

Complaint

Report to the Monitoring Officer, City of York Council, into complaints against Members of the Strensall with Towthorpe Parish Council (STPC).

From Rachel McKeivitt, appointed as Investigating Officer for this complaint by Andy Docherty, Monitoring Officer, City of York Council.

The Complaint referred for Investigation and Background

The background to this matter goes back several years, Mr and Mrs Harrison report that in 2007 they obtained permission from City of York Council for a vehicular crossing over a strip of land which is owned by City of York Council and is leased to Strensall with Towthorpe Parish Council (STPC). The strip of land provides a second access way to Mr and Mrs Harrison's property and allows for easier access for vehicles getting to and from their property. In August 2013 a Deed of Grant was given which gave a right of way over the strip of land for both pedestrian and vehicular access. Mr and Mrs Harrison have subsequently taken steps to develop some of their land and approached STPC for a Deed of Easement for services over the leased land. This request has been refused. as follows:

Mr and Mrs Harrison's complaint, which can be seen in full at Annex A which is attached to this report, can be broken down into 6 key areas:

1. Use of the words "profit through deception" in a letter from the Chairman of STPC, Councillor Marquis, to Hague and Dixon Solicitors defamed Mr and Mrs Harrison, has not resulted in an apology from STPC and amounted to a breach of the Code of Conduct.
2. Councillor Ralph Plant failed to declare an interest in Mr and Mrs Harrison's matter at a STPC monthly meeting on 11th August 2015.
3. STPC have failed to implement their Complaints Procedure.
4. Comments made at STPC's monthly meeting on 13th October 2015 in relation to a similar request for services made by Transcore in respect of land known as Sevenoaks demonstrated bias as there

was no lawful reason to refuse Mr and Mrs Harrison's request for services.

5. A letter of 9th September 2015 from STPC to Mr and Mrs Harrison exemplified the biased conduct of STPC.
6. There has been a failure to adhere to the Complaints Procedure/Code of Practice, as, in the view of Mr and Mrs Harrison, STPC have failed to act fairly.

I am only able to investigate allegations of breaches of the Code of Conduct. I am unable to investigate whether the Complaints Procedure or Code of Practice have been adhered to, therefore, this report will not contain findings in respect of the elements of Mr and Mrs Harrison's complaint numbered 3 and 6 above.

Relevant Provisions of the Code of Conduct

STPC's Code of Conduct states that it "is based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership". The Code, which was adopted on 12th June 2012, and updated on 9th July 2015, which is attached to this report at Annex B states in relation to Councillors that:

- He/she shall behave in such a way that a reasonable person would regard as respectful.
- He/she shall not seek to improperly confer an advantage or disadvantage on any person.

STPC's Code of Conduct also deals with declaration of interests at meetings. It states:

- Where a matter arises at a meeting which relates to an interest in Appendix A the member shall not participate in a discussion or vote on the matter. He/she only has to declare what his/her interest is if it is not already entered in the member's register of interests or if he/she has not notified the Monitoring Officer of it.
- Where a matter arises at a meeting which relates to an interest listed in standing orders or in the Appendix, the member shall withdraw from the meeting. He/she may speak on the matter before withdrawing only if members of the public are also allowed to speak at the meeting.

- A member only has to declare his/her interest if it is not already entered in his/her register of interests or he/she has not notified the Monitoring Officer of it or if he/she speaks on the matter before withdrawing. If he/she holds an interest in the Appendix which is a sensitive interest not already disclosed to the Monitoring Officer, he/she shall declare the interest but not the nature of the interest.

The Investigation

In forming my views I interviewed the following people:

- The Complainants - Mr Graham and Mrs Mandy Harrison
- The Subjects of the Complaint –
 - Councillor Keith Marquis
 - Councillor Dennis Baxter
 - Councillor Duncan Hill
 - Councillor Tony Fisher
 - Councillor Chris Chambers
 - Councillor John Chapman
 - Councillor Lawrence Mattinson
 - Councillor Kevin Ogilvy
 - Councillor Geoffrey Harvey-Walker
 - Ms Cath Edwards
 - Councillor Judy Smith
 - Councillor Ralph Plant
 - Councillor Tracey Flannery did not respond to my letter inviting her for interview, nor did she attend the venue set up to hold the interviews, which took place on 15th March 2016. I have since tried to contact her by telephone and email and have received no reply.
- The Clerk of the Parish Council - Mrs Susan Nunn. Mrs Nunn wrote to the Monitoring Officer on 12th February 2016 acknowledging receipt of the complaint and asked, on instruction by all members who were complained of, to request an initial discussion on the matter between myself, the Monitoring Officer, the Chairman, Keith Marquis and Susan Nunn as the Proper Officer, representing the Parish Council. This meeting took place on 19th February 2016 at West Offices. The Monitoring Officer was not present during this meeting.

