

WINCHESTER CITY COUNCIL
STANDARDS (DETERMINATION) SUB COMMITTEE

DECISION AND REASONS ON THE COMPLAINTS MADE
AGAINST COUNCILLOR KIM GOTTLIEB

INTRODUCTION

1. Councillor Kim Gottlieb has been an elected member of Winchester City Council since May 2011, when he was initially elected as a representative of the Conservative Party. He was re-elected in May 2016 but in June 2018 he left the Conservative Group on the Council and sat as an Independent until October 2018 when he joined the Liberal Democrat Group. In May 2019 he was re-elected as a Liberal Democrat.
2. Under the Localism Act 2011, Winchester City Council must promote and maintain high standards of conduct by members and co-opted members of the authority. The Council must adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. The Council must also have in place arrangements under which allegations can be investigated and decisions on allegations can be made. The arrangements for making a decision on an allegation must include provision for the appointment by the authority of at least one independent person, whose views are to be sought, and taken into account, by the authority before it makes its decision on the allegations. We have been provided with a copy of the Council's Code as it stood at the time of these allegations, and all references in this document to "the Code" refer to that document.
3. On 13 February 2017 the Council received a complaint from Paul Twelftree alleging that the conduct of Cllr Gottlieb was in breach of the Code in respect of events occurring in March 2016. On 24 July 2017 the Standards (Assessment) Sub-Committee decided that the two aspects of the complaint referring to paragraph 3.3 and 3.8 of the Code were sufficiently and potentially serious enough for an investigation to be undertaken as to whether a breach of the Code had taken place.
4. On 16 September 2018 the Council received a complaint from (then Councillor) Guy Ashton that the conduct of Cllr Gottlieb was in breach of the Code in respect of events occurring on 20 August 2018. On 27 February 2019 the Standards (Assessment) Sub-

Committee decided that this complaint also merited investigation as to whether a breach of the Code had taken place.

5. Both complaints relate to the alleged conduct of Cllr Gottlieb in respect of his dealings in the purchase and subsequent ownership of a property in the centre of Winchester and including the subsequent consideration by the Council of matters which potentially affected that property.
6. The matters were referred for investigation through the Council's processes. At some point external investigators, Wilkin Chapman, were appointed and the Monitoring Officer, Ms Kirkman became a witness to the matters under investigation. There was an attempt to mediate in November 2019 but this did not succeed.
7. On 14 November 2019 Cllr Gottlieb made a formal request, on a variety of grounds, that the decision to investigate the complaints be set aside and that the complaints themselves be abandoned. In particular he complained that these matters had gone on for far too long and that this was causing him significant stress. The matter was referred to the Standards (Review) Sub-Committee who decided on 28 January 2020 that, notwithstanding the length of time that the investigation of the two complaints had taken so far, they should not be discontinued or abandoned.
8. On that basis Wilkin Chapman were advised that they should complete their investigation and produce a report, which we have now considered. Their conclusion is that Cllr Gottlieb has not breached of the Council's Code of Conduct in respect of either complaints.
9. The matter is now before us for determination.

PROCESS

10. At the hearing, the parties were represented as follows:
 - 1) Mark Heath of Veale Wasbrough Vizards, in his role as acting Monitoring Officer, and Jonathan Goolden of Wilkin Chapman presenting the report.
 - 2) Ms Rose Burns, barrister, representing Cllr Gottlieb.
11. We are grateful for the submissions received.
12. We have been assisted by the Independent Person, Mr Mike Cronin, who remained with us during the course of the hearing and the subsequent deliberations. His views were sought, given and taken into account during the course of our deliberations. We have

also had the assistance of an independent legal advisor, Ms Samantha Broadfoot QC, who has provided legal advice and guidance where appropriate and we are grateful for her assistance in approaching our task. The decision is, however, ours.

