

Westminster City Council

Standards Committee



**Investigation Report
re. Cllr Davis**

Index

REPORT

1.	Final report of Investigating Officer, Hazel Best	11/10/2018	1 - 21
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APPENDICES

1.	Email from Cllr Davis to Monitoring Officer	01/03/2018	1
2.	Letter from Monitoring Officer to Cllr Davis (exhibit is at appendix 5)	05/03/2018	2 - 3
3.	WCC Members Code of Conduct		4 - 12
4.	DCLG illustrative text, code of conduct	01/04/2012	13 - 14
5.	WCC Arrangements for dealing with Member complaints		15 - 21
6.	Final report of Internal Audit	11/10/2018	22 - 38
7.	(Not published) Statement of Cllr Davis and Exhibits	24/07/2018	39 - 52
8.	Legal submissions on behalf of Cllr Davis	17/07/2018	53 - 59
9.	Written opinion by Mr Goudie QC to the Monitoring Officer	24/07/2018	60 - 82
10.	Redacted table of queries re Cllr Davis investigation	11/10/2018	83 - 104

REPORT

REPORT OF AN INVESTIGATION IN ACCORDANCE WITH THE WESTMINSTER CITY
COUNCIL'S ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS
UNDER THE LOCALISM ACT 2011

IN THE CASE OF COUNCILLOR DAVIS

INVESTIGATION REPORT CONTENTS

Report Author: Hazel Best, Principal Lawyer, Bi-Borough Legal Services

Report date: Draft report sent to parties 08.10.18

Final report sent to Monitoring Officer on 11.10.18

ITEM	DESCRIPTION
1	Background
2	Summary of investigation
3	Investigation procedure
4	Relevant Legislation and Protocols
5	Scope of the Investigation and evidence considered
6	Analysis of evidence and findings of Investigation
7	Summary of findings and comments of the Independent Person
8	Overall Conclusion
9	Comments on behalf of Mr Robert Davis

1. **Background**

- 1.1 On 1 March 2018 Cllr Davis sent an email to the Monitoring Officer, Tasnim Shawkat, stating

“I am writing to you further to the recent reports in the media regarding my register of interests. In light of these reports I am referring myself to you, as monitoring officer, and would like you to investigate whether or not my acceptance of these gifts and hospitality is (a) unlawful, (b) a breach of the code of conduct, (c) inappropriate from a point of view of the council’s reputation.”

- 1.2 This self-referral followed a series of press articles about the number of gifts and hospitality received by Cllr Davis. A copy of Cllr Davis’ email is attached as **Appendix one** of this report. Links to the various media reports are listed in the email but are not attached to this report.
- 1.3 The Monitoring Officer sent a letter to Cllr Davis dated 5 March 2018 to advise the self-referral merited investigation. A copy of this letter is attached as **Appendix two** of this report.

2. **Summary of matters to be investigated**

- 2.1 The number of gifts and hospitality recorded by Cllr Davis has attracted media attention since February 2018. The media reports refer to the number of gifts Cllr Davis received and registered from 5 January 2015 to 8 February 2018. The press reports imply that Cllr Davis’ receipt of hospitality and gifts has influenced his conduct as a Councillor, in particular in his capacity as Chair of one of the planning application sub committees.
- 2.2 The investigation I undertook is in relation to the self-referral by Cllr Davis and looks into whether Cllr Davis’ conduct was:
- 1) Unlawful
 - 2) A breach of the Code
 - 3) Inappropriate from a point of view of Westminster City Council’s reputation.

However, the focus of this report is whether there has been a breach of the Code.