Documents which were considered

- a) The complaint submitted by Mr and Mrs Harrison, along with the following supplementary documents, which were enclosed with the complaint:
 - a. Minutes of STPC monthly meeting of 11th August 2015.
 - b. Letter from Chairman of STPC to Hague and Dixon Solicitors dated 11th August 2015.
 - c. Letter from Chairman of STPC to Mr and Mrs Harrison dated 9th September 2015.
 - d. Email from Mr and Mrs Harrison addressed to Mr Marquis dated 10 September 2015.
 - e. Email from Mrs Harrison addressed to Mr Gray (City of York Council) dated 21 September 2015.
 - f. Minutes of STPC monthly meeting of 13th October 2015.
 - g. A copy of a transcript of notes taken, at the STPC monthly meeting on 13th October 2015, by Mrs Harrison.
- b) Lease dated 4th January 1996.
- c) STPC Meeting Notes from a meeting with Mr and Mrs Harrison, former Councillor Peter Jesse, Councillor Marquis, Councillor Chambers and the Parish Clerk dated 14th November 2011.
- d) Email from Mrs Harrison to DWF Solicitors dated 15th November 2011.
- e) Email from Mr and Mrs Harrison to Susan Nunn dated 17th August 2015 and Susan Nunn's reply dated 21 August 2015.
- f) Letter from Mr and Mrs Harrison to Susan Nunn dated 26th August 2015.
- g) Letter from Susan Nunn to Mr and Mrs Harrison dated 28th August 2015.
- h) Email exchanges between Mr and Mrs Harrison and Susan Nunn dated 11th September 2015.
- i) Minutes of STPC Planning Committee dated 23rd February 2016.
- j) Minutes of STPC monthly meetings for 2015 to date.

Interviews with Complainants and those who were the subject of the Complaint

Councillor Marquis and Susan Nunn

I met with Councillor Marquis and Susan Nunn, the Parish Clerk at their request on 19th February 2015. I went through the complaint, my role in the matter and I also asked a series of questions at this meeting to gain an understanding as to the history of the matter. I asked to speak to all of the Councillors who were the subject of the complaint, I was told that the persons concerned would only speak with me in the presence of the Clerk.

Susan Nunn told me that ahead of any monthly meeting she would send out to all Councillors the agenda and also any other relevant documents needed for each meeting, including different “outcome” draft letters for any requests requiring consideration at meetings. I was told that this was to “cut down on time”. In relation to the meeting of 11th August 2015, Susan Nunn confirmed that a draft letter agreeing to the request and one refusing the request (containing the wording “profit through deception”) had been sent out to all of the Parish Councillors before the meeting. I asked about where the words “profit through deception” came from, Susan Nunn said it had been said by someone at a previous Parish Council meeting, she was unable to recall exactly when it had been said, but said that the term “fitted the occasion”. Susan Nunn told me that in 2011 there was a meeting with Mr and Mrs Harrison, she said that at that meeting it was denied the reason for the second entrance was in order to build a house on the land, however, she said that all those present at the meeting suspected that was not the case. Councillor Marquis confirmed that in his view, “profit through deception” was what Mr and Mrs Harrison were seeking to do.

I was told that the Parish Council and Councillor Plant in particular accepted that he should have declared an interest at the meeting of 11th August 2015, but had not. I was told that he had declared an interest at previous meetings concerning The Firs, but it had been an oversight on this occasion.

I asked Councillor Marquis about the letter signed by him in his capacity of Chairman to Mr and Mrs Harrison dated 9th September 2015, in particular use of the words “illegally constructed”. Councillor Marquis said that at the time of the meeting in November 2011 which he was

referring to within the letter of 9th September 2015, there was no deed of grant in place, therefore, in his view, because there was no legal authority for the second access, at that time it was what he would deem an illegal construction.

