



**Investigation into a complaint against  
Councillor Alan Sutcliffe,  
Craven District Council**

A report for the Monitoring Officer of  
Craven District Council

**14 November 2017**

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## 1 Executive Summary

- 1.1 ch&i associates was appointed by the Monitoring Officer at Craven District Council (the District Council) to investigate five complaints about the conduct of Councillor Alan Sutcliffe, a member of the District Council. As part of this investigation I have considered whether Councillor Sutcliffe failed to comply with the District Council's Code of Conduct by using his position as Chairman of the Planning Committee in a manner that improperly disadvantaged others. I have also considered whether Councillor Sutcliffe's conduct was consistent with the principles of Openness, Honesty and Accountability.

### Scope and focus of the investigation

- 1.2 The Monitoring Officer, in consultation with the District Council's Independent Person<sup>1</sup>, considered complaints from [REDACTED] all of which concerned the alleged conduct of Councillor Alan Sutcliffe. A summary of the five complaints is set out below:

That Councillor Sutcliffe, as Chairman of the District Council's Planning Committee (the Committee) breached the District Council's Code of Conduct for Members ('the Code') in that:

- On **13 March 2017**, at a meeting of the Committee, members resolved to defer consideration of planning application 63/2016/17465 (the Candelisa<sup>2</sup> application) to *'enable the attendance of a representative of the Highways Authority<sup>3</sup> to respond to concerns in respect of the cumulative traffic impact of this and other proposed developments in the vicinity - Wyvern Park - and the relationship between this development and highway improvements associated with the Wyvern Park proposal, namely, the proposed mini roundabout to be provided in Carleton Road connecting Carleton Road via a link road to the A629'* (minute PL.821).
- On **4 June 2017**, at a subsequent meeting of the Committee, Councillor Sutcliffe told those present that the Highways Authority had declined the Committee's invitation to attend and had instead submitted a written report. It is alleged that Councillor Sutcliffe then used his casting vote to approve the Candelisa application, contrary to committee convention.
- On **21 June 2017** at a public meeting organised by the Highways Authority, officers from the County Council were challenged as to why they had refused to attend the District Council's Planning Committee meeting; they responded by confirming that Councillor

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<sup>1</sup> Appointed by the Council pursuant to section 28 of the Localism Act 2011.

<sup>2</sup> Candelisa are a UK based property development company who submitted the application.

<sup>3</sup> North Yorkshire County Council (the County Council)

Sutcliffe, as Chair of the Committee, had instructed them not to attend.

Recommendation

- 1.3 My approach in this case has been to equip the District Council to determine the allegations through any of the routes open to it, namely:
  - a. The member *was not* acting in councillor capacity therefore the code was not engaged and the member did not breach it;
  - b. The member *was* acting in member capacity, but did not through their conduct breach any Code paragraph;
  - c. The member *was* acting in member capacity and breached the Code.
- 1.4 In my view, the allegations against Councillor Sutcliffe do fall within the jurisdiction of the Code because he was acting in his official capacity.
- 1.5 The investigation has established that Councillor Sutcliffe decided that a representative from the Highways Authority would not attend the Planning Committee meeting on **4 June 2017**. In my view this decision was poorly judged; the Committee had decided that they wanted an officer present to respond to their questions and interested members of the public were clearly expecting that to occur. It is my view though that any concerns about his conduct in relation to this matter are governance rather than ethical in nature. As such, I have concluded that Councillor Sutcliffe did not use his position improperly to confer a disadvantage to the complainants either in the way in which he voted or when deciding that a representative from the Highways Authority need not attend the Committee meeting of **4 June 2017**.
- 1.6 Having said that, I do consider that Councillor Sutcliffe's failure to properly explain and take responsibility for the latter decision is sufficient evidence of a breach of the Code as to warrant the District Council taking further action. Members have a responsibility to be honest and open about the decisions they make. While I do not consider that Councillor Sutcliffe lied to the Committee, his response led to those present making the reasonable assumption that the Highways Authority had decided not to attend the meeting.
- 1.7 In considering what action the Monitoring Officer should consider taking, I am not sure that further examination of the concerns highlighted or formal determination of these allegations through a public hearing is justified, particularly given the nature of the sanctions available.
- 1.8 The District Council's arrangements for dealing with standards allegations under the Localism Act 2011 state that the Monitoring Officer will review the investigating officer's report and after consulting with the independent person will consider whether local resolution should be attempted or the matter proceed direct to hearing before the hearings panel. My recommendation therefore is that

the Monitoring Officer seeks a local resolution to the matters raised in this report. Local resolution offers a proportionate and locally owned process.

