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FINAL REPORT OF AN INVESTIGATION UNDER
SECTION 60(2) LOCAL GOVERNMENT ACT
2002

STRICTLY CONFIDENTIAL

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<p><i>Name of Investigator:Graham Rowe LL.B (Hons)</i> <i>Local Government Consultancy</i></p>
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1. SUMMARY

- 1.1 The complainant, Councillor Mrs Sally Fairman has alleged that Councillor Tony James, a Councillor of Sparkwell Parish Council ("the Council") breached the Code of Conduct of the Council ("the Code of Conduct") in the following ways. First she alleges that Councillor James failed to declare an interest in an item on the agenda of a meeting of the Council held on 12th June 2007. Secondly that he failed to declare a personal interest at a meeting of the Council held on 13th May 2008 in relation to consideration by the Council of an item of correspondence of which his wife was a co-signatory. Thirdly that he used his position as Chairman of the Council to perpetuate accusations against the complainant and that in allowing that to happen Councillor James played a part in the bullying and intimidation of the complainant.
- 1.2 I have conducted an investigation in this matter into whether any breaches of the Code of Conduct of the Council have taken place. I deal with what I consider to be the relevant provisions of the Code of Conduct in Section 2 of this report.
- 1.3 I have come to the view that the Code of Conduct of the Council was breached to the extent more particularly set out in Section 5 of this Report which contains my formal findings.

2. RELEVANT LEGISLATION

- 2.1 The Code of Conduct was adopted by the Council on 13th November 2007. The Council expressly adopted paragraph 12 (2) of the national model code of conduct.
- 2.2 Councillor James as a Member of the Council is bound by the provisions of the Code of Conduct.
- 2.3 Paragraph 3 of the Code of Conduct provides as follows:-
- 3.—(1) *You must treat others with respect.*
- 2.4 Paragraph 6 of the Code of Conduct so far as is material to this case provides as follows:-
6. You—
- (a) *must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;*
- 2.5 Paragraph 8 of the Code of Conduct so far as is material to this case provides as follows:-

Personal interests

8.—(1) You have a personal interest in any business of your authority where either—

(a) (not relevant in this case)

or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

(ii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

2.6 Paragraph 9 of the Code of Conduct so far as is material to this case provides as follows:-

Disclosure of personal interests

9.—(1) Subject to sub-paragraphs (2) to (5), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

2.7 Paragraph 10 of the Code of Conduct provides as follows:-

Prejudicial interest generally

10.—(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably

regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8

2.8 Paragraph 12 of the Code of Conduct provides as follows:-

Effect of prejudicial interests on participation

12.—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee; and

(b) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

3. EVIDENCE AND FINDINGS OF FACTS

Evidence

3.1 In the course of the investigation, I interviewed Councillor Mrs Fairman, Councillor James and Mrs Pam James. I conducted a telephone interview with the Clerk to the Council, Mrs Elizabeth Groom.

