:

“...they are found in crops all over the place, they are not protected and they can be moved”,

7.14.24 GG told me what his view had been during the early stages of his dealing with this matter,

*“It hung on the glow-worms.....it’s a rare breed in Essex.... This is the only site I am aware of, where Essex Wildlife Trust has suggested that there is a population.....it’s a rare species. It’s not a legally protected species; hence the fact that it’s not designated as a site of special scientific interest. But it’s certainly of sufficient value to the Wildlife Trust for them to suggest that it should be protected.”*

7.14.25 He went on:

*“At that stage, I’d probably written [the St Andrew’s land] off on the basis that, if you’ve got alternative sites that don’t have wildlife, the logic is that you try and bring those forward. So, as soon as I realised that this had been suggested for a local wildlife site, I would probably not have thought of that as an alternative at that point.”*

7.14.26 This was supported by GA, who said that, at the time of the publication of the draft Local Plan in November 2012,

*“...the local wildlife site was still enough to discount it in principle at that stage.”*

7.14.27 However, 5 months earlier, in June 2012, GA had been asking in his emails what APC’s position was on the St. Andrew’s site. The glow-worms are not mentioned in those emails. This is not as contradictory as it sounds and can be explained by GA simply seeking clarity on APC’s position, notwithstanding the apparent concerns and with the lack of other viable options in mind. However, this could have led to confusion for SCB and APC.

7.14.28 It should be noted that SCB was not challenged by any other councillor present, all of whom should have been aware (unless they too had not read their emails) that TDC had specifically sought APC’s views on St. Andrew’s being an option site, having been copied into the emails from GA. In fact, SCB was supported by others present.

7.14.29 The wildlife ‘problem’ was certainly discussed at the meeting between GG, GS and SCB in January 2013. As GG recalls,

*“...the recommendation [from 2009 survey by Essex Wildlife Trust] was that there were glow worms there and the [St. Andrew’s Close site] shouldn’t be developed. The discussion, the private discussion I had with the parish councillor and Councillor Scott when they came and met me was that, yes, they agreed with that and believe that [SCB], being a resident of the area, although I didn’t realise he lived right near it\*, I must admit, he corroborated that, if you like, and said, “Oh, yes, I’ve seen the glow-worms on there at night time, particularly in the summer” and, if anything, he was just backing up the evidence that we already had.”*

[\*See also 7.11.2].

7.14.30 So, whilst it is clear that TDC did not consider the St. Andrew's Close land a viable option when it issued the draft Local Plan, it was not for the three reasons given by SCB (one of which had never been the case), but solely due to the wildlife on the site. Therefore, in this respect the meeting was misled.

7.14.31 Whilst I am satisfied that SCB, at every stage, opposed the Station Road/Cockaynes Lane site being accessed via Cockaynes Lane, that does not necessarily mean that he did so as effectively as he might have, nor that he properly addressed his mind to the possibility of the St. Andrew's Close land being an alternative.

7.14.32 Is it credible to believe that some 8 months later, SCB was still labouring under a misapprehension regarding that land? Was it deliberate obfuscation or error? If an error, should a competent councillor have been able to make it?

7.14.33 It is worth setting out the minuted Local Plan discussions on the 13<sup>th</sup> February in full:

*“Although not on the agenda the attention of those present then turned to the Tendring District Local Plan Proposed Submission Draft (2012). Residents asked what the Parish Council was doing/had done about this and what their response had been. Cllr Carlsson Browne advised that a public meeting to discuss this had been held on 28 November to allow for the Council's submission to meet the deadline date of early January. No residents other than councillors had attended that meeting. Residents complained that they had not seen the notices on the notice board, although they were assured that such notices had been put up as it was a public meeting and therefore subject to the statutory legislation regarding notices. A great deal of discussion ensued, mainly to the effect that the land to the rear of Station Road*

*was not a suitable site and that land at the end of St Andrews Close, would, in their collective opinions, be better. Cllr Carlsson Browne pointed out that this site had not been put forward by TDC as an option site as it had already been designated part of the Coastal Protection Zone, was Class 1 agricultural land and also a wildlife conservation area.. The Chairman explained the planning and consultation process to residents and suggested that they each make their views known to TDC and by letter rather than a petition. The number of houses proposed was about 48 – 6% and TDC were acting under a Government instruction to provide a 6% housing increase over the next 10 years as were Councils countrywide. Alresford was a suitable site for expansion as it had good public transport links, shops, a Post Office, school, Church etc. It was also agreed by a majority of those present that some additional housing, especially for families, was needed. Cllr Osborne said that problems with the fact that the land was currently unregistered and the owner officially unknown might be encountered. Mr Diggins objected to the Parish Council having agreed that Station Road was the best option and was advised that there were few other viable options available or put forward by TDC.*

*The Chairman pointed out that APC was merely a statutory consultee not a Planning Authority and that the final decision would rest with TDC, but that in any event the consultation period just passed was the first and there would be others as plans were refined and developed.*

*The meeting moved on to discuss communication generally and it was agreed that this would be added to the March agenda for the Parish Council. Leaflet drops seemed to be the preferred option for those present and it was pointed out by the Chairman that this would involve cost and volunteer time for delivering. The meeting seemed to agree to the cost and some said that they would offer to deliver. It was felt that the cost would be minimal in proportion to the effectiveness of the*