3. Investigation Procedure

Chronology of Investigating Procedure

1 March 2018	Email from Cllr Davis to the Monitoring officer
5 March 2018	Letter from Monitoring Officer to Cllr Davis
7 March 2018	Monitoring Officer appoints Mr Goudie QC as an advisor and appoints Hazel Best, Principal Lawyer, as the Investigative Officer
9 March 2018	Monitoring Officer instructs Internal Audit to undertake a review of Cllr Davis' gifts and hospitality
21 March 2018	Meeting between Monitoring Officer, Mr Goudie QC, Investigating Officer and Independent Person, Sir Stephen Lamport
23 March 2018	Email from Sir Stephen Lamport to Investigating Officer confirming agreement to this matter being formally investigated
11 April 2018	Interim report by Internal Audit
12 April 2018	Meeting between the Monitoring Officer, Mr Goudie QC, Investigating Officer, Cllr Davis and Cllr Davis' solicitor
April/ May 2018	Pre-election period (Purdah) and local elections – no work undertaken on this investigation
16 April 2018	Monitoring Officer and Investigating Officer meet with the Chair of a community organisation representing residents and organisations in an area of Westminster
3 May 2018	Local Elections
16 May 2018	Monitoring Officer and Investigating Officer met with an individual

29 May 2018	Chief Executive, Monitoring Officer and Investigating Officer met with an individual (same individual referred to in entry above)
2 June 2018	Investigating Officer meets with a resident in relation to a planning matter (live application)
17 July 2018	Statement by Cllr Davis appending schedule of hospitality and references
17 July 2018	Legal Submissions on behalf of Cllr Davis by Mr Drabble QC
24 July 2018	Second meeting between the Monitoring Officer, Mr Goudie QC, Investigating Officer, Cllr Davis and Cllr Davis' solicitor Mr Goudie QC provides written opinion to the Monitoring Officer following the meeting
26 July 2018	Solicitor instructed by Cllr Davis forwards further references on behalf of Cllr Davis
23 August 2018	Investigating Officer meets with Internal Audit team
21 September 2018	Report by Internal Audit sent to Monitoring Officer and Investigating Officer
1 October 2018	Draft report sent to Monitoring Officer, Independent Person and James Goudie QC
2 October 2018	Investigating officer asks Internal Audit to clarify some information in their report of 21 September 2018
4 October 2018	Updated report by Internal Audit sent to the Monitoring Officer and the Investigating officer
5 October 2018	Telephone conference between Investigating Officer, Independent Person and Mr Goudie QC

- 3.1 In accordance with the provisions of the Localism Act 2011, the Council has adopted a Code of Conduct for Members and Arrangements for dealing with complaints that members have breached the Members' Code of Conduct.
- 3.2 I attach as **Appendix three** of this report the Members Code of Conduct.
- 3.3 The code of conduct applies to Members whenever they are acting in a capacity as a Member of the City Council. Members must comply with the following standards of conduct/behaviour (I have used the same numbering as set out in the code)

Paragraph 2, General Conduct

2.1 To act solely in the public interest and never to improperly confer or seek to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, friends or close associates.

2.2. Not to place themselves under a financial or other obligation to any individual or organisation that might seek to influence them in the performance of their official duties

2.3 To make all decisions on merit when carrying out public duties, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits

2.4 To be accountable for their decisions to the public and to cooperate fully with whatever scrutiny is required

2.5 To be open and transparent as possible about decisions and actions and the decisions and actions of the City Council and to give reasons for those decision and actions

2.6 To register and declare any disclosable pecuniary interests and to declare non-disclosable pecuniary interests and non-pecuniary interests as set out in the code

2.7 When using or authorising the use by others of the resources of the City Council, to ensure that such resources are not used improperly for political purposes (including party political purposes) and to have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986

2.8 To behave in accordance with all legal obligations, alongside any requirements contained within the City Council's policies, protocols and procedures, including on the use of the Council's resources and dealing with confidential information appropriately

2.9 To value and respect colleagues, staff, partners and the public, engaging with them in an appropriate manner that underpins the mutual respect between that is essential to good local government, and not to act in a manner that could be deemed to be bullying, harassment or intimidation