- 3.2 The background to this matters centres on a planning application submitted by a Mr and Mrs Collier (Mr Collier is also a Councillor on the Council) during the course of 2007 seeking a material change of use of a bungalow in their property known as "Three Streams" ("the planning application"). The material change of use being sought at that time was use of the bungalow for short terms lets. It may be useful to note at this stage that clearly some objectors believed that unauthorised works had taken place to the "bungalow" prior to the submission of the planning application and it is in relation to that aspect and the alleged association of Councillor Mrs Fairman with the planning application that the source of much rancour springs..
- 3.3 The following paragraphs refer to key points of evidence and are necessarily a distillation of the evidence. The full statements of witnesses are contained within the bundle of background documents and I have had regard to all the material points in those statements in applying my reasoning to this case and my conclusions.
- 3.4 The essence of the evidence and arguments being presented by Councillor Mrs Fairman is as follows. She advised me that sometime after Christmas 2006 she had been asked by Mr Collier to see the bungalow at Three Streams. She visited the property as she had been asked to do. She believes that visit took place in February 2007. Mr Collier explained what he was hoping to do and Councillor Mrs Fairman says that she merely advised Mr Collier on the planning process and not on the merits of his proposals. She advised him to contact a planning officer at South Hams District Council. Councillor Mrs Fairman says she did not become involved in any way in the determination of the planning application at District level. She had merely suggested that Mr Collier should speak to a planning officer at South Hams District Council. She did not specify anyone in particular.
- 3.5 Councillor Mrs Fairman says that although she has become friendly with Mr and Mrs Collier at all times relevant to the issues raised in relation to this complaint she could not be described as a "friend" of Mr and Mrs Collier. She was not part of their close circle of friends. At that time she had only been to the Colliers' house twice. The first time she had gone with the Chairman of the Hall Management Committee and the second time was in February 2007 to see the bungalow as outlined above.
- 3.6 Councillor Mrs Fairman said that the planning application was considered by the Council on 8th May 2007. Councillor Collier immediately declared an interest and left the room. Councillor James declared an interest as he (and his wife) had objected in a private capacity to the planning application. As a result Councillor James left the room.
- 3.7 At a meeting of the Council held on 12th June 2007, during the public participation session, the Chairman asked the Clerk to read out a letter which she says had been hand delivered to her home a few days earlier. This is the letter which appears as "enclosure 2" contained within the complaint of Councillor Mrs Fairman and is contained within the bundle of background documents. Councillor Mrs Fairman says that although Councillor James had declared an interest at the 8th May 2007 meeting he did not declare an interest at the 12th June 2007 meeting and she believes that is a breach of the Code of Conduct. So that is the first element to Councillor Fairman's complaint. There was no debate after the letter was read out but Councillor Mrs Fairman did make a statement refuting the

allegation that she was a close personal friend OF Councillor and Mrs Collier and making it clear that she had had no involvement in the planning application.

3.8 Councillor Mrs Fairman advised me that she believed the planning application was determined by the District Council on 20th June 2007. Approval was granted.

3.9 The remaining second and third aspects of Councillor Mrs Fairman's complaints relate to a meeting of the Council held on 13th May 2008. Councillor Mrs Fairman advised me that at the meeting, the three original ladies who had complained, one of whom was Councillor James' wife, were there. They sat in the back. Councillor Fairman said they had gone through some of the meeting but when they had got to the point where the Council would normally suspend business to enable the public to speak, the Chairman said he wanted to defer that to "Correspondence" on the agenda so as to give members of the public opportunity to make comments. When they got to that part of the meeting, the Chairman then said that the Clerk had letters to read. With that, other members of the Council referred to their own copies of the letters. They had all received a copy of the correspondence except Councillor Mrs Fairman. Councillor Mrs Fairman enquired what they were all looking at. The Chairman said "I put one in your door." Councillor Fairman said that she had not received anything. The Chairman reiterated "I put one in your door." The Chairman then asked the Clerk to read the letters. She first read the reply that Councillor Julian Taylor had written and Councillor Fairman said that she would like to see a copy of the letter that he was replying to. Someone passed a copy of the letter to her which she quickly read and then the questioning began. Councillor Mrs Fairman explained that she was asked questions by the three members of the public whom the Chairman had allowed to speak. She said the Chairman did ask her some questions towards the end. She said it just got worse and worse. She felt that she was in a kangaroo court where it didn't matter what she said she would not be believed. Councillor Fairman said that she did not say anything at first. She just heard them saying that she had been in collusion with the planning officer and that between the planning officer and herself they had worked out something whereby Councillor Collier got permission for this "dubious bungalow in the garden". Councillor Fairman said they discussed variously what level of involvement she had had and said that the word they seemed to like best was the word "lies". They said they did not like being lied to. They were respectable members of the community and that they were being lied to by someone who had been their District Councillor and now not but a Parish Councillor just the same. Councillor Fairman said that eventually one of them said that she wanted to ask her a question directly which was to ask whether she had been to the bungalow at the Colliers' house and she said again, as she has said in the past, that she had been once to give advice on the planning process and subsequently she had not been involved whatsoever in the planning application. Councillor James asked whether Councillor Fairman was aware that other people locally had applied for planning permission for buildings in their gardens and had been refused for good reasons. Councillor Fairman said it got to the point after there had been nearly 20 minutes of this haranguing when she said to the Chairman "I have had enough of this, you know what the situation is. Will you please stop"? There was some murmuring around the table of the other Councillors with an indication that they thought it was time the matter was drawn to a close and so it was.