*method of communication. The Clerk to add Communication to the March Agenda. Residents were also reminded of the Annual Parish Meeting on 20 March and invited to attend.*

*Residents were advised that the preparation of a Village Design Statement was already on the agenda for the March meeting and volunteers were called for to form a working party to take this forward, although they were warned that this was a very time consuming commitment. It appeared that there were those present in favour of the preparation of a VDS and who would offer assistance. This would be spoken about again at the Annual Parish Meeting.*

*Mr Milburn said that he did not feel that TDC or the Parish Council were in any way trying to act in an underhand manner but did not think that sufficient time had been allowed for the consultation process.*

*Mr Sanderson, a member of the Alresford Action Group spoke of how the Group had acted regarding the gravel quarry sites and agreed that although there was a need for some new housing, he thought 48 houses were too many*

*Mr Clarke, another member of the Action Group agreed that communications could always be improved and asked whether there would be further opportunities for the Parish Council to make representations to TDC. The Chairman said that this would be part of the on-going process.*

*Cllr Thompson advised that a 6% housing increase across the district was what TDC were having to produce and that Alresford was fortunate to be only being given a number of around 48 – some places were being allocated several thousand. He also felt that leaflet drops would be a good method of communication and Cllr Coates agreed with this. Cllr Fairbanks said that it was a pity that people did not read Parish Council reports in The Advertiser and it was noted that very few*

*residents present ever picked up a copy of the monthly News Letter and most of those present did not know that it existed, despite it being mentioned in Minutes of meetings and at the Annual Parish Meeting the year it was commenced. The internet was not the only way of communicating and was only open to those who had access. Notices on the notice boards were ignored despite being accessible to all. Very few residents attended the monthly Parish Council meetings and the Annual Parish Meeting was not very well attended, although better than it used to be. He also pointed out that the Parish Council was made up of a small body of volunteers and that managing the web site took time and money. It was generally agreed that the web site could be much better and residents were advised that the clerk had arranged for a web site designer from ECC to come down once the broadband at the office was installed to create a new site and train the Clerk and Cllr Thompson in its use and maintenance.*

*Mrs Watson asked whether the proposed development had to be for 48 houses and was advised by the Chairman that this was the number set by TDC for Alresford – 48 being the 6% requirement of Central Government for the area. She then asked if the sites could be split up so that they were scattered around the village rather than all concentrated in one place. Cllr Thompson said that in theory this might be possible but it could lead to sites being opened up for even more development. Asked whether the Parish Council would back objections from residents, the Chairman responded yes and advised that he was going down to the TDC planning office the next day to advise on the meeting and pass on any comments. It was however, much more effective for residents to write their own objections direct to TDC as these would carry more weight than just one comment from the PC or a petition.*

*Mrs Diggins asked the Chairman to confirm that if the Station Road development went ahead Cockaynes Lane would not be used for access. The Chairman confirmed that this was one of the main*

*objections that the Parish Council had raised, as it was clearly not suitable and the Council had said that access to the site, if developed, should be from Station Road. Asked what sort of developments was being considered, the Chairman read the housing type requirement details from TDC as follows:*

*30% - Aspirational (larger – more bedrooms etc)*

*40% - Family*

*10-25% - Social Housing*

*5-25% to be determined by the developers.*

*The design to be of low density maintaining local characteristics and sympathetic to the village as a whole. It was the wish of both TDC and the Parish Council that any development for housing should have large gardens and contain open spaces.*

*It was agreed that the formation of a body to start work on a Village Design Statement would be on the next PC agenda for the March meeting and that a leaflet drop around the village stating this would be arranged. The Clerk would also put this information in the February Newsletter and the matter would again be mentioned at the Annual Parish Meeting for the benefit of anyone who could not get to the regular meeting on 6 March.*

*There being no further comments, the Chairman thanked all for their attendance and closed the meeting at 10 past nine.”*

7.14.34 Other than the issue over why the St. Andrew's site was not viable, which is addressed above, it appears to me that SCB ran a good meeting, addressed all the issues in full and gave appropriate assurances. I have not been presented with evidence that the promised visit to TDC occurred, but there may be a number of reasons for this, including non-availability at the TDC end.



7.14.35 It is also important to note the views expressed by Mr Millburn:

*“...that he did not feel that TDC or the Parish Council were in any way trying to act in an underhand manner but did not think that sufficient time had been allowed for the consultation process.”*

7.14.36 This is a valuable piece of evidence, based on perception of conduct at the time, rather than one formulated some time later. However, it did not have the benefit of possession of all the facts.

7.15 **17<sup>th</sup> April 2013**

7.15.1 Document 13 attached to the complaint is a copy of the minutes of the APC Planning Committee on the above date. This suggests this was not simply a public meeting.

7.15.2 There are a number of procedural matters to address first.

7.15.3 If this meeting was a meeting of the Planning Committee, it is not clear why this meeting was convened and chaired by GS. As far as all the minutes up to that point are concerned, SCB was the Chair of the Planning Committee. It is not correct for this meeting to have been chaired by GS, as he was not an APC councillor.