HEARING – THE PROCEDURE

13. By virtue of Covid-19, the hearing has been conducted via Microsoft Teams. We are grateful to the Council Officers for setting up all the various types of virtual meetings required, which must have been quite a task. The open parts of the meeting were streamed on the internet in the normal way.
14. The hearing started on 14 July 2020 and followed the order set out in the agenda.
15. Cllr Becker was elected chair of the sub-committee. There were no declarations of interest. The procedure for the hearing as set out in the Agenda was endorsed.
16. The first substantive item on the agenda was to consider whether in all of the circumstances of the case the meeting should proceed as exempt business such that the public were excluded. There is a power to do so in certain circumstances under the Local Government Act 1972 and this is reflected in the Council's own procedures. The parties were agreed that the matter should proceed as exempt business. Mrs Gottlieb was permitted to remain at the hearing.
17. There were no objections to any members of the committee.
18. Shortly before the hearing started, we received a chronology document from Cllr Gottlieb, which was a route map through his submissions. We have read this carefully, along with the report and the documents in the bundle.
19. On 14 July we heard the case presented by Mr Heath and his witness, Mr Jonathan Goolden of Wilkin Chapman. We were able to ask both Mr Heath and Mr Goolden questions. We also heard the majority of evidence from Cllr Gottlieb but were unable to complete the hearing that day. Accordingly, the hearing was formally adjourned and resumed on 23 July 2020, for a further afternoon. On that afternoon we heard the remainder of Cllr Gottlieb's evidence, submissions as well as further explanations on aspects of the Code from Mr Goolden at our request who re-attended for the purpose. We were able to ask Cllr Gottlieb questions and did so.
20. The Panel deliberated in private on 23rd, 27th, 29th and 30th July 2020. Our decision was announced publicly at a further Teams meeting on 3 August 2020 with the full reasons to be handed down in writing within ten days.

21. We make our findings under each allegation as follows.

Allegation 1: Cllr Gottlieb breached the Code in using confidential information obtained as a councillor for the meeting on 26 March 2016 in order to further his own interests, namely buying St Clements Surgery

22. We find the following facts: The Council has been involved in projects and potential projects in the Central Winchester Regeneration Area (“CWRA”) for some time. A project referred to as the Silver Hill project, which included the potential redevelopment of the St Clements Surgery, was initially considered in 2011. For many years until 2016 the Council had been in negotiation with the doctors regarding the purchase of the property, this included the possibility of compulsory purchase.
23. For various reasons the scheme was not progressed. Part of these reasons, and a significant one in recent years at least, was a successful challenge mounted by Cllr Gottlieb in late 2014 when he submitted a Judicial Review against the Council. The judgement was issued in February 2015.
24. In June 2015 Cllr Gottlieb was introduced to the doctors who owned the surgery. The owners informed him of the difficulty and financial hardship being caused by the uncertainty around the proposed redevelopment.
25. On 29 March 2016 the Council’s Cabinet considered an urgent item regarding the purchase of the St Clements surgery building. The published minutes of the Cabinet meeting show that three options were considered by the Cabinet and that exempt information was provided to the meeting in appendices which contained a valuation report on the existing surgery, a scheme viability appraisal of the new surgery building and budgetary provision.
26. Cllr Gottlieb was not a member of the Cabinet however as a Councillor he had access to the confidential appendices and attended the Cabinet meeting.
27. At some point after his re-election in May 2016, Cllr Gottlieb was made chairman of the newly formed CWR Committee. However, he was sacked from that position on 30 August 2016 (the reasons for that are not directly relevant here). We accept his evidence that it was only after that sacking that he thought seriously about buying the St Clements surgery property and he started negotiations with the doctors. A price of £1.65m was agreed and contracts were exchanged on 18 November 2016¹. His interest

¹ His email, p410

was registered with the Council on 10 December 2016. Completion occurred on 29 September 2017.

28. The question for us is whether the complaint discloses a breach of para.3.3 or para.3.8 of the Code. These provide that a member's conduct must address the principles of the Code of Conduct by:

"3.3 Not allowing other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' casework, the interests of the Council's area, or the good governance of the Council in a proper manner."

"3.8 Restricting access to information when the wider public interest, the Council's Constitution, or the law requires it."

