

Appendix Three

The Investigating Officer's Report

Dacorum Borough Council

Confidential

**REPORT OF AN INVESTIGATION UNDER SECTION
28(6) OF THE LOCALISM ACT 2011 BY MARK
BROOKES, ACTING AS INVESTIGATING OFFICER,
INTO AN ALLEGATION CONCERNING COUNCILLOR
HARDY, A MEMBER OF DACORUM BOROUGH
COUNCIL**

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Executive Summary

1. This report deals with an allegation by Mrs Susan Clarke against Councillor Hardy.
2. Allegation: That Councillor Hardy failed to treat Mrs Clarke and other officers of the Borough Council's Planning Department with respect.
3. Finding: That Councillor Hardy did fail to treat Mrs Clarke with respect.

Details of the allegation

4. Mrs Clarke attended the meeting of the Development Control Committee of Dacorum Borough Council on 28 July 2015 in her capacity as a Senior Planning Officer deputising for the Head of Planning, at which meeting she introduced a report on behalf of the Head of Planning relating to an application for planning permission by Homes 'R' Us for the development of new housing at the former Civic Centre site in Marlowes, Hemel Hempstead.

She complained that Councillor Hardy was present at that meeting and, following Mrs Clarke's introduction of this report, responded by saying that the Borough Council's Planning Department was responsible for nearly costing Hemel Hempstead its football club, and for the loss of many jobs in the Borough, and for the Civic Centre site remaining empty waste land for years to come.

Councillor Hardy then asked Mrs Clarke directly to justify her existence by telling the Committee where she proposed to locate thousands of new homes required in the Borough over the next 10 years if she was going to block any sensible town centre scheme by insisting on a design brief which was commercially unviable.

When Mrs Clarke referred to the Head of Planning's recommendation that the application be refused Councillor Hardy left the room without waiting for a reply and said as he was leaving that he had more important things to do than waste his time listening to "any more excuses from a load of planning plebs who could not appreciate decent modern design".

Mrs Clarke complained that this conduct amounted to a failure to show respect both to herself and to the members of the Planning Department and implied that they were not professionally competent and put personal aesthetic preferences above professional standards and their duties to the Borough Council.

The relevant sections of the Council's Code of Conduct

5. Section 4(1) of the Council's Code of Conduct states that "you must treat others with respect". This is amplified in the Council's protocol on Member/Officer relations, which for this purpose is to be taken as guidance to

Councillors and Officers on the interpretation of the Code of Conduct, which states that officers can expect respect, dignity and courtesy from Members.

Paragraph 4(2)(b) of the Council's Code of Conduct states that "you must not bully any person." The Standards Board for England (before it was abolished in 2011) provided a description of what constituted 'bullying' in its published Guidance on the Code of Conduct. The Standards Board described bullying as follows:

"Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour; such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or group of individuals, is detrimental to their confidence and capability, and may adversely affect their health."

The Parties Involved

6. Councillor Hardy (the Member subject of the complaint), Councillor Whitman (the Chairman of the Development Control Committee), the Head of Planning, Mrs Clarke (a Senior Planning Officer and the complainant), Mr Baker (the Monitoring Officer), Rachel Kiel (the Independent Person), and Ms Johnston (the Committee Clerk).

The Evidence Obtained

7. Councillor Hardy was elected as a member of Dacorum Borough Council at the election in May 2015 and is a member of the Development Control Committee (DCC).
8. The former Civic Centre site located at the northern end of Marlowes is currently a vacant site, the building having been demolished in 2014 following the relocation of the Council staff to 'Swanky Towers' on an adjacent site. The former Civic Centre site was sold by the Council to Homes 'R' Us following the demolition of the building. Homes 'R' Us have outline planning permission for a residential scheme of up to 1000 houses and flats, 80% of which will be for private sale and the other 20% available for affordable renting.