7.15.4 Further, whilst SCB was present, he was not referred to within the minutes. There should have been some acknowledgement or explanation of how and why he had delegated his duties to GS. SCB does cease to be the Chair of the Planning Committee at a later date, but not yet.

7.15.5 SCB, in his written response to the complaint, refers to it as a, “public meeting”. It does have the sense of being such, i.e. not a meeting of the Planning Committee. If this was the case, then the minutes should have properly reflected what this meeting actually was.

7.15.6 SCB confirmed that he attended this meeting but did not take any part in it. Depending upon its status, he should perhaps have sought to have been more involved.

7.15.7 GA and GG were present at the meeting and outlined the 5 potential options. They were able to listen to all of the submissions made by the 200+ residents who attended, especially those against Station Road and access by Cockaynes Lane.

7.15.8 GG told me, confirming that even at a relatively late stage TDC still maintained reservations about the St. Andrew's Close site:

*“One commitment that I did make at that meeting was that I would have [the St Andrew's Close site] re-evaluated by Essex Wildlife Trust, because we had had a survey done there in 2009 which identified glow-worm beetles... ..and that recommended that, for that reason, this site shouldn't be developed on.*

*....I also made the commitment that I would at least re-evaluate the sites before we came to a final decision. So what happened then is we went away and looked at the whole of the local plan and saw what changes we can make. In Alresford, what was suggested, because we still weren't comfortable with [the St Andrew's Close site] because of the glow-worm beetle population – you try and avoid developing a wildlife site if you can.....*

#### 7.16 **4<sup>th</sup> October 2013**

7.16.1 I do not intend to go into great detail on this point. Notwithstanding the representations made at the April meeting and those made subsequently, TDC opted for an amalgamated site and, more surprisingly, they decided that access should still be along Cockaynes Lane.

7.16.2 This astonished and angered many residents of Alresford, who formed the Cockaynes Action Group, in response.

7.16.3 I asked GG how this decision had been made:

*“.....there was very little to choose between Site 2 [North of Cockaynes Lane] and Site 3 [South of Cockaynes Lane/Station Road]...”*

*...And what we did was looked at an option of having a smaller development south of Cockaynes Lane and then utilising some of the land to the north of Cockaynes Lane, which was in separate ownership and having a development split over the two areas of land.”*

7.16.4 GG went on to explain that a property bordering Cockaynes land could be removed/reduced in size to widen the access to the proposed site(s). GA confirmed this.

7.16.5 What is clear is that when the draft local plan was published (and it must be borne in mind that this was still a draft local plan, subject to formal consultation, in addition to the submissions already sought) the split site option with access to Cockaynes Lane came completely out of the blue for the residents and councillors of APC alike, including SCB, who thought he had done all he could to dissuade them.

7.16.6 It is simply not tenable that SCB was seeking to exert any undue influence on officers of TDC at this stage or throughout his involvement in this matter. There is no evidence to support such a possibility.

7.16.7 As GG says:

*“I never got the impression that the councillor being accused of this was trying to influence things in [his] own favour]. I never got that impression. Certainly my discussions – and there’s not been many I*

*have had with him – he sort of expressed an understanding of why we were thinking the way we were thinking, which may or may not have been convenient for him. At that stage I wouldn't have known that he lived right next door to the site that we were discounting. But no, I never got the impression that he was trying to secure it in his favour. I never got the impression that he was trying to place any undue pressure on us to do any particular thing. I think what is unfortunate about this is that people have engaged in the process after the decision has been made and then the parish council had to react to that and in a sort of state of panic, we have come up with an alternative solution, which is equally unpopular and now it's just got very messy and I think people are probably inclined to point fingers at those characters involved.”*

7.16.8 See also 7.8.7 et seq.

#### 7.17 **Subsequently**

7.17.1 On the 21<sup>st</sup> October 2013, CAG, amongst others, including GS, convinced the TDC Community Leadership and Partnerships Committee to review the matter. Further, on the basis of those submissions and a willingness expressed by officers to look at the matter again, that Committee resolved to recommend to TDC Cabinet that not only should there be a review, but that:

*“In respect of proposals made for Alresford, and in the view of comments received and representations made by the local Ward Member, Councillor Scott, Cabinet authorises officers to relook at this proposal within the Plan and agree to St Andrews Close being proposed as the preferred site for residential development and take away the allocations proposed for Cocakynes Lane, in acceptance [of] of the arguments made by residents, Alresford Parish Council and Councillor Scott”.*

7.17.2 On the 8<sup>th</sup> November 2013, Cabinet dealt with this:

*“Recommendation from the Community Leadership and Partnerships Committee Response of the Planning and Corporate Services Portfolio Holder*

*a) Cabinet authorises officers to relook at the proposed change to development in Alresford (PM7.1) and agree to land at St. Andrew’s Close being allocated for development as an alternative to land off Cockaynes Lane, in acceptance of arguments made by residents, the local Parish Council and the local Ward Member.*

*Response: Officers have re-evaluated the situation and it is agreed that the development proposed for Alresford can be focussed on land off St. Andrew’s instead of land off Cockaynes Lane.*

*Recommended change(s): Major Change MAJ11.2 to be amended to delete Policy KEY2 ‘Development South of Cockaynes Lane, Alresford’ and Policies Map Change PM7.1 be amended to allocate land off St. Andrew’s Close for residential development instead of land off Cockaynes Lane.”*

7.17.3 In my view, the process that followed the publication of the plan was wholly flawed and conducted without due consideration of all of the options. The St. Andrew’s site should not have been substituted with such alacrity, whilst consultation was ongoing. This activity compounded the ill-feeling and open division within Alresford.