Councillor Fairman said she was very upset. The issue which she found particularly upsetting was that it was the meeting that started with the election of a Chairman. She just felt that the letter had been put out, delivered by the Chairman himself, at that moment to damage her in case she was thinking of challenging Councillor James for the Chairmanship. Councillor Fairman had been asked if she had wanted to stand as Chairman and she had said that she was not too keen but she had been prevailed upon and had assented. She had been Chairman of the Council before. She did not believe you should be a Chairman for ever and it is an opportunity for other people to have that role. No-one else wanted the position so one Councillor had asked if he could put Councillor Fairman's name forward and she had agreed. As soon as she had read the letter that had been put in front of her she realized she didn't stand a chance of becoming Chairman because the objectors were rubbishing her - she believes intentionally. A few days later after the meeting she wrote the report which is dated 17th May, 2008 and which is about the meeting of 13th May, 2008. That is the document entitled "enclosure 3" included as part of the complaint papers and contained within the bundle of background documents.

3.10 Although the Chairman did not accuse Councillor Mrs Fairman of telling lies and abusing the planning system he allowed others to pursue their course on that and by joining in the discussion he was both bullying and intimidating. Councillor Mrs Fairman argues that lack of knowledge of the planning system on the part of the objectors should not be an excuse to allow repeated challenges to her honesty and integrity. Councillor Mrs Fairman claims that the Chairman allowed his wife to leave her seat at the back of the room, go up to Councillor Mrs Fairman and "shove" papers in her face saying, "I know you are lying - I have got proof of your lying". Councillor Mrs Fairman advised me that she found the whole experience deeply upsetting. This is the second aspect to Councillor Fairman's complaint.

3.11 The third aspect of Councillor Mrs Fairman's complaint is that at the meeting of 13th May 2008, Councillor James should have declared at least a personal interest because his wife had been one of the signatories to the letter introduced onto the agenda of the meeting of the Council.

3.12 I interviewed the Clerk to the Council, Mrs Elizabeth Groom and she advised me as follows:--

1. *I am Elizabeth Groom. I have been the Clerk to Sparkwell Parish Council for about twenty years.*
2. *I attended the meeting of Sparkwell Parish Council held on 13th May 2008. I acted as Clerk to that meeting. I remember the meeting very well in view of the difficult nature of it.*
3. *I believe the scene was set before the meeting started in that letters had been sent out to Councillors in connection with the planning application previously submitted by Councillor Collier. The letter had been signed by Mrs Thomson, Mrs Myers and Mrs James the wife of the Chairman of the Council. That was what started the discussion at the meeting. Those three ladies were present at the meeting. There is a lot of history over this particular planning matter. Although the planning issue has been*

decided, these three ladies are not accepting that and the issue has kept coming back to the parish council.