The Council's Planning Department consider the former Civic Centre site to occupy a prestigious and sensitive location as it is within the town centre zone and also near to the Old Town which is a conservation area. The DCC adopted a design brief for the Civic Centre site which requires that any new buildings on the site should be of a quality and design which complement its important location in the town centre and only high grade materials should be used. The design brief expressed the DCC's aspiration that any residential development would be 'up market' and iconic in design befitting its prime location in the town centre. Homes 'R' Us submitted an application for reserved matters for their residential scheme and this came before the DCC at a meeting held on 28 July this year.

9. The Head of Planning prepared the report on reserved matters but was unable to attend the meeting. Mrs Clarke deputised for the Head of Planning at the meeting which was the first meeting of the DCC which she had attended at which Councillor Hardy was present as a Councillor. Mrs Clarke presented to the Committee the report on reserved matters on behalf of the Head of Planning in which he advised that the proposed design fell substantially short of the requirements of the design brief, particularly in terms of its mass, visual appearance and use of cheap, low grade materials. The report therefore recommended that the application by Homes 'R' Us should be refused.
10. Mrs Clarke told me that she had met Councillor Hardy before his election as a Councillor when he had been extremely critical of the Borough Council's opposition to the Hemel Hempstead Football Club's plans for a new ground on the outskirts of the town on a green field site in the Green Belt. At public meetings and at the appeal hearing, and subsequently in his election literature, Councillor Hardy had made very personal and, in Mrs Clarke's view, unjustified criticisms of individual officers, but she accepted that the Code of Conduct did not apply to him until his election as a Councillor.
11. She said that since the election, she was aware that Councillor Hardy had come into the Planning Department on at least two occasions in order to make enquiries about planning applications affecting his ward. On both occasions he had not been satisfied by the information which the reception staff had been able to provide and had been referred through to Mrs Clarke. He had sought to express a view on the merits of the particular applications and she had provided him with copies of the applications and asked him to put his comments in writing so that they could be taken into account when the relevant Planning Officer wrote the report for the Head of Planning to present to the DCC.
12. She told me that, at the DCC meeting, she had distinctly heard Councillor Hardy say to the Committee that:

"this is the Planning Department which very nearly cost Hemel Hempstead its football team, has cost the Borough thousands of jobs over the years, which will ensure that the heart of Hemel Hempstead in the form of the old Civic Centre site remains empty waste land for years to come and stopping people from getting the homes they deserve."

She reports that he then turned directly to her and said:

"You are just a waste of space unless you can tell me where you propose to locate the 1,000 new homes which we have got to find, when you spend your time trying to block any sensible redevelopment of the old Civic Centre site, making sure that no developer can afford to build it by insisting on grandiose designs and materials which don't make commercial sense when a bog standard design brief would be more than sufficient."

She states that at this point, Councillor Hardy stormed out of the Committee Room, saying

“I have much more important things to do than to listen to any more excuses from a load of planning plebs who cannot appreciate a decent modern design.”

13. Ms Johnston, the Committee Clerk, attended the meeting and took manuscript notes in order to prepare the minutes of the meeting. Her practice is to make shorthand notes as the debate proceeds, highlighting key words in full text. Tape recordings are not taken of ordinary meetings of the DCC, nor are the proceedings shown on webcast.

14. The contemporaneous notes written by Ms Johnston are not a full verbatim report, but they do record Councillor Hardy as using the following phrases (in the order in which they appear below):

“Planning Department which nearly cost Hemel its football club”

“cost Borough thousands of jobs over the years”

“Civic Centre site the heart of Hemel”

“empty for years to come”

“stopping people getting homes”

“waste of space – where else can 1,000 new homes go”

“blocking sensible redevelopment – developers cannot afford to build – grandiose designs don’t make commercial sense – bog standard will do”

“more important things – listen to more excuses ”

“load of planning (indistinct word) - don’t appreciate modern design”

(leaves 11.23 am)

15. Councillor Hardy told me that he had had a number of previous dealings with the Planning Department, before his election as a Councillor, and had found them to be inflexible, seeking to comply strictly with the Local Plan and unable or unwilling to consider any alternative proposals. He referred to the proposals for the new football stadium, the Planning Department’s approach to restricting the growth of the football club and the fact that the DCC’s refusal for the new ground had been upheld on appeal by the Secretary of State. In his view, development and consequent prosperity, depend upon developers’ initiative in coming forward with ideas about what can be developed commercially and not from unreasonable restrictions on design imposed by the Planning Department.