7.17.4 I understand that the housing options remain under further consideration. It is beyond my remit to explore them in further detail as the complaint was then submitted on the 21<sup>st</sup> November 2013.

## 8. Conclusions

8.1 As set out at the start of this report, the complaint form gives the following as specific complaints against Councillor Carlsson Browne. I have set out, in brief form, my observations on each. The rationale behind these and the exploration of the wider complaint, are dealt with subsequently:

a. *“In relation to the local plan. The consultation between Nov 12 – Jan 13 was not communicated to residents in any meeting in that period”:*

8.2 Not upheld. Whilst the advertisement of meetings, to communicate the matter of the Local Plan (and therefore the consultation), may have been flawed, I cannot find that this was a deliberate attempt at suppression by Councillor Carlsson Browne and as such, there is no breach of the code.

b. *“St Andrews Close Site option [was] suppressed and only [came] to light from FOI requests to TDC”;*

8.3 Not upheld. Taking this statement very precisely, there was no suppression of the identification of the site and it was recorded in Council minutes at various points. Whether the site was properly pursued as an option, is a different question, considered below.

c. *“The use of Cockaynes Lane on the local plan was not communicated to fellow [councillors] or residents and therefore no objection [was] received in [the] consultation period”.*

8.4 Not upheld. Councillor Carlsson Browne and indeed the whole of APC were clear in their opposition to the use of Cockaynes Lane as an access point for any residential development. The decision to propose the use of Cockaynes Lane for access was entirely the responsibility of

Tendring District Council and before publication of both versions of the draft plan (November 2012 and October 2013) Councillor Carlsson Browne and APC genuinely did not anticipate that Tendring District Council would choose to do what they did. In any event, the residents and the Council had an opportunity to respond after the publication of the Local Plan, during what was the formal consultation period.

*d. “Cllr Carlsson-Browne lives in St Andrews Close – Pecuniary Interests?”*

8.5 Not upheld. Councillor Carlsson Browne did not have a Disclosable Pecuniary Interest within the definition of the Localism Act, simply by residing near to the site at the end of St. Andrew’s Close (provided that he had already disclosed his residence in Alresford on the Register of Interests). The question of interests more generally, is addressed below.

8.6 I turn to the wider questions that are raised by the complaint, reminding myself that any breaches that occurred before the 1<sup>st</sup> July 2012 cannot be the subject of any action against Councillor Carlsson Browne and that they are included by way of context only.

**Before 1<sup>st</sup> July 2012**

i. Has there been any failure to disclose or act upon a personal interest?

8.7 Yes.

8.8 Paragraph 8(1)(a)(ix) of the 2007 Model Code of Conduct provides that a councillor has a personal interest in the business of his authority if it relates to or is likely to affect any land in that authority’s area in which he has a beneficial interest.

- 8.9 Further paragraph 8(1)(b) provides that a councillor has a personal interest in the business of his authority if it might reasonably be regarded as affecting his well-being or financial position to a greater extent than the majority of other residents.
- 8.10 This is the case here. The potential recommendation of the site at the end of St. Andrew's Close could, on any reasonable view, have affected Councillor Carlsson Browne's home and its value to a greater extent than the majority of other inhabitants of Alresford, notwithstanding that a number would also be affected by the Local Plan to a lesser or greater extent.
- 8.11 Paragraph 9 of the Model Code sets out what should be done in such circumstances. With limited exceptions (which are not applicable here) the personal interest must be disclosed to the meeting. This was not done on a number of occasions.
- ii. Has there been any failure to disclose or act upon a prejudicial interest?
- 8.12 No.
- 8.13 The law is found in Paragraphs 10 and 12 of the Model Code. See also paragraphs 6.1.9 to 6.1.12, above, which deal with the example given by the Standards Board for England.
- 8.14 A personal interest is also a prejudicial interest if:
- "...the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest".*
- 8.15 It is clear to me that the proximity of the home to the site and the nature of the personal interest would pass this test.



8.16 However, paragraph 10(2) states:

*“You do not have a prejudicial interest in any business of the authority where that business –*

*(a) Does not affect your financial position...;*

*(b) Does not relate to the determining of any approval, consent, licence, permission or registration in relation to you...”*

8.17 It is my view that the two are separate exemptions (there is also an exemption (c) but it is not relevant). Whilst Councillor Carlsson Browne might still have been caught by 10(2)(a), the submissions made to Tendring District Council on the draft Local Plan do not fall within the strict definition at 10(2)(b). This is something Councillor Carlsson Browne repeatedly pointed out in meetings – that the decision was for Tendring District Council, not Alresford Parish Council – and that all Alresford Parish Council was able to do was to contribute to the consultation. A decision to do so was not, in my view, capable of amounting to any of the formal and specific decisions set out at subsection (b), above.