29. In our view, once seen in the context of the timeline and what was in the public domain, the answer is no.

30. Cllr Gottlieb had no declarable interest at the meeting on 29 March 2016. At that stage he was not seriously considering buying St Clements.

31. The information that the Council was interested in buying St Clements was not of itself confidential but general public knowledge. The confidential information contained in the exempt papers which potentially could have been of use to him, related to the stated value of the property, the price the Council was offering and how much it would be prepared to pay. In our view, none of the other confidential information provided would have been of material use to him.

32. However, we find that this information was not in fact of any use by the time Cllr Gottlieb developed a serious interest in buying St Clements. The doctors told him what they had been offered for the property by various bodies and they wanted £1.85m for it. The Council's internal (and confidential) stated maximum in March 2016 was considerably lower than what Cllr Gottlieb in the end paid for it, and although that ceiling may have been raised subsequently to £1.6m, this was not the position at the meeting in March 2016 which is the focus of this complaint, and there is nothing to contradict his evidence that he did not know this. In any event, the crucial point is that the relevant information came from the doctors and not the confidential information provided to him.

33. In all the circumstances therefore we find that there is no breach of the Code on this allegation.

Allegation 2: Broke the Code by being present and making a statement at the full Council meeting on 20 August 2018

34. We find the relevant facts on this issue to be the following (again these were not substantively in dispute):
35. In June 2018 the Council produced a Supplementary Planning Document for the CWRA. The document was considered by the Council's Overview and Scrutiny Committee. Prior to the meeting of the Committee Cllr Gottlieb sent an email to all members of the Committee setting out his views and urging the members to not support the recommendations being put to the Council's Cabinet until information was obtained on various issues.
36. On 20 August 2018 the Council considered an item regarding the purchase of property in the CWRA. The agenda for the meeting identified the item as 'Land Transaction'. It was the only substantive item on the agenda.
37. The Council's statutory officers were concerned about Cllr Gottlieb's position in light of his ownership of the St Clements property and prior to the Council meeting advice was sought from Leading Counsel, James Goudie QC.
38. On 10 August 2018 the then Monitoring Officer and Head of Legal (Interim), Lisa Hall, emailed Cllr Gottlieb informing him that:
- officers at the Council had recently been negotiating, on a confidential basis, on a land transaction that "is important to the Council and is strategically important in relation to its plans to re-develop the central Winchester area".
 - the matters to be determined related in part "to proposed acquisitions of land/land interest within the [CWRA] and consequently the Council's ability to progress its plan to regenerate the Central Winchester area without the use of compulsory acquisitions. This may also have an impact on property values within the Central Winchester Area, including the St Clements Surgery" which she also considered was likely to be affected by the Council's regeneration plans.
 - she considered Cllr Gottlieb to have a personal and prejudicial interest, as well as a disclosable pecuniary interest in the matter under consideration. In the circumstances she would not give him access to the reports which contained exempt information, that (subject to a resolution) the meeting proceed as exempt business and the public would be excluded and therefore that he may not participate in any discussion of, vote on, or discharge any function related to any matter in which he had a prejudicial interest and that he must withdraw from the

room where the meeting is being held and must not seek improperly to influence a decision about that business.