I have established that this letter was written after a “closed meeting” on 8th September 2015, which took place after the monthly meeting on 8th September 2015 and that as a result of the “closed meeting” the letter of 9th September 2015 was drafted and signed by Councillor Marquis on behalf of STPC. Mr Marquis told me that the closed session had been arranged to discuss, correspondence from Mr and Mrs Harrison, including their letter of 26th August 2015. Councillor Marquis stated that the letter was a 5 page complaint which the Parish Council had received. He stated that the letter threatened “all kinds of actions”, which is why STPC felt is appropriate to discuss The Firs at a closed session. He confirmed that after this meeting, the Parish Council felt that the matter was then closed.

I asked about Sevenoaks, which is a development not far from The Firs in Strensall. The reason I asked about Sevenoaks is because I understand that services had already been installed by Transcore over land owned by the City Council which is leased to STPC without permission from STPC. Mr and Mrs Harrison have referred to the Sevenoaks development as part of their complaint as they believed STPC had granted permission for the services to be installed at Sevenoaks, therefore, there was no lawful reason to refuse their request for services. I was told that the matter was ongoing, no decision had been made and the matter was still “open”. Susan Nunn confirmed that City of York Council as Landlord would also need to be consulted for their comments, this is in accordance with their Lease. I understand that since my meeting with Councillor Marquis and Susan Nunn, City of York Council have confirmed that the services need to be relocated and the land reinstated.

Mr and Mrs Harrison

I met with the complainants, Mr and Mrs Harrison on 8th March 2016. They confirmed that their involvement with STPC started in 2007. They provided me with minutes of a meeting which took place on 14th November 2011 and also an email they sent to their Solicitor after the meeting had taken place. They told me that they had asked STPC on 8th May 2015 for permission for services to be brought across the land concerned. They said that the Clerk wrote back on 13th May 2015 to say

that they had missed the cut off for the May meeting, therefore, the request would be considered at the meeting on 9th June 2015. At the meeting on 9th June 2015, their request was refused. I was told that STPC confirmed this in writing. Mr and Mrs Harrison said that they first heard of the comment “profit through deception” as a result of seeing the letter the Chairman of STPC had sent to Hague and Dixon Solicitors.

Mrs Harrison confirmed that she attended the meeting on 13th October 2015. She confirmed that the notes which were attached to the complaint were her notes which she had typed up from hand written notes made at the meeting. Mrs Harrison explained to me what some of the notes meant and the format she had put the notes into.

Councillor Interviews

I have had difficulties in conducting the Councillor interviews. I was initially told that the Councillors would meet with me, but with the Clerk present, which I was happy to do. I was then told that the Councillors would not speak with me. When I was informed that the Councillors would not speak with me, I wrote to all involved on 11th March 2016 advising that I was available to meet at a time to suit them on 15th March 2016. I advised that if I did not hear from the individuals concerned by 18th March 2016 then I would presume that individuals did not wish to discuss the matter with me and I would then conclude my investigation. After I had sent the letter, the Clerk contacted me to say that the Councillors would speak with me and she arranged appointments for me to speak with each person concerned who wanted to speak with me. Councillor Tracey Flannery did not attend the meeting, nor has she been in contact with me. I have recently been given her mobile and landline telephone number and also her email address. I have tried to contact her through all of these means, but to no avail.

I met each Councillor at what I would describe as “back to back” meetings on 15th March 2016. Each Councillor requested that their interview took place in the presence of either the Clerk or Councillor Marquis. My questions centred around the key events within the complaint, including the meeting on 11th August 2015, the letter sent on 11th August 2015, the meeting on 13th October 2015 and the letter of 9th September 2015. I ensured at the outset that each person was aware of the complaint, that they had seen a copy, that they could ask questions at the end of the interview and I also provided a copy of all of the key documents which formed part of the complaint, so that all those interviewed had the chance to read through the document being

discussed to refresh their memory and assist them. I explained to each person what each document was. I asked every person I interviewed whether they had seen and were aware of the Code of Conduct. All those interviewed confirmed they had seen the Code and were aware of it. I made notes of responses given to each of the questions I asked. I have set out below an overview of each interview, they have been written in the order that I carried out each interview.

My difficulty in this particular investigation has been in relation to the Councillors' recollection of meetings, letters and events. I did receive a lot of responses to my questions of "cannot recall", but have set out below a brief overview of the relevant responses to questions asked.