- 1.9 I consider that the local resolution should involve Councillor Sutcliffe making a verbal apology at the next meeting of the Planning Committee for his failure to make it clear that he had instructed the Highways Authority not to attend the meeting of **4 June 2017**.
- 1.10 A summary of the findings of the investigation and outcome of the local resolution should be provided to the Council's Standards Committee. If Councillor Sutcliffe does not engage with the process in a manner that the Monitoring Officer considers sufficient, I believe that the breach of the Code highlighted in this report should be referred to the Standards Committee for a formal hearing.

## **2 Official details of Councillor Alan Sutcliffe**

- 2.1 Councillor Sutcliffe (Conservative) was elected as a member of the District Council in May 2010; his current term of office ends in May 2018. Councillor Sutcliffe is the ward member for Gargrave and Malhamdale.
- 2.2 Councillor Sutcliffe is currently a member of the District Council's Planning Committee (Chair) and Select Committee. He also represents the District Council on the Airedale Internal Drainage Board and North Yorkshire County Council's Craven Area Committee.

## **3 The relevant legislation and protocols**

### Localism Act 2011

- 3.1 By section 27(1) of the Localism Act 2011 (the Act) a "relevant authority" is placed under a statutory duty to "promote and maintain high standards of conduct by members and co-opted members of the authority".
- 3.2 By section 27(2) of the Act a relevant authority "must in particular, 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".
- 3.3 Under section 28(1) of the Act a relevant authority must ensure that a code adopted by it is, when viewed as a whole, consistent with prescribed principles of standards in public life – the so called "Nolan principles".
- 3.4 The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level which engenders public confidence in democracy, as was recognised by Beatson J, as he then was, in *R (Calver) v The Adjudication Panel for Wales* [2012] EWHC 1172 (Admin) when he held that there was a clear public interest in maintaining confidence in local

government while at the same time bearing in mind the importance of freedom of political expression or speech in the political sphere.

- 3.5 Under 28(6) of the Act, Local Authorities must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. By section 27(7), arrangements put in place under subsection (6)(b) must include provision by the appointment of 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 an allegation that it has decided to investigate.
- 3.6 Section 28(11) of the Act provides that if a relevant authority finds that a member or a co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take.

#### Craven District Council’s Code of Conduct

- 3.7 Under Section 27(2) of the Localism Act the District Council established a Code of Conduct for members (the Code). The Code adopted by the District Council includes the following relevant paragraphs:

##### Member obligations

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations:

3. He/she shall not seek to improperly confer an advantage or disadvantage on any person.

#### APPENDIX C

The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services...

**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

## 4 The investigation

- 4.1 This investigation was conducted by Alex Oram on behalf of the Council's Monitoring Officer. Alex<sup>4</sup> is a director of ch&i associates, a company with a successful track record of conducting complex investigations, assessments and case reviews within the regulatory, charity, NHS and local government sectors. Alex has been conducting member conduct investigations since 2003. He was previously employed by Standards for England as a principal investigator responsible for conducting many of their most complex, politically sensitive and high-profile investigations into member conduct.
- 4.2 During this investigation, we have considered evidence provided by [REDACTED] (the complainants), the District Council, the County Council and Councillor Alan Sutcliffe, including an audio recording of the Committee meeting of 4 June 2017. We have also spoken with Councillor Sutcliffe, [REDACTED], Mr Neville Watson (the District Council's Development Control Manager), Councillor Andy Solloway (District and County Councillor), Councillor Brian Shuttleworth (District Councillor) and Mr Andrew Mather (the District Council's Member Support Manager).

## 5 The evidence

### Committee meeting, 13 March 2017

- 5.1 On **13 March 2017**, the District Council's Planning Committee (the Committee) met to consider planning application reference 63/2016/17465: *Residential development for 67 houses with associated off-street parking, access roads and cycle circuit track, land at Carleton Road, Skipton* (the Candelisa<sup>5</sup> application).
- 5.2 At the meeting [REDACTED] was given the opportunity to present the collective objections of a number of local residents to the Committee. Their primary concern related to the cumulative traffic impact of this and other proposed developments in the vicinity; primarily Wyvern Park.<sup>6</sup> Although the Highways Authority (North Yorkshire County Council) had submitted no objection to the Candelisa application, certain members of the District Council felt that not all of the concerns raised by residents had been fully addressed in the Highways Authority's written representations.