39. Cllr Gottlieb disagreed with her analysis that he had the relevant interests. The MO thus went back to James Goudie QC on the content of her email. He responded in a short further Opinion dated 15 August 2018 stating, amongst other things, that he agreed with it and that “Cllr Gottlieb has both a DPI and a personal interest that is prejudicial.”
40. Insofar as what Cllr Gottlieb knew about the business of the meeting, it is clear that although Cllr Gottlieb had not been told many details about the land transaction (and was not given access to the exempt papers), he had obviously worked out that it related to Friarsgate. This can be seen from his reference “The Friarsgate Surgery” in the subject matter of his email of 12 August 2018 to (then Cllr) Guy Ashton asking for information about that the deal with THRE, whilst in the same email stating that “for obvious reasons, I will not be partaking in the main discussion about the proposed purchase”. Mr Ashton’s emailed response was that it was “all in the exempt papers... thus I cannot discuss it”. Cllr Gottlieb told us that this confirmed to him that the transaction related to Friarsgate Surgery.
41. We therefore find that Cllr Gottlieb knew that the land transaction related to the Friarsgate Surgery (though maybe he was not aware of the full extent of the proposed transaction), that he had been told that he should not attend and could not participate.
42. Cllr Gottlieb exchanged emails with the Monitoring Officer. These included a request by him for a dispensation to speak on the item. No dispensation was granted (on the basis that the Monitoring Officer did not have power to grant such a dispensation).
43. Cllr Gottlieb did attend the meeting on 20 August 2018 and prior to the consideration of the item made a statement about his interest in the matter stating, words to the effect that, “*he had a personal but not a prejudicial interest in the matter, he had done more than anyone in the Chamber to bring about this opportunity for the Council and he would be very supportive of the transaction.*” In his oral evidence to us he stated that he had prepared a written statement for the meeting (which was not in the bundle, but he read out to us and was to similar effect) although he told us he may not have read it out word for word.
44. Cllr Gottlieb then left the meeting prior to the Council considering the exempt report.
45. The relevant Code provisions arising out of this complaint relate to what a person can and can’t do if they have a prejudicial interest, and/or they have a disclosable pecuniary

interest. It is therefore necessary to work out first whether Cllr Gottlieb had a relevant interest.

46. We have looked at each one in turn.

Prejudicial interest.

47. Cllr Gottlieb accepts that he had a personal interest in the business of the Council and we agree. The question is whether that personal interest amounted to a prejudicial interest.

48. Prejudicial interests were defined in Part 8 of the Code. In summary, Cllr Gottlieb only had a prejudicial interest in the Council business on 20 August 2018 if 3 conditions were met:

- 1) The matter did not fall within one of the exempt categories of decisions set out in para.2.3 of Part 8 of the Code;
- 2) The matter affected Cllr Gottlieb's financial interests (or related to a licensing or regulatory matter); and
- 3) A member of the public, who knew the relevant facts, would reasonably think Cllr Gottlieb's personal interest was so significant that it was likely to prejudice his judgement of the public interest.

49. As to each limb of that test, we find:

- 1) The matter did not fall within one of the exempt categories, indeed no one suggested that it did.
- 2) The matter did affect Cllr Gottlieb's financial interests within the meaning of Code.
 - Cllr Gottlieb's St Clements property and the Friarsgate surgery land are very close to each other and both pieces of land fall within the CWRA.
 - Whilst there is a difference of view as to whether the Council's acquisition might increase or decrease the value of St Clements surgery, it is clear to us that the Council's land acquisition for the purposes of the regeneration of the area clearly potentially affected the value of St Clements and therefore affected Cllr Gottlieb's financial interests.
 - We are supported in our conclusion by the approach taken in the Standard Board's historic guidance on the 2007 Model Code of Conduct (on which the

Council's Code as considered here is modelled) that the phrase 'affect financial interests' should be broadly construed. This states: "A member's financial position can be affected directly or indirectly, favourably or unfavourably, substantially or marginally".²

3) Finally, in our view, a member of the public, who knows the relevant facts, would reasonably think Cllr Gottlieb's personal interest is so significant that it is likely to prejudice his judgement of the public interest.

- The relevant facts are the location of the two properties in question, the fact that Cllr Gottlieb owns one of them, the reasonable possibility of the decision affecting his financial interests, the general history of the redevelopment scheme and Cllr Gottlieb's extensive involvement and strongly held views on it.
- Whether Cllr Gottlieb thinks he has good judgment and can nonetheless act in the public interest is irrelevant. This paragraph is about public perception by the reasonable ordinary member of the public. It is obvious to us that a member of the public would consider that his personal interest is, as a result of the relevant facts, so significant that it is likely to prejudice his judgment of the public interest.

50. Cllr Gottlieb did not and still does not accept that he had a prejudicial interest in the Council business on 20 August 2018. For the reasons above we consider that he is wrong about that. This view is also supported by James Goudie QC in his various opinions at that time and Wilkin Chapman in their report.