4. *It came back to the meeting of 13th May 2008 because the letter from the three ladies had gone out to the Councillors just before the meeting. I read that letter and a letter from another Councillor who had not been able to go to the meeting and he wanted to express his opinions. That started what I would call an attack on Councillor Mrs Fairman and Councillor Collier who submitted the planning application the previous year. I felt very uncomfortable. It was very difficult. I did not know how I could stop it. The Chairman was letting these three ladies continue with their verbal attack. It was quite distressing. GR – can you tell me why it was distressing? EG – They were saying that Mrs Fairman was a liar, that Councillor Collier had used his position to get his planning application through. All the time they were insinuating that something was going on between Councillor Fairman and Councillor Collier to obtain a planning permission. GR – do you know how long this went on for? EG – I would say from 15 to 20 minutes. GR – do you think the attack should have been stopped by the Chairman before it was? EG – Yes, I do. We do have on our Agenda a slot for members of the public to speak. For some reason the Chairman deferred that to the item on correspondence. When the letters were read under “correspondence” this immediately started an argument if you like because Mrs Fairman had not received a copy of the letter. Mr James, the Chairman, said he had personally delivered it. Mrs Fairman said she had not received it. So even at the beginning of the discussion there was confrontation.*
5. *GR – did any suggestion come from the Chairman himself that Councillor Fairman was lying? EG – not from the Chairman, No. Not that I remember. It was from the three ladies. GR – there is a suggestion that Mrs James got up from the meeting? EG – Mrs Fairman did not have a copy of the letter. I did not have a copy of the letter either. I think the Chairman handed me a copy and Mrs James got up and thrust a copy in front of Mrs Fairman. Then later on I think it was Mrs James who actually directly asked Mrs Fairman questions but not through the Chair. So it developed in that the three ladies were talking directly to Mrs Fairman. GR – were suggestions made at that time that Councillor Fairman was lying? EG – Yes. What they kept saying was that Councillor Fairman had said that she had had no involvement in the planning application of Councillor Collier. Mrs Fairman explained that as District Councillor at that time she had been invited to visit “Three Streams” (the site of the planning application) by Councillor Collier for advice on the planning process. She had walked across the garden to have sight of the building. She did not enter the building but invited Councillor Collier to contact South Hams Council. She had no involvement in the consideration of the planning application. The three ladies take it that because of the occurrence of the visit she cannot say she had no involvement. GR – Mrs Fairman is saying that she was not involved in the sense that she did not take part in the consideration of that application. EG – exactly. They allude that Councillor Fairman and Councillor Collier had misused their positions in some way in order to get the planning permission. I do not know what grounds they have to say that.*
6. *I do not want to speak out of turn but I would say that the conduct of our meetings anyway is not as they should be. This was in my view handled*

in the same way and because it has been such a controversial issue and has been going along for so long that is why it became as uncomfortable as it got. GR – in what ways do you think your meetings generally are not as they perhaps should be? EG - I think there is too much of a casual approach to them. There is swearing. People get angry and really shout. The Chairman will take breaks for a cigarette etc. The meetings can be a bit of a shambles.

7. *GR – at the meeting of 13th May 2008 did you give any advice to the Chairman about interests? EG – no, I didn't. GR – he did not ask for any advice about interests? EG – No. The Chairman did let the discussion continue. He did not overly take part in the discussion himself. He did let the attack by the three ladies continue. I would say he is aware of declaring interests because the year before when the planning application arose he declared an interest as an objector and left the room. The following meeting when the parish council again had a letter about the planning application he did not declare an interest. I would say that if he declared it once, he would know he had an interest to declare.*
8. *In summary, I think the meeting of 13th May 2008 was difficult and unpleasant. I felt uncomfortable and I am sure others thought so as well.*

3.13 During my interview with Councillor James, he told me that he had been on the Council for approximately 10 years. He had been Chairman of the Parish Council for about 6 years. Councillor James told me that the matter centred on the planning application. The planning application related to a property across the road from them although they could not see it from where they live. Councillor James advised me that he knew the property well because the previous owner, Les Littlejohn was a great friend of theirs. When Les Littlejohn used to go on holiday, sometimes for nine weeks at a time, Councillor James used to go over there - sometimes twice a day -to check the property. As a result he knows the property very well. Councillor James advised me that his neighbours brought it to his attention that Councillor Collier had without planning permission or building regulation consent extended and rebuilt the original building. He felt that he had to take action and could not stand back because he might be accused of doing nothing because Councillor Collier is a fellow parish Councillor. So his neighbours asked him if he would join them in putting in a complaint about that which he did. The original building on the property was a chalet bungalow and it kept getting flooded. So Mr. Littlejohn applied for planning permission to build the new house which he did on the highest point on the land because of the bungalow being flooded. That was why planning permission was granted due to the flooding problem but on condition that the old bungalow was taken down. Councillor James advised me that Mr. Littlejohn and his son took down about ¾ of the bungalow because a neighbour had complained it had not been demolished. It was agreed at that time that one room could be left as a summer house and a little store on the side for tools. That was all that was there. The point Councillor James made to me was that was that Councillor Collier put in a planning application for a material change of use of the building but the building only existed in the form it did because it had been rebuilt without the benefit of planning permission.