8.18 I wonder if either Councillor Carlsson Browne or any other councillor realised this at the time. In any event, there was no prejudicial interest for Councillor Carlsson Browne to disclose or act upon.

iii. Has there been any other breach of the code or of the 10 Principles of Public Life? Specifically:

a. Did Councillor Carlsson Browne mislead fellow councillors or members of the public, whether actively or by omission?

8.19 I have given this aspect of the matter careful and lengthy consideration, reminding myself of the standard of proof.

8.20 The Ten General Principles of Public Life were:

**“Selflessness** – members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

**Honesty and integrity** – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.

**Objectivity** – members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

**Accountability** – members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

**Openness** – members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

**Personal judgement** – members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

**Respect for others** – members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority’s statutory officers and its other employees.

***Duty to uphold the law*** – members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

***Stewardship*** – members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.

***Leadership*** – members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.”

- 8.21 I will not deal further with the failure to declare a personal interest, which is dealt with above.
- 8.22 Councillor Carlsson Browne wished the matter of the Local Plan to be dealt with at full Council level [6.1.18] and the minutes of the 26<sup>th</sup> October 2011 show that St. Andrew’s Close was an early option [6.1.19]. This was reasonable under all the circumstances.
- 8.23 The paragraphs culminating in 6.2.6, show early involvement and demonstrate the complexity and limitations imposed by different types of planning scheme. I am not convinced that it was reasonable to expect much more from Councillor Carlsson Browne at this stage.
- 8.24 The APC notes of the meeting on the 9<sup>th</sup> May do not mention the St. Andrew’s Close site as an option [6.8.7]. However this was remedied by the inclusion of the TDC notes as the appendix [6.12.4].
- 8.25 Councillor Carlsson Browne did not ensure a public meeting took place in November 2011 [6.4.1].

- 8.26 On the 29<sup>th</sup> May 2012, Councillor Carlsson Browne should have given attention to the Local Plan. As minutes are not available, it is not known if he did [6.11.1].
- 8.27 Councillor Carlsson Browne failed to deal with the emails of June 2012. He has stated he had personal matters to deal with, but was actually away in Le Mans at the time. Whilst I have sympathy over the difficulties he was experiencing, he should have, at some point in May or June of 2012, taken the time to check his emails, given the important position he held. It is unreasonable to expect others to simply pick up the pieces.
- 8.28 At the Planning Committee meeting on the 26<sup>th</sup> October 2011, it was stated that the land was Grade 1 agricultural land. This was not the case. It is not clear from the minutes who stated this. I do not accept that Gary Guiver had told Councillor Carlsson Browne that this was the position. That does not, given the reasons stated by Gary Guiver, seem to be at all realistic. Whoever made this statement at the meeting misled the meeting. It is most likely that it was stated by Councillor Carlsson Browne. In the absence of any explanation other than that he was told it by Gary Guiver, I am satisfied that Councillor Carlsson Browne made this statement, without ensuring its veracity. This was either reckless or deliberate, reducing the attractiveness of the St. Andrew's Close option and the potential impact upon Councillor Carlsson Browne's end of the village. Importantly, it does not matter that other factors vitiated against the St. Andrew's Close site in any event. Neither does it matter, in this respect, that APC only had the power to make a recommendation, save as to lessen the consequence of the breach.
- 8.29 Therefore, prior to 1<sup>st</sup> July 2012, it is likely that Councillor Carlsson Browne breached the code on at least this one occasion.

8.30 As JL suggests in her complaint, this would have been a breach of multiple elements of the code, including Selflessness, Honesty and Integrity, Openness and Leadership. I have taken into account the overt efforts to ensure proper debate at full Council and have the St. Andrew's Close site noted in the papers at this stage, but these do not mitigate this action.

8.31 In addition, during this time Councillor Carlsson Browne failed, on a number of occasions, to properly carry out his role as Chairman of the Planning Committee, with the diligence and attention to detail that it required. In respect of this latter, I have not been able to discern that Councillor Carlsson Browne deliberately ignored the email correspondence of June 2012. As such, whilst this was a failure of leadership, it would not have amounted to a breach of the code

b. Did Councillor Carlsson Browne seek to mislead or improperly influence officers of Tendring District Council?

8.32 No.

8.33 This is dealt with at 7.15.6 above.

8.34 Again, no sanctions can be applied for any of the above.

**1<sup>st</sup> July 2012 to date:**

8.35 Any breaches after this date are capable of being addressed by the imposition of sanctions.

i. Has there been any failure to disclose or act upon a non-pecuniary interest?

8.36 No.

8.37 A non-pecuniary interest is something other than a DPI (see below) that a councillor should disclose to ensure openness in decision-making. It would include such things as; membership of a Trade Union or political party, membership of the Local Wildlife Trust, School Governorship and the like.

8.38 As far as I am aware, there is no non-pecuniary interest that Councillor Carlsson Browne should have declared, that was of any relevance to this matter.

ii. Has there been any failure to disclose or act upon a pecuniary interest?

8.39 Yes and no.

8.40 Firstly, dealing with any failure to *disclose* a DPI. The annex to the Openness and Transparency on Personal Interests guidance sets out a specific list of pecuniary interests that must be disclosed. One of these is a beneficial interest in land (which would include an owned home) in the parish.