51. Given our conclusion, Part 9 of the Code applies. This contains the effect of prejudicial interests on participation. The relevant part is paragraph 1.1 which provides:

"Unless a dispensation has been granted... you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a prejudicial interest... and must as soon as it becomes apparent to you that you have such an interest... withdraw from the room where the meeting considering the business is being held, and must not seek improperly to influence a decision about that business."

52. The meeting on 20 August 2018 had one substantive item for discussion only, the "land transaction", which, as we said earlier, Cllr Gottlieb knew included the Friarsgate Surgery.

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<https://webarchive.nationalarchives.gov.uk/20110119125734/http://www.standardsforengland.gov.uk/CaseinformationReporting/OnlineCaseReview2010/Paragraph10/QandA/#d.en.27205> see Q99.

53. We find that Cllr Gottlieb did not participate in any discussion of, vote on, or discharge any function related to any matter in which he had a prejudicial interest because he withdrew from the room before there was any discussion of or vote on it.
54. The question that we have found more difficult is whether by his statement he sought improperly to influence a decision about the business. Wilkin Chapman in their report have not provided guidance on this so we have had to assess this without the benefit of their input or analysis. However, we have had the benefit of legal advice from Ms Broadfoot and disclose her written note as a separate annex to this Determination.³
55. In our view he should not have made a statement at the meeting to the effect that he supported the proposed transaction. He was properly to be excluded from the meeting by his personal and prejudicial interest. He should have just left without making any comment on the matter to be discussed.
56. If he was attempting to influence the decisions of others by making the statement at that meeting it would be improper and a breach of the Code. We asked him why he would choose to say it if he wasn't intending it to have any impact. His answer was that he was simply trying to say something positive in support of the Council. We don't accept that. Having read all the papers and heard Cllr Gottlieb's evidence, including that he was "miffed" at "not being invited to the party" and "felt left out", we find that he was very annoyed at being excluded from that meeting. In our view, however, he was not intending to influence anyone on the substance of the matter, rather it was an ill-judged and undisciplined statement made in order to demonstrate that he was generally cross with everyone. And to do so having had express advice from the Monitoring Officer not to do so might be viewed as reckless, or at the very least unwise.
57. In acting as he did, Cllr Gottlieb did not act in accordance with the highest standards of conduct to be expected of a councillor, but nonetheless and on balance the remark was not a breach of the Code in this instance nor, for the avoidance of doubt, was it for his own benefit.
58. Accordingly, we find no breach of paragraph 1.1 of Part 9 of the Code.

³ In light of our conclusion on the outcome it was not procedurally unfair not to put this to the parties for comment.

Disclosable pecuniary interest

59. The Council's Code defines DPI in Part 2 – this definition reflects the Localism Act 2011 and the regulations made under it.⁴

60. There is no doubt that Cllr Gottlieb has a DPI in his ownership of St Clements Surgery and was required to register it under paras.1.1 and 1.2 of Part 3 of the Code. He did so and there is no dispute about that.

61. The issue is whether he breached para.1.5 of Part 3 of the Code.

62. This provides:

“1.5 unless a dispensation has been granted by the standards committee you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a disclosable pecuniary interest. You must as soon as it becomes apparent that you have such an interest withdraw from the room where the meeting considering the business is being held.”

63. Part 3 of the Code is intended to implement the provisions of the Localism Act 2011 which concern DPIs. The obligations in s31(2)-(4) of that Act only apply if the conditions in s31(1) are met. These are:

- i. The Member is present at a meeting of the authority;
- ii. He has a DPI “*in any matter to be considered...*” at the meeting; and
- iii. He is aware of ii.

64. So the first question is whether Cllr Gottlieb had a DPI *in* the matter to be considered?

65. This is a vexed question because whilst predictably Cllr Gottlieb believes that he did not, it transpires that he is supported in this view. Jonathan Goolden of Wilkin Chapman, experienced solicitor in this field whose team conducted the investigation, and Mark Heath from Veale Wasborough Vizards, (“VWV”) also very experienced in this field and who was Acting Monitoring Officer in this case, also submitted that, as a matter of law, Cllr Gottlieb did not have a DPI in the matter to be considered at the meeting on 20 August 2018.