Councillor Chambers

Councillor Chambers confirmed that he was not present at the meeting on 11th August 2015 and told me that he did not recall seeing a copy of the draft letter of 11th August 2015, although he could have seen it and not noted it. I asked him about the words "profit through deception", Councillor Chambers said that he thought those words had been used at a previous meeting, which had taken place possibly a month or so before the 11th August 2015 meeting. When I asked him who had drafted the letter, he said he would have thought that it would have been the Clerk, perhaps with others.

I asked Councillor Chambers about the letter of 9th September 2015. Councillor Chambers said that he probably could have had an input into the letter, it could have been circulated and he could have been asked to comment, but could not remember exactly, although he did recall that he'd seen it before.

Councillor Chambers confirmed that he was the Chair at the meeting of 13th October 2015. In relation to the point regarding setting a precedent for any other property, Councillor Chambers said that it was probably fair to say that it could have been reference to "The Firs", although he could not recall the words "The Firs" specifically being used during the meeting. He confirmed that the Parish Council would deal with each request as an individual case. He said that he was aware that someone was making notes at the meeting on 13th October 2015.

Councillor Fisher

Councillor Fisher confirmed that he was at the meeting on 11th August 2015. He said that he had seen a copy of the letter of 11th August 2015 as it was sent to him by way of email. Councillor Fisher was clear that the content of the letter of 11th August 2015 was, to quote his words “my view”. When asked about the phrase “profit through deception” Councillor Fisher said that the phrase may have been used before, he did not recall the entire phrase being used, and added that “the Harrison’s were”.

I asked Councillor Fisher about his reasons for refusing the request in relation to The Firs, he said that the Parish Council as Tenants had the right to refuse the request, he said that he had discussed the case with other Councillors who had been Councillors prior to him becoming a Councillor and that it was clear that the reasons given by Mr and Mrs Harrison were not “genuine, truthful reasons”.

I asked Councillor Fisher about the letter of 9th September 2015. He said that he had seen the letter but had had no involvement with its preparation, but was of the view that there was nothing in that letter that he would disagree with.

I asked Councillor Fisher about the request made by Transcore at the meeting on 13th October 2015 and how this differed from the request made in relation to The Firs. He said that he would deal with each request as a separate situation. He couldn't recall whether The Firs was specifically mentioned at that meeting.

Cath Edwards

Cath Edwards told me that she resigned from the Parish Council in October 2015. She said that she was not at the meeting of 11th August 2015 and that she did not use email to receive her correspondence from the Parish Council, that she received all documentation by post. Cath Edwards confirmed that she did not attend the meeting of 13th October 2015. She had nothing further to add in relation to this matter.

Councillor Mattinson

Councillor Mattinson confirmed that he was present at the meeting on 11th August 2015. He said that he did not see a copy of the letter signed by the Chair, but that it was read out in the meeting. In relation to the

letter, Councillor Mattinson said that at the time of the meeting he was in agreement with the letter. He then made reference to a previous meeting on 14th July 2015 and section 5(d) of that meeting which read “The Clerk reported that she had written to the Solicitors acting for Mr and Mrs Harrison to convey the refusal for the Deed of Easement. A letter from City Council confirming their support of that decision had also been received”. Councillor Mattinson told me about a meeting which took place on 28th August 2015 where he says it became apparent that Mr Marsden (the developer) and Mr Harrison worked together. He said that he did not know why the Solicitors did not identify this issue at the time, there was negligence on the part of the Solicitors. He said that City of York Council also objected and when Mr and Mrs Harrison got approval for a second access they now had decided that they wanted to sell the land. He referred to it as a “strange series of events”.

I asked about Councillor Mattinson’s reasoning for refusing the request for services, he said that the Chairman gave him a history of the background to the case, that Mrs Harrison had previously attended a meeting and was in tears and that a caravan was mentioned. He said that he understood that someone was in ill health and that the matter had a “long history”.

I asked Councillor Mattinson about the correspondence dated 9th and 10th September 2015 between STPC and Mr and Mrs Harrison. He said that the email looked in his view to have been put together by a solicitor due to its legal wording. He said that it was “inappropriate” and “unprofessional”. In relation to STPC’s letter of 9th September 2015, he said it looked to him like they had acted in good faith but couldn’t recall seeing the letter or any input or involvement in it.

With regards the meeting on 13th October 2015, Councillor Mattinson said that he recalled a discussion about the Transcore request, he said that the Firs was not discussed at the meeting. He could not say if Mrs Harrison’s notes were accurate or not. I asked him about the note which Mrs Harrison had made with regards to “Matteson wasn’t on agenda – not familiar – would like to see a drawing of it”. He said that he was not familiar with the site, there was no drawing, he said that he had not looked at the area discussed and still does not know what it is or involves.