8.41 It is clear that the required form of the Register of Interests (i.e. under the Localism Act) was not in place at all material times. As such, Councillor Carlsson Browne's home address, a DPI, was not properly disclosed and published until after October 2012. See also paragraphs 7.2.3 et seq. This is a breach of the obligation to disclose.

8.42 Secondly, dealing with any potential failure to *act* on a DPI. If a councillor has a DPI relating to any business to be considered at a meeting they must not take part in the discussion or vote on the matter without a dispensation. This wording has led to confusion, as it is not as clear as the previous law, even if the intent – to limit the restrictions on councillors – was made very clear at the time the new code was

introduced. What does 'having a DPI in any business to be considered', mean?

- 8.43 It is not the same test as for a prejudicial interest. Further, given the intent of the government, it would be strange indeed if a greater restriction had been placed onto councillors.
- 8.44 There must be a direct link between the DPI and the business to be considered by the Council. The reality is that for Councillor Carlsson Browne to fall foul of this requirement, the connection between his interest and the matter of the Local Plan would have to have been significantly closer than it was, probably to the extent of ownership of one of the pieces of land in question or evidence of a direct (i.e. a payment) financial benefit to him because of where he lived.
- 8.45 That is clearly not the case. Councillors and residents both may be surprised by the relaxation of the rules to such an extent, but the reality is that this is exactly what the government intended.
- iii. Has there been any other breach of the code or of the 7 Principles of Public Life? Specifically:
- a. Did SCB mislead fellow councillors or members of the public, whether actively or by omission?

- 8.46 The Code of Conduct adopted by Alresford Parish Council in 2012 is brief and to the point. It focusses on the Seven Principles of Public Life. These are:

*“Selflessness – Holders of public office should act solely in terms of the public interest.*

*Integrity – Holders of public office must avoid placing themselves under any obligation to people or organisations that might try*

*inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.*

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

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

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

**Honesty** – *Holders of public office should be truthful.*

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

8.47 During the period of 1<sup>st</sup> July to 3<sup>rd</sup> October 2012, there is no evidence that Councillor Carlsson Browne contacted Gary Ashby, as promised [7.5.3.i].

8.48 The same paragraph highlights that on the 3<sup>rd</sup> October, the minutes clearly state that St. Andrew’s Close was an “*alternative preferred option*” [7.5.3.iii]. This shows the site was not suppressed, as stated in the complaint.

8.49 There is no mention of the CPB or the agricultural grade of the land being reasons to reject the option at St. Andrew’s Close, at this meeting. The only other issue raised is parking. The position appears



to have been properly understood and properly represented at this meeting [7.5.3.v]. However, months later, these issues are resurrected (see below).

- 8.50 It took a reminder from Gary Guiver, via Gary Scott, to resurrect due consideration of the matter of the Local Plan. Whilst APC anticipated the publication of the draft Local Plan in the autumn of 2012, SCB should, as Chair of the Planning Committee, have shown greater leadership and involvement during the period of May to October 2012 [7.5.7].
- 8.51 I have already addressed the question of advertisement of meetings during the autumn of 2012 [7.8.6 et seq]. However, the handling of meetings and debate on this issue [7.8.6 to 7.9.5] was procedurally incorrect and failed, to give due consideration to the question of St. Andrew's Close as a potential site.
- 8.52 As stated above, it does not matter that other factors meant that Tendring District Council were unlikely to choose the St. Andrew's Close site in any event. Again, neither does it matter, in this respect, that APC only had the power to make a recommendation, save as to lessen the consequence of any breach.
- 8.53 I have noted in the main body of this report Gary Scott's comments regarding Councillor Carlsson Browne's declaration of interest 7.11.2]. I have no reason to doubt this and, having carefully considered the wording of both, it does not conflict with the comments of Gary Guiver [7.13.29].
- 8.54 Councillor Carlsson Browne's proposed submission draft was prepared very shortly before the meeting. The date for submissions had already passed. If intended as a draft for approval, it was wholly inadequate. In any event, there is no evidence that it was circulated at the meeting [7.12.1 et seq].

- 8.55 Councillor Carlsson Browne then submitted the draft himself. I am satisfied he did this due to the time limitations.
- 8.56 There is no reference to St. Andrew's Close as an option in the minutes of full Council on the 9<sup>th</sup> January [7.12.23]. Critical comment was closed off quickly [7.12.22]. There should have been proper discussions on the St. Andrew's Close site, to demonstrate openness and to ensure all options had been properly considered. Whilst Councillor Carlsson Browne did not suppress the site in the manner suggested by JL, these omissions are significant, convenient and, in my view, deliberate actions on the part of Councillor Carlsson Browne.
- 8.57 The meetings on the 6<sup>th</sup> and the 13<sup>th</sup> February saw direct challenge from residents regarding the decision-making of the Council and the Planning Committee. In response, Councillor Carlsson Browne again raised the matter of the CPB (on the 6<sup>th</sup> – [7.13.1 et seq]) and then both the CPB and the agricultural nature of the land (on the 13<sup>th</sup> – [7.13.4 et seq]).
- 8.58 By this time Councillor Carlsson Browne should (and in my view must) have been aware of the CPB no longer presenting a difficulty. I have already dealt with the question of the agricultural status of the land.
- 8.59 If one looks at the minutes of the 13<sup>th</sup> February in isolation, it could be argued that Councillor Carlsson Browne was not suggesting that those matters continued to be problematic at the time of that meeting. Rather he may have been explaining the decision making of Tendring District Council at the time they put forward the draft Local Plan (approved some four months earlier).
- 8.60 However, this analysis does not stand up to scrutiny for a number of reasons. The most telling is that in the minutes of the 6<sup>th</sup> February, Councillor Carlsson Browne is recorded as pointing out that the the

field at the end of St. Andrew's close was part of the CPB. This relates to why the field could not be considered viable at the present time It does not relate to past decision-making.