2.10 To promote and support high standards of conduct through leadership and by example

- 3.4 The code was adopted from the illustrative text for local codes of conduct published by the Department for Communities and local government in April 2012. I attach as **Appendix four** a copy of the "illustrative text".
- 3.5 I attach as **Appendix five** of this report the Council's "Arrangements for dealing with complaints alleging a breach of the Members Code of Conduct"
- 3.6 Having considered the "Arrangements" the Monitoring Officer considered the matters raised in the email from Cllr Davis merited formal investigation. The Monitoring Officer appointed Mr James Goudie QC as an Independent advisor as the Monitoring Officer had previously advised Cllr Davis in relation to his acceptance of gifts and hospitality. I was appointed as the Investigating Officer.
- 3.7 In accordance with paragraph 4.2 of the "Arrangements" the Monitoring Officer consulted the Independent Person, who in this case is, Sir Stephen Lamport, before coming to a final decision as to whether or not, the self-referral met the relevant criteria and should be investigated. The Monitoring Officer, Mr Goudie QC and I met with Sir Stephen Lamport on 21 March 2018 to discuss Cllr Davis' self-referral.
- 3.8 On 23 March Sir Stephen Lamport confirmed his views in an email to me as the Investigating Officer.
- i. The volume and frequency of hospitality and gifts declared by Cllr Davis was extraordinary.*
 - ii. I did not question his honesty and integrity in making such an assiduous declaration of them.*
 - iii. But there were other aspects of the Code of Conduct which were relevant to the scale of hospitality, and which raised questions about Cllr Davis's*

judgement. The fact of this scale of declared hospitality laid him open, fairly or unfairly, to a perception of his activities which could damage his personal reputation and, particularly given the senior positions he has held and does hold, the public reputation of the Council generally. This was relevant to his obligation made under 2.10 of the Code of Conduct 'to promote and support high standards of conduct through leadership and by example.'

iv. Linked to this was his vulnerability to a perception that the sheer quantity of hospitality he has received might place himself under an obligation to individuals or organisations. This is relevant to 2.2 of the Code of Conduct.

For these reasons it is my opinion that this case should be carefully investigated and formally considered by the Standards Committee.

3.9 This is an unusual complaint, as it was a self-referral. Normally the Monitoring Officer would receive a complaint by way of a form completed which requires that evidence is produced supporting the complaint and the allegation of breach of a particular section/s of the Code. However, in this case no evidence was produced by Cllr Davis when he sent his email of 1 March 2018 to the Monitoring Officer. Therefore, on 9 March 2018 the Monitoring Officer instructed the Council's audit team to undertake an audit into the list of gifts and hospitality that Councillor Davis has accepted. Her instructions to the audit team were as follows:

(i) Whether all the entries made fall into the category of gifts and hospitality that should have been registered and, if not, how many such entries are there which needed to be registered

(ii) If there is a link between all those providing gifts and hospitality and the City Council and how many of them are from developers who have applied for planning permission in Westminster

(iii) If gifts or hospitality were given to Councillor Davis developers, who subsequently applied for planning permission, whether Councillor Davis made appropriate declarations.

(iv) At the meetings Chaired by Cllr Davis (about 10 per year) whether decisions were made along officer recommendations or against officer recommendations and how many in each category and any voting pattern.

(iv) Whether there has been any reduction of the number or the types or any change in pattern in the gifts and hospitality since training was provided in October 2016 and a meeting was held with the Monitoring Officer in September 2017.

(v) Any other matters you consider are relevant.

3.10 The audit team prepared an interim report setting out its findings in relation to items (i) and (v) on 11 April 2018. To be able to complete its findings in relation to items (ii), (iii) and (iv) the audit team required further information from Cllr Davis. The Director of Audit, Fraud, Risk and Insurance sent the final investigation report to the Monitoring Officer and me on 21 September 2018. On 2 October I asked the Internal audit team to clarify some of the information in their report. I attach a copy of their final report undated but received on 4 October 2018 as **Appendix six** to this report.