16. Councillor Hardy told me that, since being elected as a Councillor, he has been made aware of his constituents' concerns over the delay in building the residential development proposed for the former Civic Centre site. He said there was an acute shortage of affordable housing in Hemel Hempstead and he was therefore very supportive of the Homes 'R' Us proposals which would bring in 200 affordable homes into the town centre. His view is that the design proposed by Homes 'R' Us is an honest, workmanlike design which would be a considerable improvement over the present waste land appearance. Since Homes 'R' Us is required to use its resources for the provision of 200 social rented housing, its decision not to spend additional money on up market design and materials will mean that it does not have to reflect the additional cost in the rents of the affordable housing. Accordingly, he supported the simplicity of the presented design and opposed the Head of Planning's recommendation that it fell short of the design brief. He said it was the brief that was wrong and not the designs put forward by Homes 'R' Us.
17. Councillor Hardy told me that he had felt that it was important for the DCC to take a practical decision within the bounds of what was economically achievable. He stated that, in addressing the Committee, he had no intention to cause offence to Mrs Clarke or to any officer in the Planning Department, but was seeking to draw to members' attention the Head of Planning's attempts to seek unrealistic standards, with the result that beneficial developments had been prevented or delayed. In his view, the Planning Department and its officers should be capable of accepting honest criticism without taking offence.
18. Councillor Hardy has evidence that he had another appointment elsewhere in Hemel Hempstead at 12 noon on the day of the meeting which necessitated his leaving the meeting very shortly after the start of the consideration of the planning application by Homes 'R' Us. He did not speak from notes and says that he cannot recall the exact words which he used. He is clear though that he did not use the word 'plebs'. He said that he would never use such a word but he did accept that he felt totally frustrated with the Planning Department. He insisted that he had intended no discourtesy to the Chairman and had addressed his remarks towards the platform where both the Chairman and Mrs Clarke were seated. He recalls asking where the required new housing was to be located if it were not to be permitted on the Civic Centre site and acknowledges that it is possible that he may have expressed this request directly to Mrs Clarke rather than through the Chair, but points out that he has only recently been elected as a Councillor and that he is not yet accustomed to such conventions of address.
20. Councillor Whitman, the Chairman of the DCC told me that Councillor Hardy had apologised to him before the meeting that he could not stay for the whole meeting. Councillor Whitman said that Councillor Hardy is a forceful and colourful personality who speaks his mind on issues. Like most new members, he needs to learn the etiquette of Committee procedure and as Chairman he allowed him some tolerance, but he had spoken to him in the Members' Room after the previous meeting of the DCC where he had made very personal remarks to another member and told him privately that he did

not need to personalise the argument but should stick to the main points and direct his remarks to the Chairman.

21. Councillor Whitman told me that the Head of Planning's recommendation was entirely consistent with the policy adopted by the DCC and with previous decisions of the Committee. He had not noticed anything exceptional in respect of the matter until Mrs Clarke had completed her presentation of that report. He did not recall Councillor Hardy's exact words. He did recall that he was loud and that he seemed to be unnecessarily re-opening the Hemel Hempstead Football Club issue but that he had noted that he again personalised issues to the Planning Department despite the fact that these were decisions taken by the full Committee. He had intended to have a further word with him after the meeting, except that he had left by then. Councillor Hardy's words did not seem to have influenced the Committee unduly, as Mrs Clarke had summed up the policy position very clearly and the Committee had agreed with the recommendation and resolved to refuse the application.
22. Councillor Whitman told me that he had not been aware that Mrs Clarke had taken particular offence at Councillor Hardy's words until she raised the issue in their usual post-meeting review two days later, when they go through the draft minutes and agree actions. At the start of that meeting Mrs Clarke had said that she took exception to Councillor Hardy's accusation that officers were not acting professionally and that she looked to the Chairman to take appropriate action. The Chairman said that he had replied that they had both come up against Councillor Hardy before he was elected as a Councillor and that he showed no signs of having changed his attitude or behaviour since his election. So, whatever he might say to him, Mrs Clarke would have to accept that he was going to be on DCC for the foreseeable future so she might as well get used to him expressing his views.