When I concluded the interview, I asked Councillor Mattinson if he had anything he wanted to add, he said that the owners and the employer got so far, either they did not have solicitors, or their solicitors did not

bring things to their attention. In his view, the Parish Council had acted responsibly in all issues.

Councillor Plant

Within their complaint, Mr and Mrs Harrison state that Councillor Plant failed to declare an interest, namely that he is a neighbour of theirs and also that he was a signatory to the lease which includes the land which was the subject of the request for the deed of easement.

Councillor Plant told me that he had been a Parish Councillor for 26 years and had no interest in what his neighbours did. He accepted that he had failed to declare an interest at the meeting on 11th August 2015, he said that it was the first time he had failed to declare an interest when he felt he should have at a meeting. I asked him about the decision relating to The Firs, he said that it was a unanimous decision, therefore, his vote would have made no difference to the decision. He confirmed that he had voted at the meeting, but he was clear that he recalled that it was a unanimous decision. Councillor Plant said that he accepted his error, but said that it was a “technical error”.

I asked Councillor Plant about the letter of 9th September 2015. He said that he had not seen it and wouldn't expect to have, as there is a Chairman and a paid Clerk, as a member he said he did not expect to be involved in the drafting of a letter, the purpose of the letter had been accepted by the Parish Council.

Councillor Plant confirmed that he attended the meeting on 13th October 2015. He said that he declared an interest at this meeting because he lives on the same Lane, he again said that on 11th August 2015 he had made an error. He said that he had never been involved in any changes to the houses in Lord Moors Lane for 20 years as he had never wanted to upset his neighbours. He said that he didn't know his neighbours and did not want to get involved in legal processes. I asked Councillor Plant about the hand written notes of Mrs Harrison from the meeting on 13th October. He said that the notes where reference is made to him saying “go ahead” were “not true”.

Councillor Smith

Councillor Smith couldn't recall the 11th August 2015 meeting in particular, she said that she had only started in the May so things were “new to me”. She said it was a “learning curve for me”. She confirmed

that the letter which was approved at that meeting was read out at the meeting. In relation to the wording of the letter, Councillor Smith said as far as she knew the wording had come up at the meeting, but she couldn't remember who suggested the specific words. She said that everyone agreed with it. I asked Councillor Smith about her reasons to refuse the request for services made at that meeting, she said that she had been on the Parish Council 6 years ago, she knew some of the background, she said she was surprised that the matter was still being discussed.

In relation to the letter of 9th September 2015, Councillor Smith said that she had not seen the letter of 9th September 2015, nor could she recall any input or involvement in it.

Councillor Smith confirmed that she was present at the meeting on 13th October 2015. I asked her about Mrs Harrison's notes. She recalled the discussions regarding Mr Bolton's pathway, she confirmed that she has said that she was happy to approve this, she said that he brought a laptop along to show the improvements made to the drive. She said that in relation to Seven Oaks, she did not say "no dyke". I asked Councillor Smith if the words "The Firs" were used at all during that meeting. She said she couldn't recall.

Councillor Hill

Councillor Hill informed me at the outset of the interview that he was going to record the interview on his mobile phone. I said I did not object to this. I took him through the documents and he raised the fact that the copy of the documents he had received did not have a 2nd page in relation to the minutes of the meeting of 11th August 2015. I showed him the document in full and allowed him the time to read through it.

I asked him about the meeting on 11th August 2015 and the letter of the same date, he said he couldn't recall seeing the letter which was approved for signature by the Chairman. He said that if his memory serves him correct it was a long dispute, he couldn't remember a lot about the meeting. I asked if he knew who drafted the letter. He said he was not sure, Sue Nunn or Keith Marquis and that it could have been a joint thing. He explained that words were banded about and put into a letter.

I asked Councillor Hill about his reasons to refuse the request. He said that he was aware that it was the 2nd or 3rd meeting about the matter, he

had a brief discussion with Councillors about The Firs, he obtained a quick history about what had happened and was aware it had been going on since 2011.

I asked Councillor Hill whether he was involved or had any input into the letter of 9th September 2015. He confirmed he did not recall any involvement.