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<sup>4</sup> Alex is not a lawyer and any information in this report should not be construed as legal advice; all reasoning is based on his extensive experience of having conducted over 300 standards investigations.

<sup>5</sup> Candelisa are a UK based property development company who submitted the application.

<sup>6</sup> Wyvern Park was a development that had already been granted permission but where development works were yet to start.

- 5.3 The Committee resolved to defer consideration of the Candelisa application to enable the attendance of a representative of the Highways Authority. Members specifically wanted more information regarding the possible cumulative traffic impact of this and other proposed developments in the vicinity. They also wanted to clarify the relationship between the Candelisa development and highway improvements associated with the Wyvern Park proposal; namely, the proposed mini roundabout to be provided in Carleton Road connecting Carleton Road via a link road to the A629.
- 5.4 After the meeting Mr Neville Watson, the District Council's Development Control Manager, arranged to meet with representatives of the Highways Authority to discuss the concerns raised. Mr Watson told me at interview that to an extent this meeting quickly became unnecessary after Candelisa commissioned and produced an additional engineer's report. This report considered the traffic impact of their proposed development in a way that fully incorporated scenarios where the previously agreed Wyvern Park scheme (and its associated highways improvements) both did and did not proceed.
- 5.5 Having reviewed the engineer's report, the Highways Authority revisited their original report and recommendation of 'No objection' to the Candelisa application. Officers decided to submit a more detailed report to the District Council to set out their position, which concluded that neither scenario (the completion or not of the Wyvern Park development and associated changes to the local road network) would cause severe traffic problems. Their revised submission to the Committee made clear that they still had no objection to the Candelisa application, including any arising from traffic impact.

Did Councillor Sutcliffe instruct the Highway's Officer not to attend the subsequent Committee meeting?

- 5.6 The Candelisa application was listed to be considered at the Committee meeting of **4 June 2017**. As a result, it was one of the matters under consideration when, on **24 May 2017**, Mr Watson met with Committee Chair Councillor Alan Sutcliffe and his Vice-Chair, Councillor Thompson, for the Chairman's Briefing<sup>7</sup>.
- 5.7 During discussions about the Candelisa application, Mr Watson asked Councillor Sutcliffe whether the Committee still required the attendance of an officer from the Highways Authority to answer questions about the potential cumulative traffic impact of this and other proposed developments in the vicinity; he told Councillor Sutcliffe that the County Council had confirmed that an officer from North Allerton could attend to present their new report. Councillor Sutcliffe told Mr Watson that he did not consider their attendance to be necessary any longer because all the questions raised by members at the previous meeting had been fully addressed in the latest report. Councillor Sutcliffe made the point that even if an officer from the Highways Authority did attend, he/she would have no power to reverse the Authority's decision not to object to the Candelisa application. Councillor Sutcliffe told Mr Watson that he also feared that the officer's presence risked diverting any

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<sup>7</sup> Mr Watson meets with the Chair of the Committee prior to every meeting to discuss the relevant agenda



debate away from the material planning considerations, to the rights and wrongs of the formal position taken by the Highways Authority.

- 5.8 Councillor Sutcliffe told me at interview that as far as he was concerned the Committee's decision to request the attendance of a Highways Officer so that he/she could respond to questions about their initial report had been made moot by the fact that they had produced a much more comprehensive report that fully addressed all questions raised. Councillor Sutcliffe stressed that he had no personal objection to an officer from the Highways Authority attending the Committee meeting; he simply viewed it as unnecessary and potentially distracting. Councillor Sutcliffe acknowledged that the decision to effectively 'uninvite' the officer had been his; he was of the view though that neither Mr Watson or Councillor Thomson<sup>8</sup> appeared to have any concerns about it.
- 5.9 Mr Watson told me at interview that while he agreed with Councillor Sutcliffe to the extent that the latest report from the Highways Authority did address the questions and concerns previously raised by the Committee, he did express some disquiet with Councillor Sutcliffe's decision. Mr Watson told me that clearly members of the Committee would be expecting an officer from the Highways Authority to attend and therefore he would have thought it sensible to have provided one; the arrangements for the officer's attendance had already been made. Mr Watson added that in his view the presence of a Highways officer would have more likely reassured members and reinforced the position of the Highways Authority, which in turn supported the planning officer's recommendation to approve the Candelisa application.
- 5.10 On **1 June 2017**, Mr Watson contacted [REDACTED], a Highways Authority officer, to inform him that Councillor Sutcliffe had decided that he did not need to attend the forthcoming Committee meeting.
- 5.11 There appears to be no dispute over the fact that I was Councillor Sutcliffe who decided that the Highways Officer would not attend the Committee meeting to answer questions about the Candelisa application despite the Committee having previously deferred the matter for that very reason. Based on the evidence I have seen and without any evidence to the contrary, I have no reason to doubt that Councillor Sutcliffe took that decision for the reasons he gave me (as set out in paragraphs 5.7 & 5.8 above).