3.11 On 12 April 2018 the Monitoring Officer, Mr Goudie QC and I met with Cllr Davis and his solicitor. At the meeting Mr Goudie QC confirmed the ambit of the investigation and advised on the procedure the Monitoring Officer and I, as the Investigating Officer would follow.

3.12 It was reiterated that the terms of reference of the investigation would be whether or not any of Cllr Davis' acceptance of gifts and/or hospitality has been:

- 1) Unlawful or given rise to illegality; and/ or
- 2) In breach of the Code of Conduct; and/ or
- 3) "Inappropriate" from the point of view of the Council's reputation

However, it was made clear that the focus of the investigation would be whether or not there had been a breach of the Code. It was stated at this stage it was clear that the Cllr Davis' conduct in accepting the declaring gifts and hospitality was not unlawful and whether it was 'inappropriate' from the point of view of the Council's reputation would be a matter for Members to decide.

3.13 In relation to 2) ie breach of the Code it was confirmed the focus was on paragraphs 2.2 and 2.10 of the Code of Conduct, which require members to conduct themselves as follows:

"2.2 Not to place themselves under a financial or other obligation to any individual or organisation that might seek to influence them in the performance of their official duties"

“2.10 To promote and support high standards of conduct through leadership and by example.”

At this meeting Cllr Davis was assured that no investigation would take place during the pre-election period, however that we would meet one individual who represents a community organisation.

- 3.14 A further meeting with Cllr Davis and his solicitor took place on 24 July 2018. Prior to the meeting Cllr Davis’ legal team had provided me with a statement by Cllr Davis and legal submissions by Mr Drabble QC on behalf of Cllr Davis (17 July 2018). I attach as **Appendix seven** a copy of Cllr Davis’ statement (with exhibits) and I attach as **Appendix eight** a copy of the legal submissions on behalf of Cllr Davis. On 24 and 26 July 2018 Cllr Davis’ solicitor forwarded further references on behalf of Cllr Davis. I have added these to the references already provided with Cllr Davis statement.
- 3.15 Following the meeting on 24 July 2018 Mr Goudie QC provided a written opinion to the Monitoring Officer, which I attach to this report as **Appendix nine**.
- 3.16 A copy of the statement of Cllr Davis (and exhibits) were sent to the Internal Audit team to enable them to complete their investigation. Copies of the statement of Cllr Davis (and exhibits, including further references) legal submissions by Mr Drabble QC, the written opinion of Mr Goudie QC and the internal audit report were sent to the Independent Person.

4. Relevant Legislation and Protocols

- 4.1 In completing this report, in addition to the Code of Conduct and the “Arrangements” I have considered the Seven Principles of Public Life which apply to anyone who works as public office-holder. The principles were first set out by Lord Nolan in 1995 and are commonly referred to as the “Nolan Principles”

Selflessness

- 4.2 Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends

Integrity

- 4.3 Holders of public office must avoid placing themselves under any financial or other

obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties

Objectivity

- 4.4 In carrying out public business, including making public appointments awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit

Accountability

- 4.5 Holders of public office are accountable to the public for their decisions and actions to the public and must submit themselves to the whatever scrutiny is appropriate to their office

Openness

- 4.6 Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands

Honesty

- 4.7 Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest

Leadership

- 4.8 Holders of public office should promote and support these principles by leadership and by example.
- 4.9 I have also considered sections 27 and 28 Localism Act 2011.

5. Scope of the Investigation and evidence considered

- 5.1 In completing this investigation I am following the process for investigating complaints as set out in the “Arrangements”. It is important that I set out what is within the scope of my investigation and what is not, for the reasons set out below.
- 5.2 Following reports in the media that that Monitoring officer had confirmed the self-referral by Cllr Davies merited formal investigation a number of residents of

Westminster and others contacted the Monitoring officer, the Chief Executive of Westminster City Council, the Leader of Westminster City Council and Mr Goudie QC.