3.14 Councillor James told me that the planning application for a change of use came before the Council on 8th May, 2007. He was at that meeting and he

declared an interest and left the room. His interest arose because he had objected to the proposal either on that day or the previous day. He declared an interest and left the meeting. As a result of that meeting, the Council made recommendations to the District Council to approve the planning application.

- 3.15 Councillor James confirmed that the matter came back to the Council on 12th June, 2007 because of a letter from Mr. and Mrs. Thomson dated 27th May 2007. Councillor James said that he did not declare an interest in the matter because he had no input into it. Councillor Collier did not leave the meeting and neither did he so he thought that was in order. He said he relied on the Clerk to advise him on such matters. Nothing was said and so he thought it was in order to stay at the meeting. There was no resolution which sprang from the debate. Councillor James accepts that Councillor Fairman made it clear at the June meeting that she was not a close friend or associate of Councillor Collier and in addition that she had had nothing to do with the planning application.
- 3.16 Councillor James said that the planning application was considered by the District Council on 20th June 2007 and it was approved by the District on a temporary basis for three years. That marked the end of the matter so far as he was concerned.
- 3.17 In relation to the meeting of the Council held on 13th May 2008, Councillor James said that he had hand delivered a letter from Mr. and Mrs Thomson to Councillors. The essence of the evidence being provided by Councillor James and his wife is that Councillor Fairman had been questioned previously about her involvement in the planning application and she had said that she had no involvement with the planning application and that she had not visited the planning application site. He claims at another meeting Councillor Fairman said that yes she had visited the applicants' property. Councillor and Mrs James felt that if she knew that building work was going on over at the property as an elected District Councillor did she not feel that she should go and tell the immediate neighbours what was going on? In response to the suggestion by Mrs James to Councillor Fairman along those lines, Councillor Fairman is alleged to have said that she did not know who to speak to. Mrs James said that there were only four properties involved and that they were not on a big estate. Councillor James said that he could not remember people at the meeting of 13 May, 2008 suggesting that Councillor Fairman was telling lies. He thought they were just stating facts contained within the letter. Councillor James said that he did not think it was a personal attack on Councillor Fairman's integrity. It was just a debate on the letter which Mr. Mrs Thomson had written. In response to my question as to why the matter had been opened up after a year and with Councillor James's wife being one of the signatories to the letter, Councillor James said that as Chairman of the Council, if a member of the public writes to the Council it is only right and proper to bring that to the attention of the Council. He did not believe he should act as God to say that something should or should not be discussed. In his view, everything that is sent to the Council should be discussed. As a result it is then an open and fair meeting and everyone can then give their opinion. Councillor James thought it only fair to let the Thomsons put their case. Councillor James could not remember whether the questions raised were about Councillor Fairman's integrity. Councillor James confirmed that what Mr and Mrs Thomson had thought odd to them and what they had picked up on was that Councillor Fairman

had said at the beginning that she had not visited the property and said on a later occasion that she had. Mr. and Mrs. Thomson had written to the Standards Board complaining saying that Councillor Fairman had said she had not been over to the site when in fact she had been there. In the planning application Mr. Collier states that the property was visited by Sally Fairman. Councillor James had said that he thought the whole issue arose from Sally Fairman stating at one meeting that she had never visited the property then at a later meeting she said that she had. At one time when Councillor Fairman had been canvassing she had said she was friends of the Colliers. Then she denied she was a friend of the Colliers. He thought that was where the whole issue arose from. Councillor James advised me that his view it all stemmed from Councillor Fairman saying one thing one moment and another the next. And at one point people thought she must be telling lies. Councillor James thought that the discussion did not last for 20 minutes. He would say it lasted for 7 or 8 minutes. Councillor James said that both parties got heated and in view of that he drew the meeting to a close. It certainly did not last for 20 minutes. Councillor James said they were getting nowhere with the debate and so he said it had to end. During my interview I put to Mrs James the allegation that Councillor Fairman had made, namely that Mrs James had left her seat and shoved papers in Councillor Fairman's face saying "I know you are lying - I have got proof you are lying". Mrs James said that was not in her nature and that she was very clear to me that she did not say that.