Did Councillor Sutcliffe tell the Committee that the Highways Authority declined their invitation to attend the subsequent Committee meeting?

- 5.12 On **4 June 2017**, the Committee again considered the Candelisa application. After the relevant planning officer had presented her report (recommending approval), County Councillor Solloway presented objections on behalf of a group of residents<sup>9</sup>. The planning applicant's agents and then the two relevant ward

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<sup>8</sup> I note that Councillor Thompson had not been present at the earlier meeting in **March 2017** when the Committee resolved to invite the Highways officer to attend. The Council's Monitoring Officer also informed me that the Chairman's briefing is normally also attended by one of the Council's solicitors, however on this occasion this did not occur.

<sup>9</sup> In Mr Forman's absence

councillors were also given an opportunity to address the Committee. The primary focus of the objections centred on the likely impact the proposed development would have on local traffic.

- 5.13 At this point in the meeting Councillor Sutcliffe reminded members that the Committee could not rely on what residents claimed would be the likely impact on local traffic; they had a responsibility to rely on the professional advice received from the County Council's Highways Department. Councillor Sutcliffe told those present that any refusal based on highways concerns would be indefensible at appeal given that the Highways Authority had indicated in detail that they had no objection on highways grounds.
- 5.14 Councillor Shuttleworth, a member of the Committee, expressed his dissatisfaction with the fact that an officer from the Highways Authority was not present: *"I think it is a snub"*. Councillor Shuttleworth expressed concern that members still did not fully understand how the Highways Authority could support their position of 'no objection' given the weight of anecdotal evidence suggesting that the area was already experiencing severe traffic. Councillor Shuttleworth ended: *"I really do feel slighted that Highways did not send a representative. Is there any particular reason for that?"*
- 5.15 Councillor Sutcliffe responded: *"The Highways Authority are not obliged to be cross examined at a Planning Committee meeting. Their role is as a written consultee and they have supplied their opinion based on a fair amount of research and a load of conditions included in it and that really is about as far as we can expect them to go"*.<sup>10</sup>
- 5.16 Councillor Shuttleworth then questioned whether the research could be relied on given that it had been commissioned by the applicants. Councillor Sutcliffe responded: *"I think as a professional firm of consultants I would expect them to maintain their professional integrity. As such I think their results can be relied on. I would make the point that the County Highways did a lot of looking at this themselves – they did not just rely on a report from the applicant's consultants"*. Mr Watson supported this view, stating that the Highways Authority would have highlighted any flaws in the research.
- 5.17 All five complainants stated in their complaints that Councillor Sutcliffe told those present that the Highways Authority had 'DECLINED' to attend the Committee meeting. ██████ told me that although he had not been at the meeting, he had spoken with those present (including the other four complainants) and all had been disconcerted at Councillor Sutcliffe's conduct: *"The belief of the community is that had Highways attended the outcome may have been different and that the Chairman had no right to tell them not to attend. The Chairman also then lied to the Planning committee and those who were at the meeting as observers."*
- 5.18 At interview Councillor Sutcliffe denied the allegation that he had misled the Committee, stating that he never told those present that the Highways Authority

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<sup>10</sup> Taken verbatim from an audio recording of the meeting

officer had declined to attend. Councillor Sutcliffe made the point that none of the Committee members at the meeting said words to the effect '*I do not understand the rationale behind the report from the Highways Authority*'; had members felt that their concerns and questions remained unanswered they could have asked for the application to be deferred again.