5.3 I attach as **Appendix ten** to this report an anonymised table of the queries. The names of individuals, organisations and other information has been anonymised for to protect their data, as they did not fall within the scope of this investigation.

5.4 The Monitoring Officer sent a response to each enquiry explaining the ambit and process of the investigation in relation to Cllr Davis' acceptance of gifts and hospitality. I set out below as an example one of the responses by the Monitoring Officer:

"... I am the Monitoring Officer for the City Council. One of my responsibilities is to investigate complaints against Members for actual or alleged breach of the Members Code of Conduct.

As you may know Cllr Davis has referred himself to me for an investigation. In accordance with the referral made by Cllr Davis I am investigating whether or not Cllr Davis' acceptance of the large number of gifts and hospitality is:

- a) unlawful*
- b) a breach of the code of conduct*
- c) inappropriate from a point of view of the Council's reputation.*

I am considering the referral as a complaint against Councillors and am dealing with it in accordance with the City Council's Arrangements for dealing with complaints alleging a breach of the Members Code of Conduct. I attach a copy of the Arrangements for your reference. I also attach the Code of Conduct.

You will see from the Arrangements that as part of the process I have to consult with an Independent Person appointed by the Council. I have appointed an investigating officer, which is Hazel Best, Principal Solicitor. I have also instructed James Goudie QC to assist me in this investigation. Mr Goudie is counsel with considerable experience in public law matters and is the best position to provide independent advice during this investigation.

In accordance with the arrangements I will be consulting the Independent Person and then we will interview Cllr Davis in the next week or so. Once we have interviewed Cllr Davis I will consider who else we need to interview in order to complete the investigation.

I should mention that the Chief Executive is undertaking a review, which will focus on the planning decision making process to ensure its probity and to make any recommendations which may be considered appropriate. The review will look at a range of issues including both officer and member / committee governance arrangements.

You will see from the above that neither my investigation nor the review being undertaken by the Chief Executive will look at individual planning applications or decisions. As you know planning decisions can be challenged through the courts by developers or objectors on public law grounds and any challenge must be made promptly.

If you have any evidence that relates to the investigation I am conducting about any breach of the Code of Conduct then either I or my investigating officer would be happy to meet with you. If you wish to provide information about the planning decision making process then you may wish to contact the Chief Executive.

I trust this sets out in detail the processes and I hope you will find this helpful.”

- 5.5 In total, fourteen queries were received, some of which were on behalf of Resident Associations and other organisations. Some of these individuals and organisations contacted the Monitoring Officer several times and some wrote directly to Mr Goudie QC. The Monitoring Officer has also shared the correspondence with Mr Goudie.
- 5.6 It is my view that these queries do not directly relate to whether or not Cllr Davis has breached the Members code of conduct but refer to individual planning or highway matters. However, they all express concern about Cllr Davis' acceptance of large number of gifts and hospitality, particularly from those involved in the planning or highways matters.
- 5.7 The Monitoring Officer and I met two individuals (one representing an organisation) and I met with a third. It has been difficult to explain to these individuals that their queries and dissatisfaction related to matters that were not within our investigation.

Their perception was that the level of gifts and hospitality must have influenced Cllr Davis' decisions in favour of developers. However, no specific evidence was produced by the individuals of any actual wrongdoing.

- 5.8 Therefore, in relation to my investigation, I have had to disregard the information about specific planning and highways issues raised by these individuals and organisations. The Chief Executive of Westminster City Council has commissioned a review of the planning decision process, in particular, looking at both officer/ member/ committee governance arrangements. Further information about this will be available in due course
- 5.9 I confirm that although I have disregarded the specific information provided by each of those who contacted us as evidence of breach of the Code, I have taken into account the generality of the overall concern or "noise" from these complaints in considering whether para 2.10 of the Code has been breached.
- 5.10 The primary evidence I have considered as part of my investigation is (1) statement provided by Cllr Davis, and (2) the report produced by the Council's audit team, as requested by the Monitoring Officer. As part of the investigation I have also interviewed the Monitoring Officer and her two deputies, Chief Solicitor for Contract Planning and Property Law and Monitoring Officer at Kensington and Chelsea and also Chief Solicitor for Litigation and Social Care (currently seconded to another authority). This was to address the issue raised by Cllr Davis in his statement at paragraph 18 that prior to September 2017 no one inside or outside the Council had ever mentioned to him that there might be an issue with a) the number of declarations he was making b) his approach to declarations or c) the people from whom he was accepting hospitality.