- 3.18 In response to my question to Councillor James whether it occurred to him that he might have an interest in the matters before the meeting of the Council on 13th May 2008, Councillor James said that he personally thought that the letters were a waste of time and unnecessary but again he thought that if a member of the public brings a matter to the Council it is fair and proper to give those people their chance. Councillor James said he had no input into it apart from the fact that he thought it was pointlessly going on and accordingly he brought an end to the meeting. Councillor James said that he asked for the matter to come to an end and not Councillor Fairman and as Chairman he altered the draft minutes to reflect that position.
- 3.19 Prior to my interview with Councillor James, I was provided with a written response from him to the allegations made by Councillor Mrs Fairman. The submission included a copy of a letter from Mr and Mrs Littlejohns dated 17th May 2007, an extract from the planning application showing "Extra Information" (where there is a reference to "Mrs Sally Fairman, our District Councillor visiting the property") an extract from the minutes of the Council for the meeting of 12th June 2007 and an extract from the meeting of the Council held on 13th May 2008. All those documents, including those not specifically highlighted are included within the bundle of background documents.
- 3.20 Councillor James has also provided me with a short history of his involvement in the area which in fairness I also include in the bundle of background papers. Councillor Mrs Fairman was given the opportunity of commenting on the statement of Councillor James. She makes the point that from the research she has carried out the works of improvement to the bungalow such as new window frames, up to date kitchen and bathroom and the front step of the building, facing the river, was raised to prevent flooding. It is Councillor Mrs Fairman's understanding that the permitted development rights were never removed from the property. Following a complaint about

building work being carried out there without permission South Hams District Council investigated, found no breaches and the file was closed. Councillor Fairman expresses the view that she believes that Councillor James, Mrs James, Mrs Thomson and Mrs Myers are aggrieved by a set of circumstances that never existed. They do not accept that Councillor Fairman has been telling the truth all along but chose to believe, because they were so aggrieved by the planning application and consent that she took an active part in obtaining the planning permission by some underhand means. Councillor Fairman believes that the perception those objectors had surrounding the planning situation was not correct and that Councillor James used his position as Chairman of the Council to perpetuate the claims against her that she was not telling the truth. Councillor Fairman's submissions are included within the bundle of background documents.

Findings of Fact

- 3.21 The Council adopted the Code of Conduct on 13th November 2007
- 3.22 As a Councillor of the Council, Council James is bound to observe the Code of Conduct
- 3.23 The planning application was considered by the Council on 8th May 2007. In respect of this item, Councillor James declared an interest (unspecified) and left the Council Chamber.
- 3.24 As a result of the consideration of the planning application by the Council on 8th May 2007 the Council presented no objections to the District Council on the planning application.
- 3.25 The issue of the planning application was taken up again by the Council on 12th June 2007 to deal with a letter dated 27th May 2007 by N.M. Thomson addressed to Ms Kati Owen a planning officer at South Hams District Council. The Council was not an addressee of the letter but it had been copied to the Chairman. The item was dealt with under the public participation session of the agenda and the business of the Council was suspended to allow the public to comment. Councillor James did not declare any interests in this item and remained in the room during the consideration of the item.
- 3.26 There was no debate on the item referred to in paragraph 3.25 above but Councillor Mrs Fairman did make it clear that she was not friends of Councillor and Mrs Collier and that she had had no involvement in the planning application.
- 3.27 On or around 20th June 2007 the planning application was approved by South Hams District Council and an approval granted on a temporary basis for three years.
- 3.28 Councillor James chaired the meeting of the Council held on 13th May 2008. The letter of which Mrs James was a co-signatory (the attachment to "enclosure 3" in the supporting documents attached to the complaint)("the Watersmeet letter") was considered not in the public participation session but on the agenda item "Correspondence". In considering that item the Council was carrying out the business of the Council.