66. Any reader might well ask why the Sub-Committee then has to determine that matter or indeed how it could reach a different conclusion.

⁴ S30 of the Act, and UKSI 1464/2012 *The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012*

67. The answer as to the question of 'why' is simple. The matter is before us and we must determine it. It is nonetheless a difficult question because the advice from Mark Heath and Jonathan Goolden is the opposite of the advice that the Monitoring Officer, Lisa Hall, appears to have received from external leading counsel, James Goudie QC. We say 'appears' because, notwithstanding the unequivocal statement that Cllr Gottlieb had a prejudicial interest and a DPI, and that he agreed with the MO's email which said the same, Mr Goudie later says Cllr Gottlieb had a prejudicial interest "and/or" a DPI. It seems to us that leading counsel may not have intended to opine on the two issues separately, since the effect of either a personal and prejudicial interest or a DPI was that Cllr Gottlieb needed to exclude himself from the business in question and should not receive the exempt papers.
68. So that brings us to the position of having to consider competing legal opinions on a point which is, at best, unclear. We are therefore particularly grateful to our Independent Legal Advisor Ms Broadfoot QC, who conducted further research and analysis on this issue and was subject to rigorous questioning by this Panel (two of whom are also lawyers) during our private deliberations.
69. She advised us and we are now satisfied that Cllr Gottlieb did not have a disclosable pecuniary interest "in" any matter to be considered, namely the land transaction proposed. His interest was in his nearby property but not in Friarsgate. Accordingly, there was no breach of the Code in this regard.
70. We cannot however leave it at that. We are very concerned that it is possible for very experienced lawyers to come to opposite conclusions about something which is meant to be applied by non-legal people up and down the country, even with Monitoring Officer advice. We are also concerned that, as set out in Ms Broadfoot's legal advice, the government guidance and explanatory notes all seem to support a wider interpretation of the statutory language than that which we have concluded is correct. For the avoidance of doubt, we think it was entirely proper for the Monitoring Officer to seek and rely on external legal advice in this case. It is unfortunate that, as a result of the more thorough analysis conducted both by Wilkin Chapman and Ms Broadfoot than that evidenced in Mr Goudie QC's Opinions, we have had to disagree with his advice.
71. We disclose, as a separate annex, Ms Broadfoot's legal advice on this issue. As her legal advice led to the same conclusion as that of the parties, there was no unfairness in not reverting to the parties for comment prior to the decision, but we disclose it to the parties in this way for transparency given the technical difficulty of the point.

72. We understand from Mark Heath's report that this issue of interpretation has not been confined to this Council alone but has arisen elsewhere. We agree that this is most unsatisfactory for all concerned and leaves Monitoring Officers advising members in an invidious position. We note that there may be future legislation following the January 2019 CSPL report and recommendations.

73. In conclusion therefore, we find no breach of the Code on allegation 2.

Allegation 3: that Cllr Gottlieb breached the Code of Conduct by subsequently being quoted in the Hampshire Chronicle on 23 August 2018 as saying "The proposed acquisition of the Friarsgate Surgery by the council is something I am happy to support", thus disclosing the confidential details of a very sensitive transaction in public.

74. This allegation relates to events that happened immediately after Cllr Gottlieb agreed to leave the meeting on 20 August 2018. We find the relevant facts as follows:

75. As the meeting was going into private session a reporter from the Hampshire Chronicle also left the meeting at the same time as Cllr Gottlieb. Cllr Gottlieb spoke to the reporter and was subsequently quoted in the Chronicle on 23 August 2018 commenting on the land transaction. The relevant part of the article included the following:-

"Civic chiefs have approved a secret deal this week to buy a piece or pieces, of land in the Silver Hill 2 area.

The city council is currently refusing to reveal the [sic] say where it is or how much taxpayers' money was spent.

It is thought the deal relates to the city centre Friarsgate Medical Centre... However, it has also been rumoured to relate to several properties front onto The Broadway, including the Gandhi restaurant, Subway and two empty units next to Alfie's pub...