- 5.19 Mr Watson also told me that he could not recall Councillor Sutcliffe saying that the Highways Officer had declined the Committee's invitation to attend. Mr Watson did also say though that he did not think that Councillor Sutcliffe had been clear about the fact that it had been he who had told the Highways Authority that they no longer needed to send a representative.
- 5.20 In my draft report I provisionally concluded, based on the audio recording of the Committee meeting, that Councillor Sutcliffe did not explicitly tell those present that the Highways Authority had declined their invitation to attend. It was my view though Councillor Sutcliffe's explanation as to their absence (as set out in paragraph 5.15 above) understandably left those in attendance with the impression that the decision had been left out of the Committee's hands; including his own.
- 5.21 In his comments on the draft report, ██████ expressed concern at the fact that I had not interviewed any of the other complainants, all of whom had attended the Committee meeting, to establish whether the audio recording was accurate: *"How strange that the recording of the meeting in question took so long to be posted on the website (you commented on this when we spoke, and I noted that fact and you also commented when it surprisingly reappeared). How strange that everyone there heard Councillor Sutcliffe state that the Highways had declined to attend and yet this part of the recording is strangely missing? How concerning also that you have failed to interview any of those who complained and attended the June meeting. This fact alone undermines your whole report and I believe makes it invalid and inadmissible."*
- 5.22 I informed ██████ that I had not interviewed the other complainants because I did not consider it necessary to establish the facts of this case; the only conduct relevant to this investigation that they claimed witness to was Councillor Sutcliffe's comments at the Committee meeting. Once I was able to obtain a recording of that meeting, evidence that I had no reason to doubt the accuracy of, then interviewing witnesses to establish exactly what Councillor Sutcliffe said became unnecessary.<sup>11</sup> I told ██████ that I would review my provisional findings once I had received any comments from ██████ and ██████ all of whom were provided with a copy of my draft report and provisional conclusions. None of them made any comment on my provisional findings of fact and recommendations, however because of ██████ concerns the Monitoring Officer instructed me to interview Councillor Solloway and the Member Support Manager responsible for the audio recording to ensure that it represented an accurate record of the Committee meeting.

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<sup>11</sup> While it is important to establish the facts in a case, Standards investigations must be proportionate and reflect the 'light touch' regulation that Parliament intended when it revised the standards framework in 2011

- 5.23 Councillor Solloway told me that his main recollection of the Committee meeting was the non-attendance of a Highways officer; he was very surprised to see that they they had not sent a representative and assumed that they had been told not to come.<sup>12</sup> Councillor Solloway said that he could not recall Councillor Sutcliffe specifically addressing the issue; he does though think he would have remembered if Councillor Sutcliffe had explicitly told those present that the Highways department had declined to attend.
- 5.24 Councillor Solloway told me that both he and the County Councillor responsible for Highways were very concerned about Councillor Sutcliffe's decision to 'uninvite' the Highways officer and his subsequent failure to openly take responsibility for the decision. Councillor Solloway said that although he does not think it would have necessarily impacted on the decision that was made, the application was a very emotive issue locally and therefore the reputation of the Highway department was put at risk.
- 5.25 The District Council's Member Support Manager was able to confirm that the recording of the Committee meeting had not been edited and was therefore an accurate account of what was said<sup>13</sup>. He told me that delay in publishing the recording on the District Councils website had simply been an administrative error which was rectified as soon as it was brought to their attention that it was not available. He was also able to confirm that no councillor would be able to influence whether an audio recording was published or not<sup>14</sup>.
- 5.26 Given the above, I remain satisfied that Councillor Sutcliffe did not explicitly tell those present that the Highways Authority had declined the Committee's invitation to attend the meeting. It is still my view though that Councillor Sutcliffe's explanation as to their absence (as set out in paragraph 5.15 above) understandably left those in attendance with the impression that the decision had been left out of the Committee's hands; including his own.

Did Councillor Sutcliffe use his casting vote to approve the Candelisa application, contrary to committee convention?

- 5.27 When the Committee was called on decide whether to approve the Candelisa application, four members voted against it and four members (including Councillor Sutcliffe) voted in favour; the remaining members abstained. As a result, Councillor Sutcliffe was called on to make the Chair's casting vote. Councillor Sutcliffe cast it in favour of the application, authorising Mr Watson to approve the Candelisa application subject to numerous conditions and to the applicant first entering into a Section 106 Planning Obligation to secure the provision of affordable housing and a contribution towards open space provision.