Councillor Hill confirmed that he was present at the meeting on 13th October 2015. I asked him about how the decisions made in that meeting differed from The Firs decision. He said that Sevenoaks was a bad corner and he was concerned about road safety. He said that they had been “straight up” about it, but The Firs had not been. He said that the requests were totally different. I asked about what Councillor Hill thought was meant about viewing each request as a separate item and not setting a precedent for any other property. He said it meant to assess each case as it comes in and being upfront with the Parish Council. He said that The Firs wasn’t upfront.

I showed Councillor Hill Mrs Harrison’s notes. I asked him if he had any comments to make about them. He said that she was putting her own slant on things, he said he didn’t feel it was a good way of putting a complaint in. I asked if The Firs, so far as he could recall, was specifically mentioned at the meeting, he said he thought between two Councillors, but not in public.

I asked Councillor Hill if he had anything further he wanted to say. He said that it was a long standing dispute and it was the 2nd or 3rd meeting. He said that he would like closure on the matter, he felt that it was clutching at straws on behalf of the Harrisons. He said that the letter was correct and had his “full backing”.

Councillor Ogilvy

Councillor Ogilvy confirmed that he was present at the meeting on 11th August 2015. He said he could recall the comment “profit through deception” being said and thought it wasn’t right. Councillor Ogilvy wouldn’t name the Councillor he claimed said the comment, but said that he saw that Councillor Marquis had a word with that Councillor after the meeting. I asked whether Councillor Ogilvy had seen the letter of 11th August 2015. He said that he had not seen the letter, although he later said that the letter could have been put on the screen as there is a facility during these meetings to do this. He said he was half asleep, as

he had been at work. I asked Councillor Ogilvy about the views within the letter of 11th August 2015 being those of the entire Parish Council. He said that they were not the views of the full Parish Council. He said that he could remember the comment being made and someone saying don't get into trouble it is The Firs.

I asked Councillor Ogilvy about his reasoning for refusing the request, he said there was a history of the situation which he knew about.

I asked about the letter of 9th September 2015, Councillor Ogilvy said that he could have seen the letter had it been on a screen, he didn't really seem to be able to recall it with certainty.

Councillor Ogilvy said that he was at the meeting on 13th October 2015. He said that he judges every case individually. He had no comments to make regarding Mrs Harrison's notes and did not recall whether the words "The Firs" were used at all during that meeting.

Councillor Chapman

Councillor Chapman confirmed that he was not at the meeting on 11th August 2015. He said that he may have seen the letter of 11th August 2015, but was not 100% sure of this. Councillor Chapman said that the phrase "profit through deception" had been a recent statement of someone from a meeting.

With regards the letter of 9th September 2015, Councillor Chapman said he had no input or comments were made in relation to this letter.

Councillor Chapman said that he did not attend the meeting on 13th October 2015. He had no input into any of the decisions made at the meeting. I mentioned Mrs Harrison's notes and Councillor Chapman said that it was not Yorkshire Water but Morrisons workmen whom he had seen. He said that the men were not aggressive at all. He said that they were sitting in the van sorting things out so the comment with regards aggression was not a true account as to his encounter with them.

Councillor Harvey-Walker

Councillor Harvey-Walker told me that he had been away in Europe for July and August so had not attended the 11th August 2015 meeting. He was not involved in any way in the 11th August 2015 letter due to him

being out of the country. He couldn't recall the 9th September 2015 correspondence.

He confirmed that he was at the meeting on 13th October 2015. Councillor Harvey-Walker vaguely remembered the discussions, but couldn't remember what exactly was said at the meeting, he also couldn't recall seeing Mrs Harrison's notes before. He did say that The Firs was not specifically mentioned at the meeting.

Councillor Baxter

Councillor Baxter confirmed he was at the meeting on 11th August 2015. He said that letters are put onto a screen and then the Parish Councillors can look at the letters and make comments on them. He said that the comment "profit through deception" originated from the letter of 11th August. I asked Councillor Baxter about his reasons for refusing the request. He said that he had been on the Parish Council a long time and knew that the land was common land.

I asked Councillor Baxter about the letter of 9th September 2015. He said that he usually gets all copies of letters. He said he was not involved in any input or recalled any involvement in the letter of 9th September 2015.

Councillor Baxter confirmed that he was present at the meeting on 13th October 2015, he did not know what was meant by setting a precedent for any other property and he said that he did remember during that meeting using the words "The Firs".