8.61 By this time it is simply untenable for Councillor Carlsson Browne not to have been aware of the CPB no longer being an issue. Therefore, in respect of both this and the agricultural status of the land, I am satisfied that Councillor Carlsson Browne sought to prevent adequate consideration of the land at the end of St. Andrew's Close by the provision of information that he knew to be wrong.

8.62 Therefore, after 1<sup>st</sup> July 2012, I consider that Councillor Carlsson Browne breached the code on at least two occasions, by recklessly or deliberately providing flawed information to the Council and the public, in order to justify, and seek to prevent proper scrutiny of, earlier decision-making.

8.63 This is a breach of multiple elements of the code, including Selflessness, Honesty and Integrity, Openness, Objectivity and Leadership.

8.64 In addition, during this time he failed, on a number of occasions, to properly carry out his role as Chairman of the Planning Committee, with the diligence and attention to detail that it required. This was a failure, but a general failure to do the job well is not, of itself, a breach of the code.

b. Did SCB seek to mislead or improperly influence officers of Tendring DC?

8.65 No.

8.66 This is dealt with fully at 7.15.6 above.

## 9. Additional Observations

- 9.1 I think it is helpful to make some additional observations.
- 9.2 The first is that in terms of the failure to declare an interest, many of the other Councillors would have been in a similar position to Councillor Carlsson Browne. Some lived very close to the other sites for potential development. There was wholesale failure to properly understand and make declarations at Alresford Parish Council.
- 9.3 There was a lack of understanding and a failure to ensure compliance with the rules of procedure during this time. This is evident throughout, but most so in the backlash against the original recommendation that led to a delegation attending at the Tendring District Council meeting.
- 9.4 Whilst there were clear divisions in the Council (and the Parish) and personal animosity both during and after the period in question, I do not consider that such impacted upon the events at the time nor the evidence provided to me during this investigation.
- 9.5 Councillors are not paid and are not professional administrators. I am not convinced that Councillor Carlsson Browne was properly supported or trained either before or during the period in question.
- 9.6 For the avoidance of any doubt:
- i. It is entirely reasonable and proper for a committee to take into account the totality of Councillor Carlsson Browne's conduct between 2011 and 2013, when coming to a decision on whether breaches have occurred after the 1<sup>st</sup> July 2012.
  - ii. However, that decision-making must be distinguished from the imposition of any sanctions.

- iii. This means that any committee considering the imposition of sanctions against Councillor Carlsson Browne cannot rely upon any earlier breaches when deciding whether to impose sanctions for any breaches after the 1<sup>st</sup> July 2012.
  - iv. Conversely, the committee is able to rely upon events from any time in order to mitigate any sanctions.
- 9.7 See 7.14.3. This comment is entirely refuted by JL, who, in her response to the draft of this report, has also expressed concern regarding some of SCB's comments, in particular 7.12.22, above.
- 9.8 I am very sorry to report that I have received an offensive email from Councillor Carlsson Browne at 15.50 on the 11<sup>th</sup> July, following his receipt of my draft report. The email read only as follows:

*“Response to 7.12.7  
Lying c\*\*t”*

- 9.9 Whilst this comment does not seem to be aimed directly at me (given that it references a quote from the Chairman) I found it highly offensive and not something I would expect from a councillor. It is completely inappropriate in any event.

**HEARING PROCEDURE (approved March 2014)**

**STANDARDS COMMITTEE &  
TOWN & PARISH COUNCILS' STANDARDS SUB-COMMITTEE**

This procedure supplements Section 7.1.2 of the Council's Complaints Procedure and a copy will be provided to the both the Complainant and the Member the subject of the Complaint ("Councillor").

All Hearings will be held in Public unless the relevant paragraph of Schedule 12A of the Local Government Act 1972 applies, however the public interest test must be considered and therefore it would only be in exceptional circumstances that the hearing will be held in Private. The Council's Monitoring Officer will provide the relevant advice.

Where District Councillors were required to make a decision in respect of a hearing, they have due regard to, and take into account any views expressed by Town and Parish Councillors in reaching their decision.