The city council has refused to confirm either, with a spokesman only saying that the council had agreed the transaction...

Speaking to the Chronicle the independent councillor said "The proposed acquisition of the Friarsgate surgery by the council is something I am happy to support."

"It is a prominent part of the Central Winchester Regeneration (CWR) area, and its future needs to be considered within the context of a master plan for the whole site. The purchase would bring the THRE's eight-year involvement in this project to an end."

"Cllr Gottlieb added "Their continued interest in the site, and the way in which the council preserved the original planning permission, kept alive the possibility that a development scheme that was deeply flawed might be resuscitated."

"What's important is what happens next. However, just now the council should spare a thought, and possibly a thank you, for those many residents who by resisting the Henderson scheme created the opportunity for the council to make sure that, this time, the development of the site really is devised in the best interests of the city."

76. The article went on to report on a statement made by a former Labour City Councillor at a Cabinet meeting earlier that same day when commenting on the secrecy issue before members of the public were excluded. It stated:-

"It cannot be proper that the council is seeking to do business in this way. I can only assume it is a transaction to do with the CWR. It cannot be right this is the way it is being dealt with."

"This long report cannot be wholly dealt with in public, fair enough, there must be certain commercial aspects. That's it. It cannot all be dealt with in private."

77. The relevant Code provisions are those set out relating to Allegation 1, namely that

"As a member of Winchester City Council, your conduct will address the principles of the Code of Conduct by:

...

3.8 Restricting access to information when the wider public interest, the Council's Constitution, or the law requires it."

78. As observed in the VWV report, this provision in the Code appears to replicate the provision in the former model code that covers the disclosure of confidential and exempt information. The Council's Constitution, at Section 2.04 which covers Rights and Duties of Councillors, states:-

"They will not make public any information which is confidential or exempt, or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it."

79. The first question is what was the information that Cllr Gottlieb is said to have disclosed?

80. The relevant information appears to be that the land transaction proposed by the Council to be considered at the 20 August 2018 meeting was or at least included the Friarsgate Surgery.

81. The next question is whether this was confidential information. We are advised and accept that the test set out at para.7.23 of the report is an appropriate one. This provides that information can only be confidential if all of the following apply:-

- (a) it has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be);
- (b) it was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential);
- (c) disclosure of it would be detrimental to the party wishing to keep it confidential.

82. Turning to each limb we find:

- a) It had the necessary quality of confidence about it. It wasn't trivial and it was clear the Council wanted to keep it private. Whilst the Council's interest in the land generally was in the public domain, there is no evidence that their intention to purchase it at that particular point in time was in the public domain, as indeed the content of the Chronicle article makes clear. We also note Joseph Holmes' evidence that "At this stage the Council was keeping its proposed purchase of the Friarsgate Surgery building strictly confidential. There had been no public disclosure of any information relating to the matter... the Council's intentions were only known to a small number of the Council's Senior Officers"⁵ – as well as members presumably. We are also aware, from our collective experience, that this was viewed as a time-sensitive deal and there was a desire not to see it upset, for example by late interest by a third party being shown. This was, of course, what had happened previously with St Clements Surgery.
- b) The information was given to Cllr Gottlieb in circumstances importing an obligation of confidence. He had guessed the identity of (at least part) of the land under consideration and this had effectively (though possibly inadvertently) been confirmed by Cllr Ashton's email of 12 August. It is clear from that email, and particularly when seen following Lisa Hall's email of 10 August, that all aspects relating to the transaction, including the identification of the land, were seen by the Council, as confidential. We find that this would have been obvious to Cllr Gottlieb.
- c) On the question of whether disclosure would be detrimental to the party wanting to keep it secret, we have found this a difficult question. However, we have in the end concluded that there is no evidence before us to show that acknowledging the specific location of the land that was the subject of the transaction at the time would be detrimental to the Council. Further we note that in fact no detriment was caused, though that is not determinative. Further, as Mr Holmes accepts in his witness statement, once a person was aware that the land transaction concerned land in the CWRA, "anyone with limited knowledge of the Council's proposals for the area would have been able to identify the "land" referred to in the confidential report."⁶ Given that the information that the transaction related to CWR appeared to be circulating, this also points to that conclusion.