- 3.29 Mrs Pam James, one of the signatories to the Watersmeet letters is the wife of Councillor James.
- 3.30 At the meeting of the Council held on 13th May 2008 Councillor James declared no interests in relation to the Watersmeet letter.
- 3.31 During the debate which ensued on the Watersmeet letter on 13th May 2008 allegations were made that Councillor Mrs Fairman had lied about her involvement in the planning application and suggestions made that there had been some collusion between Councillor Mrs Fairman and Councillor Collier to obtain planning permission. There was also a suggestion of collusion between Councillor Fairman and the planning officer.
- 3.32 On the balance of probabilities I find that the duration of the questioning of Councillor Fairman and the attacks on her integrity and her statement about her involvement in the planning application lasted some 15 minutes to 20 minutes and not the 7 or 8 minutes estimated by Councillor James.
- 3.33 In April 2008 a complaint was made against Councillor Mrs Fairman to the Standards Board for England. The complaint was made by the three signatories to the Watersmeet letter which included Mrs Pam James. Councillor Mrs Fairman was informed by the Standards Board for England that she had not breached the Code of Conduct.
- 3.34 The attacks on Councillor Mrs Fairman's integrity caused her distress on the night of 13th May 2008 and subsequently. The Clerk also found the proceedings distressing and there may well have been others who felt distinctively uncomfortable at the turn of events that evening.
- 3.35 An attempt was made to revisit the issue at a meeting of the Council held in June 2008 but the Council did not pursue the matter on that occasion.

4. REASONING

- 4.1 At the meeting of the Council held on 12th June 2007 the letter that N.M. Thomson had copied to the Chairman was considered during the public participation session and not during the formal business of the Council. The rules on declarations of interests would not therefore apply as the formal business of the Council was not at that stage being transacted. No formal decisions can be made or resolutions follow and the most a member of the public can do is to request a matter be placed on a future Council agenda. I do not therefore believe that any declaration of interests on the part of Councillor James was required in relation to that item. I appreciate that at the relevant time there was an earlier version of the code of conduct in force (as the Council did not adopt the revised code of conduct until 13th November 2007). The same principle stated however would have applied even though the code of conduct was in a slightly different form.
- 4.2 At the meeting of 13th May 2008 the Watersmeet letter was dealt with as part of the formal agenda under "Correspondence". The formal business of the Council was being transacted. I consider that the "well-being" of both

Councillor James and his wife was affected by the issue more than the majority of the taxpayers in the parish because both Councillor James and his wife had objected in a private capacity to the planning application and Mrs James had reported Councillor Mrs Fairman to the Standards Board in relation to the matter. Under the Code of Conduct the "well-being" of a relative, in this case the wife of Councillor James, amounts to the "well-being" of the principal, Councillor James. So I consider that Councillor James had a personal interest in the consideration of the Watersmeet letter item and should have declared an interest but did not do so. The Code of Conduct expressly provides that if the interest does not relate to a financial matter or the determination of a regulatory matter, e.g. the consideration of a planning application of the Councillor or any person or body referred to in paragraph 8 of the Code of Conduct the interest cannot amount to a prejudicial interest. The planning application had been determined by the District Council in June 2007 and so I do not consider that a prejudicial interest arose. Consideration of issues of predetermination and bias are outside of my remit as they involve common law principles which are not entirely encapsulated within the Code of Conduct. Otherwise I might have been keen to express a view on those aspects.

4.3 I have to say that it is clear to me in looking at the evidence that the wife of Councillor James was involved with the other signatories to the Watersmeet letter in a campaign against Councillor Mrs Fairman and Councillor Collier because the objectors were still seriously put out by the outcome of the planning application. Those signatories have not been able to let the matter drop. Much of the disquiet arises I believe results in a misunderstanding on the part of the signatories on the issue of "involvement" in the planning application. The only evidence that has been produced to me to support the allegation that Councillor Mrs Fairman at one time said she did not visit the site lies in the minute of the Council for the meeting of 12th June 2007. In that minute, Councillor James has highlighted the passage which says that "Councillor Mrs Fairman explained that at no time has she been involved with the application." Clearly the signatories regard that as inconsistent with Councillor Mrs Fairman having visited the property. That is because the signatories have failed to make the distinction that simply to point someone in the right direction in terms of process is not the same as involvement in the consideration or assessment of a planning application. It appears that that fundamental misunderstanding has fuelled much of the rancour which has been exhibited. The fact that the Parish Council had collectively and democratically raised no objections to the planning application and the complaint to the Standards Board had been rejected should in my view have marked the end of the matter. Legitimate challenge of a Member's policies or opinions or actions is one thing. I think the challenge to Councillor Fairman was allowed to go far beyond that. Members of the public were allowed to interrogate Councillor Mrs Fairman directly rather than through the Chair and personal attacks on the integrity of Councillor Mrs Fairman were allowed by the Chairman to continue. I consider that those personal attacks were unfounded, excessive and offensive and went beyond legitimate challenge. I also consider that the Chairman, Councillor James, in orchestrating and creating the opportunity for his wife and the other signatories to continue the personal attacks on Councillor Mrs Fairman in a public forum represented a failure on his part to treat Councillor Fairman with respect.