6. Analysis of the evidence and findings of this investigation

Number of gifts and hospitality recorded

- 6.1 The record of Cllr Davis' gifts and hospitality is not disputed. Cllr Davis has been fastidious in recording his acceptance of gifts and hospitality. (A further 85 items came to light when Cllr Davis submitted information to me on 17 July 2018 relating to four months not previously submitted to Governance Services during 2015 and 2016. It is accepted that this was an administrative oversight by Cllr Davis).

- 6.2 It is evident that Cllr Davis has declared items which he was not required to declare. Of the 530 items recorded (for the period 5 January 2015 to 8 February 2018) at least 80 did not need to be recorded as Cllr Davis was not accepting gifts and hospitality in his role as Councillor. This number could be higher but this could not be confirmed without knowing the identity and relationship to Cllr Davis of all donors.
- 6.3 At paragraph 19 (1) of the Legal Submissions provided on behalf of Cllr Davis, it is stated that Cllr Davis' review of the declarations led him to conclude that 43% of the declarations (265 out of 621) it was not necessary for him to declare. On the information available, the Internal Audit team concluded that it appears between 15% and 20% of items recorded did not need to be recorded but they acknowledge that this could be higher.
- 6.4 In his statement Cllr Davis sets out his role as ambassador for the Council's leadership and that it is therefore not surprising that he made the most declarations of all Westminster Councillors.
- 6.5 Cllr Davis in his statement reviews all the declarations he has made in the past three years and his approach to meeting with stakeholders and developers in the various senior roles he has held in the Cabinet and as a Councillor.
- 6.6 I find that the number of gifts and hospitality recorded is not in dispute. I also find that Cllr Davis has followed the Code of Conduct in registering his gifts and hospitality appropriately. I am of the view that the acceptance of gifts and hospitality is not unlawful provided that gifts and hospitality over £25 is registered. The acceptance of a large number of gifts and hospitality is not unlawful either. There is no limit set on the numbers of gifts and hospitality.
- 6.7 Although the number of gifts and hospitality received is not unlawful I do find that Cllr Davis has prima facie breached the Code of Conduct, for the reasons stated below and it is to do with the proximity and timing of Cllr Davis' acceptance of some of the gifts and hospitality from developers who were involved in the planning process at the time. In other words, a few of the gifts and hospitality received were too close to the planning application/ decision, as found by the Audit team and described below.

Links to gifts and hospitality and developers

- 6.8 The audit team investigated whether there was a link between those providing gifts and hospitality and the City Council and how many of them were from developers (or those representing developers) who have applied for planning permission in Westminster. A total of 333 decisions were reviewed which were made by the

Planning Sub-Committee 1, which was chaired by Cllr Davis, between 15 July 2014 and 17 January 2017. Of those 41 decisions were identified where the committee had made a decision contrary to the recommendation of officers, of these 32 decisions were made to grant planning permission against officer recommendations.