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<sup>12</sup> Councillor Solloway told me that he had taken it upon himself to ensure that the Highways department had the capacity to send a senior officer to the Committee meeting and therefore he was confident that they would have contacted him had they made the decision not to attend.

<sup>13</sup> The recording that was published on the website had been split into 2 parts because of file size limitations. A comparison with the original recording confirmed though no parts of the recording had been deleted during this process.

<sup>14</sup> Only an intervention from the District Council's on the grounds that a recording included confidential or defamatory information would stop an audio recording being published; that did not happen in this instance.

Councillor Sutcliffe told the meeting *"In effect, our feet have been cut from beneath us. We have to base our decision on our written response from the Highways Authority and if we don't, it would inevitably result in an appeal."*

- 5.28 Mr Forman told me at interview that in his view convention dictated that Councillor Sutcliffe should have used his casting vote as Chair to maintain the status quo.
- 5.29 Councillor Sutcliffe rejected this argument, telling me that he can vote as he wishes and that for him to have used his casting vote differently to his original vote would have been perverse. Councillor Sutcliffe added that if he felt any responsibility to use his casting vote in a particular way (rather than as he wished) it would be to support an officer recommendation; on this occasion, his own view and that of the planning officers were congruent.
- 5.30 Having conducted some general research into the matter I have found evidence of advice to those who chair meetings that supports [REDACTED] position. Those who argue in support of a Chair using their casting vote to preserve the status quo do so because it ensures, without there being a clear majority, that the issue under consideration is free to be raised again at a later meeting; indeed, this is the convention for the Speaker in the House of Commons (known as Speaker Denison's rule). Mr Watson and the Council's Monitoring Officer confirmed with me however that there is no such convention within the District Council; the Council's procedural rules state:

#### 16.2 Chairmans's Casting Vote

If there is an equal number of votes for and against, the Chairman will have a second or casting vote. There is no restriction on how the Chairman chooses to exercise a casting vote.

#### Meeting with the Highways Authority, 21 June 2017

- 5.31 On **21 June 2017**, approximately 80 residents of the Carleton Road Area (including [REDACTED]) and Councillor Solloway met with officers from the Highways Authority to discuss their concerns about the Candelisa development. When asked why a representative from the Highways Authority had failed to attend the Committee meeting on 4 June 2017, [REDACTED] (the County Council's Area Highways Manager) told those present that while it was correct that Highways Officers are not obliged to attend planning committee meetings, on this occasion it had been Councillor Sutcliffe who had instructed them not to attend.
- 5.32 In his complaint, [REDACTED] stated that this information was met with *'a large amount of anger, disbelief and disgust by the large audience.'* [REDACTED] stated in his complaint: *"There is something very odd and unacceptable about this chain of events that requires urgent investigation please. The belief of the community is that had Highways attended the outcome may have been different and that the Chairman had no right to tell them not to attend. The Chairman also then lied to the Planning committee and those who were at the meeting as observers."*

## 6 Have there been failures to comply with the Code?

### Official Capacity

- 6.1 Before I make a recommendation as to whether Councillor Sutcliffe's conduct amounts to a failure to comply with the Code of Conduct, I need to decide if he was acting as a councillor (i.e. acting in his official capacity). Section 27(2) of the Localism Act 2011 requires all relevant authorities to adopt a code of conduct *"dealing with the conduct that is expected of members ... when they are acting in that capacity."* The District Council has reiterated this in its Code, stating *"Whenever you are acting as a member or co-opted member of this Council you must act in accordance with the following obligations"*.
- 6.2 There can be no question that Councillor Sutcliffe was acting in his capacity as a District Councillor when he attended the various meetings described above. As such I am confident that his conduct at the various meetings referred to above falls within the jurisdiction of the standards framework.