I asked Councillor Baxter about Mrs Harrison's notes, in particular the comments she has noted that were made by him. He admitted saying "should have been sorted out before – no different to other case – if we give permission for one – rod for back – could be expensive" and "not sticking up for man – rod for own back". He said that in his view if Sevenoaks had been allowed it would be "double standards". He said that he was not sticking up for Mr Harrison, and alleged that a man he believed to be Mr Harrison had verbally abused him in the street previously.

Finding and conclusion

As previously stated, I am not concerned with investigating the allegation of failure to implement the complaints procedure or the code of practice

that is not within the remit of my role in this investigation, I am concerned with allegations of breaches of the Code of Conduct only.

Letter of 11th August 2015 – “Profit through Deception”

The letter of 11th August 2015 was distributed to the Parish Council as a draft decision letter prior to the meeting which took place on 11th August 2015. However, the final decision as to whether the letter was to go out and its final version was decided at the monthly meeting on 11th August 2015. It is clear that Councillors Chambers, Chapman, Flannery and Edwards were not in attendance at this meeting, therefore, I find no breach of the Code of Conduct in regard this letter against them. In addition, Councillor Harvey –Walker also was not present, although his apologies were not recorded. I find also in respect of him that there was no breach of the Code of Conduct in respect of this letter.

The minutes of the monthly meeting state that the Parish Council “voted unanimously” to refuse the request. The letter, containing the words “profit through deception” was then approved by those in attendance at the monthly meeting and signed by the Chairman. It appears during the course of my investigation that there is a belief amongst the Parish Council that Mr and Mrs Harrison intended at the time the Deed of Grant was granted to then sell the land for development purposes, however, I have found no evidence of this.

I find that a reasonable person would find such a comment disrespectful. I also find that without any evidence of deception on the part of Mr and Mrs Harrison, that this comment could and has improperly conferred a disadvantage to them. In relation to this strand of the complaint, I find that Councillors Marquis, Plant, Baxter, Hill, Fisher, Mattinson, Ogilvy and Smith are all in breach of the Code of Conduct.

Failing to declare an interest at the meeting on 11th August 2015

Mr and Mrs Harrison have raised within their complaint that Councillor Plant is one of the Parish Councillors who signed the Lease on 4 January 1996. Councillor Plant’s failure to declare that he was a signatory to the Lease does not, in my view, amount to a personal interest which would require declaration. I am required to look at whether a personal interest had to be declared under any circumstances at that meeting and note that Councillor Plant accepted that he had failed to declare an interest at the meeting on 11th August 2015. He said that he had no interest in his neighbours but felt that he did not want to be involved in changes to houses on the street where he lives. He said

that he did not know Mr and Mrs Harrison, therefore, it cannot be said that they fall within the definition of “friend, relative or close associate”. However, this could be a decision which might reasonably be regarded as affecting Councillor Plant’s well-being, which would give rise to a declaration of a personal interest. A decision such as granting access for services on a development on land on the street where Councillor Plant lives could, in my view, affect Councillor Plant’s well-being and as such I find that Councillor Plant’s failure to declare an interest is a breach of the Code of Conduct. Councillor Plant did vote on the request concerning The Firs, his view was that as the vote was unanimous, whether he had voted or not, it would not have affected the decision.

Bias and no lawful reason to refuse request

As part of this investigation, I have considered minutes of various STPC meetings. As part of this strand of Mr and Mrs Harrison’s complaint, the request made by Transcore in relation to Sevenoaks (which was considered on 13th October 2015) has been given as an example of bias and to demonstrate that there is no lawful reason to refuse the request made for The Firs. I cannot change the decision made in relation to the request made relating to The Firs, nor any other similar request, including Sevenoaks. The minutes of the meeting on 13th October 2015 indicate that the Sevenoaks request was “agreed in principle subject to the provision of a detailed plan”. The minutes go on to say “the parish council viewed each request as a separate item and this would in no way set a precedent for any other property”.

Since this meeting, City of York Council, as landowners, have considered the Sevenoaks request and have informed Transcore that the services at Sevenoaks must be relocated and the land reinstated. The minutes of STPC’s Planning Committee Meeting on 23rd February 2016 confirm this. Despite the subsequent decision of City of York Council, which effectively renders Sevenoaks in the same position as The Firs, I have to consider whether Councillors acted improperly when The Firs request for services was considered. It could be said that Transcore were in a more difficult position in relation to their request, they had already installed the services without approval, whereas it could be said that Mr and Mrs Harrison had worked with STPC and sought approval before any works started. Despite this, it appears that STPC were willing to approve the request made by Transcore, despite rejecting Mr and Mrs Harrison’s request. Councillor Baxter expressed his concerns to me during our interview as to this decision and

confirmed some of the notes made by Mrs Harrison which she took at the meeting on 13th October 2015.