- 6.9 Six of the applicants/ agents/ individuals linked to them, involved with these 41 decisions are recorded as having provided Cllr Davis with gifts or hospitality, one appearing on more than one occasion (Gerald Eve). There are 6 instances where it can be shown that gifts and hospitality were received before or after a planning application was made. The analysis identified that Cllr Davis had received gifts and/or hospitality linked to 5 applications from an applicant/ agent or linked individual either in the period before or shortly after the sub-committee granted the consent to the applications (either in full or with conditions) where officers had recommended refusal. In one case the officers had sought committee consideration where the sub-committee granted conditional permission. It is not possible from the information provided to identify whether there were more instances of this. The table after paragraph 4.10 in the audit report sets out the information referred to in this paragraph.
- 6.10 The instances where Cllr Davis has accepted gifts and hospitality from developers/ agents before or after planning decisions does not itself evidence any inappropriate conduct by Cllr Davis, particularly as planning decisions are made by a politically balanced committee of elected Councillors. However, it also does not rule out a conclusion that he has placed himself in a position where people might seek to influence him in the performance of his duties. I refer to paragraph 32 of the written opinion of Mr Goudie QC in relation to the interpretation of paragraph 2.2 of the code of conduct. I agree that (1) the question is whether an individual or organisation “might” seek to influence, not whether there has been any actual attempt to influence; and (2) the obligation on the member is not to place himself under an obligation, whether or not the member is actually influenced. I therefore do not agree with the opinion of Mr Drabble who states at paragraph 12 in his submissions that paragraph 2.2 *requires evidence* that Cllr Davis has placed himself under a financial or other obligation to an individual or organisation that might seek to influence him in the performance of his official duties.
- 6.11 Therefore I find that Cllr Davis by accepting gifts and hospitality, close to the committee decision point, from developers or someone linked to the planning process whilst in itself is not evidence of any inappropriate conduct by Cllr Davis it

also does not rule out a conclusion that he has placed himself in a position where people might have sought to influence him in the performance of his duties. I am not suggesting that the donors of the gifts and or/ hospitality have sought to influence Cllr Davis.

Awareness of Cllr Davis' acceptance of gifts and hospitality and advice given

- 6.12 Cllr Davis states in para 18 of his statement that other councillors and officers knew about the hospitality he was receiving and yet until September 2017 no one inside or outside the Council raised any issues.
- 6.13 There is mention of previous discussions he has had with the Monitoring Officer and Cllr Davis makes specific reference to a complaint made against him under the "Arrangements" in 2016, which was dismissed.
- 6.14 I discussed with the Monitoring officer whether she had previously spoken to Cllr Davis in relation to his acceptance of gifts and hospitality. She advised me that she can recall three separate conversations with Cllr Davis when she raised the issue of risks around public perception of his gifts and hospitality and on the first two with reference to his role in planning committee. The three occasions are as follows:
- 6.15 The Monitoring Officer and one of her two deputies, Chief Solicitor for Contract, Planning and Property, who is the Monitoring Officer at Kensington and Chelsea, considered a complaint against Cllr Davis in May 2016. A number of allegations were made and it was found that there were no breaches of the Code and the Monitoring Officer responded accordingly. This letter is attached to Cllr Davis' statement. However, the Monitoring Officer took the opportunity to meet Cllr Davis together with the Chief Solicitor on 10 May 2016 to discuss his acceptance of gifts and hospitality, as that was one element of the complaint. Cllr Davis gave an explanation which seemed reasonable at the time and no evidence was produced of potential pressure. However, the Monitoring Officer and her colleague highlighted the fact that there are likely to be further such complaints. They advised that there is an issue of perception which Cllr Davis needed to be aware of, given that his acceptance of gifts and hospitality was unusually extensive. Cllr Davis said that he was fully confident that if there were complaints he would be able to show he had not done anything wrong. He stated that he meets with and accepts hospitality from anyone who offers it. He said he was passionate about the City and worked only in the interest of the City. The Monitoring Officer told me that she would not normally meet with a Councillor when her investigating officer has found no breach of the Code, but she made an exception

on this occasion in order to warn Cllr Davis. She also stressed that she did not doubt Cllr Davis' passion for his work and commitment to the City of Westminster.