4.4 "Bullying" may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour". This is the definition adopted in the "Guide for

Members on the Code of Conduct May 2007". The Guide further states that "such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health". I do not consider the conduct of Councillor James on the evening of 13th May 2008 constituted bullying on his part even though he created the space for others to make attacks on the integrity of Councillor Mrs Fairman. I fall short of labelling the conduct of Councillor James as bullying but for the reasons I have already expressed, I do believe it represented a failure on his part to treat Councillor Mrs Fairman with respect.

- 4.5 The wife of Councillor James was a signatory to the Watersmeet letter. She had been instrumental with others in criticising the actions of Councillor Fairman and questioning her integrity. She was personally involved in the grievance which she and others were pursuing. I believe that Councillor James in creating a platform within the Council agenda for his wife (and the other two signatories to the Watersmeet letter) to pursue her private grievance, to permit direct questioning of a Member, to allow personal attacks on the integrity of Councillor Mrs Fairman to be made, amounted in my view to an improper use of his position as Chairman to confer a disadvantage on Councillor Mrs Fairman.

5. FINDINGS

- 5.1 During the public participation session of the Council at its meeting held on 12th June 2007 the business of the Council was not being transacted and no decisions of the Council could during that session be lawfully and validly made. Therefore the question of interests does not in my view arise and as a consequence the provisions of the code of conduct that preceded the Code of Conduct do not fall to be considered.
- 5.2 I find that at the meeting of the Council held on 13th May 2008 Councillor James should have declared a personal interest in the item relating to the Watersmeet letter for the reasons I have given in Section 4 of this Report. I therefore consider that Councillor James was in breach of paragraph 9(1) of the Code of Conduct.
- 5.3 I find for the reasons already provided that at the meeting of the Council held on 13th May 2008 Councillor James through his conduct in allowing unreasonable and excessive personal attacks to be made on the integrity of Councillor Mrs Fairman failed to treat Councillor Mrs Fairman with respect contrary to the obligation contained at paragraph 3(1) of the Code of Conduct.
- 5.4 For the reasons provided in Section 4 of this Report I find that Councillor James in actively creating within the meeting of the Council a platform for his wife (in common with others) to question Councillor Mrs Fairman directly and to pursue a personal grievance against Councillor Mrs Fairman in my view amounted to an improper use of Councillor James' position as Chairman to the Council and conferred a disadvantage on Councillor Mrs Fairman. I find that contrary to the requirement of paragraph 6(a) of the Code of Conduct.

5.5 This is a final report which will fall to be considered by the Standards Committee of South Hams District Council

Dated 16th February 2009

Graham Rowe

SCHEDULE OF BACKGROUND PAPERS

Background documents

Complaint papers and associated documents		Pages 1 to 28
Note of Interview with Councillor Mrs Fairman along with exhibits		Pages 29 to 38
Note of a Telephone Interview with the Clerk to the Council, Mrs Elizabeth Groom		Pages 39 to 41
Note of an Interview with Councillor James and Mrs Pam James		Pages 42 to 49
Response statement of Councillor James dated 20 th October 2008 with enclosures including minutes of the Council for the meetings of 12 th June 2007 and 13 th May 2008		Pages 50 to 60
Response statement of Councillor Mrs Fairman		Pages 61 to 63
Statement of Councillor James outlining his contribution to public life, his view of the complaint and his personal circumstances		Pages 64 to 65