### Did Councillor Sutcliffe fail to comply with the Code of Conduct?

- 6.3 The intention of the Code is to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy. In adhering to the principles set out in the Code there is an expectation that members will not use their position improperly to confer on or secure an advantage or disadvantage and act in an open and transparent manner.
- 6.4 It is not in dispute that it was Councillor Sutcliffe who decided that a representative from the Highways Authority would not attend the Committee meeting on 4 June 2017. In my view the decision was poorly judged; the Committee had decided that they wanted an officer present to respond to their questions and interested members of the public were clearly expecting that to occur. In considering whether Councillor Sutcliffe breached the Code though it is important to focus on whether he used his position improperly to secure an advantage for the applicants or disadvantage for those who opposed it.
- 6.5 There are many circumstances where it is proper for a member to attempt to confer a desirable outcome, or advantage, for their constituent(s); this in turn might disadvantage others. Councillor Sutcliffe's conduct would only be improper if he was to try to use his public position to further his own private interest (or the interest of a friend/close associate) to the detriment of the public interest. I have seen no evidence that supports this being the case; on the other hand, Councillor Sutcliffe's stated reasons for deciding that the Committee no longer needed a Highways officer present are convincing. In addition, I am inclined to concur with Mr Watson's view that if the presence of an officer from the Highways Authority was going to have any discernible impact on the decision taken by members, it is more likely to have encouraged members to support the planning officer's recommendation to approve the application. The position taken by Highways was made very clear in their revised report; as such I am not persuaded that their absence led to any disadvantage to the complainants.

- 6.6 Subsequent to taking that decision, it is alleged by all the complainants that Councillor Sutcliffe told the Committee that it had been the Highways Authority who had 'DECLINED' to attend. This investigation has established that although this was not actually the case, it is understandable that the way in which Councillor Sutcliffe chose to answer left those present making the reasonable assumption that the decision had been out of the Committee's (including Councillor Sutcliffe's) hands. While I accept that Councillor Sutcliffe's response was factually correct, in my view it lacked the openness and honesty I would expect of a councillor in such circumstances. Councillor Sutcliffe had made the decision and should have been prepared to be accountable for it, even in the face of what might have been a hostile response.
- 6.7 With regards the way Councillor Sutcliffe used his casting vote; while I can understand why [REDACTED] may have expected Councillor Sutcliffe to support the status quo, I do not consider it a standards issue. The Council does not operate any type of convention for such situations and Councillor Sutcliffe gave this investigation cogent reasons for voting in the way that he did. As a member of the Committee, Councillor Sutcliffe has a responsibility to make all decisions for planning reasons. If the Candelisa application had been declined, any appeal to the Planning Inspectorate would have been difficult for the Council to defend on planning grounds on the basis that the Chair had used his casting vote to reject it because of an unwritten convention to maintain the status quo.

## **7 Recommendation**

- 7.1 The investigation has established that Councillor Sutcliffe decided that a representative from the Highways Authority would not attend the Planning Committee meeting on 4 June 2017. In my view this decision was poorly judged; the Committee had decided that they wanted an officer present to respond to their questions and interested members of the public were clearly expecting that to occur. It is my view though that any concerns about his conduct in relation to this matter are governance rather than ethical in nature. As such, I have concluded that Councillor Sutcliffe did not use his position improperly to confer a disadvantage to the complainants either in the way in which he voted or when deciding that a representative from the Highways Authority need not attend the Committee meeting of 4 June 2017.
- 7.2 Having said that, I do consider that Councillor Sutcliffe's failure to properly explain and take responsibility for the latter decision is sufficient evidence of a breach of the Code as to warrant the District Council taking further action. Members have a responsibility to be honest and open about the decisions they make. While I do not consider that Councillor Sutcliffe lied to the Committee, his response led to those present making the reasonable assumption that the Highways Authority had decided not to attend the meeting.
- 7.3 In considering what action the Monitoring Officer should consider taking, I am not sure that further examination of the concerns highlighted or formal determination

of these allegations through a public hearing is justified, particularly given the nature of the sanctions available.

- 7.4 The District Council's arrangements for dealing with standards allegations under the Localism Act 2011 state that the Monitoring Officer will review the investigating officer's report and after consulting with the independent person will consider whether local resolution should be attempted or the matter proceed direct to hearing before the hearings panel. My recommendation therefore is that the Monitoring Officer seeks a local resolution to the matters raised in this report. Local resolution offers a proportionate and locally owned process.
- 7.5 I consider that the local resolution should involve Councillor Sutcliffe making a verbal apology at the next meeting of the Planning Committee for his failure to make it clear that he had instructed the Highways Authority not to attend the meeting of 4 June 2017.
- 7.6 A summary of the findings of the investigation and outcome of the local resolution should be provided to the Council's Standards Committee. If Councillor Sutcliffe does not engage with the process in a manner that the Monitoring Officer considers sufficient, I believe that the breach of the Code highlighted in this report should be referred to the Standards Committee for a formal hearing.