Conclusions

23. I am satisfied that Mrs Clarke's recollection of events at the meeting of the DCC on 28 July this year and of what Councillor Hardy said at the meeting, as set out in Paragraph 12 above and very largely confirmed by the contemporaneous notes made by Ms Johnston, the Committee Clerk, is essentially a correct record. The only substantial dispute is in relation to the allegation that Councillor Hardy used the word 'plebs' as he left the room. Mrs Clarke is adamant that she heard Councillor Hardy say the word 'plebs' as he was walking out of the room. Councillor Hardy is equally adamant that he did not use the word 'plebs' and that the word he used was 'people'. There is no evidence to corroborate Mrs Clarke's allegation in this respect. Ms Johnston's notes do not record the use of the word although they do refer to some word or words being indistinct. Councillor Whitman cannot recall exactly what Councillor Hardy said and the other members of the Committee say they were too far away to hear what was being said as Councillor Hardy was in the process of walking out the door and had his back to them.

24. I am satisfied that the Head of Planning's report to the DCC in respect of the Homes 'R' Us proposals was properly presented by Mrs Clarke in accordance with the professional standards which would normally be expected from a Senior Planning Officer.
25. I have not sought to investigate the history of the Hemel Hempstead Football Club scheme or of other employment or housing planning applications in the Borough, so I express no view upon the veracity of Councillor Hardy's assertion as to the impact of planning policies.
26. I accept Councillor Hardy's assertion that, in addressing the DCC, he had no intention to cause offence to Mrs Clarke or to any member of the Planning Department, that his intention was to draw the Committee's attention to a series of events, and that his parting remarks were a reference to the fact that he was unable to remain at the Committee because of a requirement to attend another meeting. I therefore approach the issue of whether his remarks constituted a failure to treat others with respect not in terms of his intention but in terms of whether the language that he used and the manner of his address fell below the standard which might reasonably be expected of a Councillor in such circumstances.
27. Local Government is required to resolve matters of local controversy. Such matters will be matters which give rise to strong feelings. Some element of political rough and tumble is to be expected and accepted between members. But local authorities can only function effectively if reasonable relations are maintained between members and officers, however controversial the current issue may be.
28. It is not uncommon that the perceived failings of policies which have been adopted by the Council are laid at the door of the officer or department whose responsibility it is to administer those policies, and this is not of itself a failure to treat the officer or department with respect.
29. In this instance, however, Councillor Hardy did positively challenge Mrs Clarke at the meeting to justify her existence, and implicitly her continued employment by the Borough Council, and then left the Committee Room without giving her the opportunity to respond. Whilst he had explained to the Chairman of the Committee that he would have to leave the meeting early, he could not be sure that Mrs Clarke was aware that this was the reason for his departure, and his parting words (even if it is accepted that the word 'plebs' was not used) were, whether intentionally or not, such that they would be understood by an independent observer to indicate that he did not consider that any response which Mrs Clarke might give could be worth listening to. In so doing, in my view, Councillor Hardy failed to treat Mrs Clarke with respect and therefore failed to comply with the Code of Conduct.
30. Turning then to the complaint of bullying, as set out above, I am satisfied that Councillor Hardy's words and the manner in which they were delivered was offensive to Mrs Clarke. I cannot say that they were intimidating, in the sense that Mrs Clarke was not intimidated from responding to those words by

making this complaint. The Council's Code of Conduct does not define what constitutes 'bullying'. I have therefore used the description of bullying applied by the former Standards Board for England. In order to satisfy the Standards Board's description of bullying, it would be necessary that Councillor Hardy's words and actions constituted an attempt to undermine Mrs Clarke and/or her colleagues in the Planning Department. Councillor Hardy denies any such intention and in the absence of any further positive evidence of such intention, I must conclude that he did not have the necessary intention to intimidate and therefore that his words and actions did not amount to bullying.

Mark Brookes

Investigating Officer