Regardless of the position of City of York Council which has changed the decision made in respect of Sevenoaks, it does appear to me that The Firs was rejected because of a belief, even though I have found no evidence to support this belief, that there was some sort of deception taking place.

I have also looked to the minutes of the monthly meeting which took place on 9th June 2015 which deals with Mr and Mrs Harrison's request for services across the leased land, the reason within the minutes given by STPC to refuse this request was "the original Deed of Grant was given for a specific purpose". In my view, I cannot see the relevance in considering this request of the purpose of the Deed of Grant, this request which was made in June 2015 was a new request for services to be brought across the land. The minutes of this meeting, as with the meeting the following month state that this was a unanimous decision. I have also considered the further request for services over the leased land relating to The Firs was again made the following month by solicitors acting for the developer. Again, the minutes state that STPC unanimously rejected the request.

I find that these decisions and the reasons for making the decision has led to a disadvantage being conferred upon Mr and Mrs Harrison, which has been to their disadvantage. As I have previously stated, I can find no evidence to support the belief of STPC of an intention on the part of Mr and Mrs Harrison to "profit through deception". I also find that the decisions made were not made in the spirit of some of the principles which form the basis for the Code of Conduct, namely in relation to selflessness, integrity, objectivity, accountability and openness. On that basis I find that those Councillors involved in the decisions made on 9th June 2015 and 11th August 2015 are in breach of the Code of Conduct in respect of this strand of Mr and Mrs Harrison's complaint. Councillors Marquis, Plant, Chapman, Chambers, Harvey-Walker, Baxter, Ogilvy, Smith, Flannery and former Councillor Edwards in respect of the decision made on 9th June 2015 and Councillors Marquis, Plant, Baxter, Hill, Fisher, Mattinson, Ogilvy and Smith in respect of the decision made on 11th August 2015.

Maladministration, prejudice and bias of Councillor Marquis, in particular in relation to the letter of 9th September 2015

The letter of 9th September 2015 appears to have been sent after a “closed meeting” regarding The Firs which took place after the monthly meeting on 8th September 2015. Mr and Mrs Harrison make reference to Councillor Marquis’ maladministration, prejudice and bias within this letter, although I was told during my interviews that those Councillors at the closed meeting approved the letter which was sent out, Councillor Marquis merely signed it in his capacity of Chair of the meeting, therefore, I have to consider all of those Councillors present at the closed meeting when considering whether a breach of the Code of Conduct has occurred.

This strand of Mr and Mrs Harrison’s complaint centres around the wording of the letter. I have read the letter and what I do note is that STPC appear to be referring to matters which are not of relevance to the recent request, such as matters in 2011 and also the death of Mrs Harrison’s father. I would also suggest that perhaps in future letters of this kind, STPC should refer the member of the public to the Code of Practice or Complaints Procedure as good practice, but these 2 factors alone do not amount to, in my view, a breach of the Code of Conduct. What I have considered however, is the penultimate paragraph of the letter which reads “The Parish Council, with the support of the City of York Council are not prepared to permit any Deed of Easement to allow you to profit from the erection of a new property, accessed in this way. The Parish Council feel that you misled them in order to achieve your wish to profit from providing a building plot made accessible by the second structure.” I find that this paragraph of the letter does not accord with the principles of the Code of Conduct in respect of objectivity, openness or honesty. I also find that such a comment could be deemed disrespectful to a reasonable person and also improperly confers a disadvantage upon Mr and Mrs Harrison. On that basis, I find that those who attended this meeting, and approved this letter, namely Councillors Marquis, Plant, Baxter, Hill, Fisher, Chambers, Chapman, Mattinson, Ogilvy and Flannery in breach of the Code of Conduct in respect of this strand of Mr and Mrs Harrison’s complaint.

Rachel McKevitt
8th June 2016

Annexes

Annex A – Complaint made by Mr and Mrs Harrison (pages 21 to 41)
Annex B – STPC Code of Conduct for Councillors – Adopted 12th June 2012, updated 9th July 2015 (pages 43 to 50)