<b><u>Item No.</u></b>	<b><u>Procedure</u></b>
<b>1</b>	<b><u>Quorum</u></b>  1.1. Three Members must be present throughout the hearing to form a quorum.  1.2. Where the complaint refers to a Town or Parish Councillor a non-voting Town and Parish representative of the Town and Parish Councils' Standards Sub-Committee must be present.  1.3. The Committee or Sub-Committee shall nominate the Chairman for the meeting in accordance with the terms of reference of the relevant Committee.
<b>2</b>	<b><u>Opening</u></b>  2.1 The Chairman explains that:  (i) The hearing has been convened in accordance with the Council's Complaints Procedure and that an investigation has been conducted, the outcome of which is that it is considered there is evidence of a failure to comply with the Members' Code of Conduct.  (ii) The Parties have been aware of the content of the Investigator's Report and this has been circulated to all Members of the Committee.

	<p>(iii) The Monitoring Officer has referred the matter for a hearing either because upon conclusion of the investigation, informal resolution has not been successful or it is not appropriate to do so, for the reasons given within the Committee Report.</p> <p>(iv) Purpose of the Hearing is to consider the Investigators Report, the evidence in support and representations from the Parties. If the Committee or Sub-Committee depart from the recommendation from either the Investigating Officer and/or Monitoring Officer detailed reasons are required and published in the Decision Notice.</p> <p>2.2 The Chairman asks all present to introduce themselves.</p>
<p><b>3</b></p>	<p style="text-align: center;"><b><u>The Complaint</u></b></p> <p>3.1 The Investigating Officer or Monitoring Officer shall be invited to present their report including:</p> <ul style="list-style-type: none"> <li>(i) any documentary evidence or other material;</li> <li>(ii) call such witnesses as considered necessary; and</li> <li>(iii) make representations to substantiate the conclusion that the Councillor has failed to comply with the Code of Conduct</li> </ul> <p>This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.</p> <p>It is only under 3.1 (ii) that the Complainant will take part in the hearing.</p> <p>3.2 The Councillor (or their representative) may question:</p> <ul style="list-style-type: none"> <li>(i) the Investigating Officer upon the content of their report and/or;</li> <li>(ii) any witnesses called by the Investigating Officer.</li> </ul> <p>This is the Councillor’s opportunity to ask questions rising from the Investigators report and not to make a statement.</p> <p>3.3 Members of the Committee or Sub-Committee may question:</p> <ul style="list-style-type: none"> <li>(i) the Investigating Officer upon the content of their report and/or</li> <li>(ii) any witnesses called by the Investigating Officer.</li> </ul> <p>This is the Committee or Sub-Committees’ opportunity to ask questions rising from the Investigators report and not to make statements.</p>
<p><b>4</b></p>	<p style="text-align: center;"><b><u>The Councillor’s case</u></b></p> <p>4.1 The Councillor (or their representative) may:</p>

	<ul style="list-style-type: none"> <li>(i) present their case;</li> <li>(ii) call any witnesses as required by the Councillor or their representative and</li> <li>(iii) make representations as why they consider that they did not fail to comply with the Code of Conduct.</li> </ul> <p>4.2 The Investigating Officer may question the Councillor and/or any witnesses.</p> <p>4.3 Members of the Committee or Sub-Committee may question the Member and/or any witnesses.</p> <p>In all instances, only questions will be permitted relating to the allegation and the Councillor’s case and no statements should be made.</p>
5	<p style="text-align: center;"><b><u>Summing Up</u></b></p> <p>5.1 The Investigating Officer may sum up the Complaint.</p> <p>5.2 The Councillor (or their representative) may sum up their case.</p>
6	<p style="text-align: center;"><b><u>Decision</u></b></p> <p>6.1 Members of the Committee or Sub-Committee will deliberate in private to consider the complaint (if required, in consultation with the Independent Person) prior to reaching a decision.</p> <p>6.2 Upon the Committee or Sub-Committee’s return the Chairman will announce the Committee or Sub-Committee’s decision in the following terms:-</p> <ul style="list-style-type: none"> <li>(i) The Councillor has failed to comply with the Code of Conduct; or</li> <li>(ii) The Councillor has not failed to comply with the Code of Conduct</li> </ul> <p>The Committee or Sub-Committee will give detailed reasons for their decision, which will be included within the published Decision Notice.</p> <p>6.3 If the Committee or Sub-Committee decides that the Councillor has failed to comply with the Code of Conduct they will then consider any representations from the Investigator and/or the Councillor as to:</p> <ul style="list-style-type: none"> <li>(i) The appropriate sanction, as set out in Section 8 of the Complaints Procedure.</li> <li>(ii) Based on relevance to the breach, being proportionate and necessary to promote and maintain high standards of conduct.</li> </ul>



	<p>6.4 The Committee or Sub-Committee will then deliberate in private to consider what action, if any, should be taken. The Committee or Sub-Committee is required by law to do so in consultation with the Independent Person</p> <p>6.5 On the Committee or Sub-Committee's return the Chairman will announce the Committee or Sub-Committee's decision as to what actions they resolve to take (in relation to a Town or Parish Councillor a recommendation to their Council).</p> <p>6.6 The Committee or Sub-Committee will consider whether it should make any specific recommendations to the Council or in relation to a Town or Parish Councillor to their Council with a view to promoting and maintaining high standards of conduct among Members.</p> <p>6.7 The Chairman will confirm that a full written Decision Notice shall be issued within 7 working days following the hearing and that the Committee or Sub-Committee's findings will be published on the Council's website and reported to the next full Council.</p>
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