⁵ Para.6.

⁶ Para.10.

83. Accordingly, and on balance, we find that in respect of allegation there is no breach of the Code.

CONCLUSIONS

84. In addition to our findings on the Code, we think it is potentially helpful, going forward, to make some observations about the process and issues arising.

85. **Timing and delay:** We are concerned about the length of time these complaints have taken to get from start to finish. On any view, these have taken far too long and any future complaints must be determined more promptly. We suggest that the Code and/or the constitution be altered to require shorter time frames both for making complaints and resolving these. Questions should also be asked as to why it took so long to resolve these particular complaints and lessons learnt from this process. Cllr Gottlieb has told about the stress these complaints and this process has placed on him and his family. No one should have to go through this again for this length of time.

86. **Process:** The process of determining the complaints has been in a peculiar context because both sides were in agreement as to outcome. This meant that a significant burden fell on us to test the assertions and propositions and to ensure that we were able to reach a proper determination in which we made up our own minds.

87. This brings us to the Wilkin Chapman report. Whilst we appreciate that it must have seemed like quite a complex matter since any external investigators had to get to grips with considerable history and context, we found the report to be insufficiently focussed and, as a result, it is much too long. Despite (or maybe because of) this the report failed to analyse some important issues regarding improper influence and the confidentiality aspect relating to the August 2018 meeting. This meant that some of the possible concerns of the Council were not explored as fully in the evidence as they might have been: there is little in the report regarding the reasons why the Council may have considered disclosure of any details detrimental, and indeed no one appears to have been asked that question, despite the criticisms made in the report about not understanding why some of the information was confidential. The investigators also failed to elicit key information such as the exact dates upon which Cllr Gottlieb became interested in buying St Clements, the date of exchange and the date of completion and the fact that he had a prepared statement for the meeting on 20 August 2018. We think that identifying the issues at an early stage, perhaps involving a Panel from the Sub-Committee may be helpful.

88. We also add for future reference that a bundle running to several hundred pages should have a detailed index or contents page in order to make it more manageable to find documents.
89. It is right to record however, that we appreciated Mr Heath's straightforward and practical approach to our questions such as how he would have managed the circumstances of giving Cllr Gottlieb more information prior to the 20 August meeting, as well as the oral explanations given both him and Mr Goolding regarding the DPI issue.
90. **Culture and training:** we are concerned about the culture of adversity and the issues that have arisen from the matters that have played out in this investigation. We particularly note here the tone and language of some emails, the readiness to involve the police at an early stage and the failure to take approaches suggested by Mr Heath as more suitable. As a council, we must all, councillors and officers, work together in a civilised, respectful and non-threatening manner to achieve the best for the people we represent.
91. We also think that there needs to be more, and more detailed, training on the Code of Conduct for all Members and Officers, and that serious consideration should be given to whether some of this should be given by external trainers, and include specific case examples in order to stimulate thought and wider understanding of the types of issues that may arise, and what sorts of interests may be personal, personal and prejudicial, or Disclosable Pecuniary Interests – and what obligations are associated with each. In addition, Winchester's current Code is different from the one which applied at the time of these events. These are matters that we anticipate will be taken forward by the Audit and Governance Committee.
92. **Consequences:** The question as to whether Cllr Gottlieb had a personal and prejudicial interest *or* a DPI mattered little at the end of the day insofar as his potential involvement in the Council business in 2018 was concerned since either route led to a conclusion that he was not to participate. However, the point relating to DPIs has taken on more significance now because the provisions on personal and prejudicial interest no longer appear in the current version of the Code of Conduct. In our view this must be reviewed urgently in order to ascertain whether there is a gap in the Code in which a person with a significant personal interest can nonetheless participate in a meeting which decides matters which are likely to affect that interest.

Cllr Kathleen Becker (Chair)

Cllr Hugh Lumby

Cllr Mike Craske

10 August 2020