- 6.16 On 12 October 2016 the Monitoring Officer and her other deputy, Chief Solicitor for Litigation and Social Care attended Cllr Davis' office to provide training on the updated Code of Conduct, on a two to one basis. At that training the Monitoring Officer stated they stressed that in addition to complying with the letter of the Code / law it was extremely important to be aware of perceptions. They discussed that perceptions of wrongdoing were even more important in the context of social media and the ability of persons to damage the reputation of Members and the Council, instantly. The Monitoring Officer gave this advice to all Members who attended training the sessions. In the case of Cllr Davis, in the two to one session they referred to the gifts and hospitality, as an example.
- 6.17 Finally, on 14 September 2017 the Monitoring Officer met with Cllr Davis, at his request, when Cllr Davis wanted to discuss a press article and asked whether he was over declaring certain matters. The Monitoring Officer advised that he was and, for example, it was not necessary to declare a lunch with his neighbour who happened to be a developer, with no connection with the Council. Cllr Davis also declares attending events arranged and hosted by the Council. At that meeting the Monitoring Officer stressed again that complaints and adverse press comments would continue unless he cuts down the number of gifts and hospitality, significantly.
- 6.18 It appears that the Monitoring officer's messages on 10 May or 12 October 2016 did not sink in and it was not until Cllr Davis saw the article in the press in September 2017 the potential risk to reputation was taken into account.
- 6.19 In my view this is borne out by the audit report in that the number of gifts and hospitality only reduced after the third meeting between Cllr Davis and the Monitoring Officer. Having spoken to the Monitoring Officer and her deputies, I am satisfied that Cllr Davis was given advice which he did not heed until after September 2017.
- 6.20 More importantly, it is my view that the Code of Conduct imposes the obligations on Members individually. It is Cllr Davis' judgement that is in question and this is relevant to para 2.10 of the Code. Even if no advice were given the fact that there is a code and Members are required to accept the Code means that a framework for a councillor's conduct is set and each councillor has a responsibility to act within the letter and the spirit of the Code.

- 6.21 Section 27(1) Localism Act 2011 states a relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority. Section 27(2) states that in discharging its duty under sub section (1) a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members of the authority when they are acting in that capacity.
- 6.22 Section 28 (1) states that a relevant authority must secure that a code adopted by it under s27(2) (a code of conduct) is when viewed as a whole, consistent with the following principles:
- a. Selflessness
 - b. Integrity
 - c. Objectivity
 - d. Accountability
 - e. Openness
 - f. Honesty
 - g. Leadership
- 6.23 On behalf of Cllr Davis it is contended that para 2.10 is not a stand-alone requirement of the Code of Conduct. Westminster City Council has followed these principles in adopting its own code of conduct. It is not stated in paragraph 2.10 of the code that the “high standard of conduct by leadership and example” is to promote and support the principles in paragraphs 2.1 to 2.9 of the code. It is a stand-alone standard of conduct/ behaviour expected of members. I adopt the advice of Mr Goudie QC at paragraph 47 of his opinion that paragraph 2.10 in its own right is a significant element of the overall code. I therefore do not agree with the opinion of Mr Drabble QC at paragraphs 25 to 31.
- 6.24 I find that by accepting the large scale of gifts and hospitality Cllr Davis has not promoted and supported high standards of conduct through leadership and by example. His conduct has attracted media and public attention which has an impact of the Council as a whole. I agree with the opinion of Mr Goudie QC at paragraph 51 to 53 of his opinion where he states:

“51 My advice is that as regards paragraph 2.10 of the Code:

(1) There is a prima facie case; and

(2) There should be reference to the Standards Committee

52. Again, my reason can be shortly stated. I do not consider that the question is whether Cllr Davis has in general promoted and supported high standards of conduct

through leadership and by example. He makes out a strong case that he has, supported by impressive references.

53. Rather, I regard the questions as being whether there has been a lapse from that requirement specifically by reference to the scale and totality of his gifts and hospitality. I consider there is a prima facie case in that respect.”

7. Summary of Findings

7.1 Based on the above the key findings of my investigation are as follows:

- I find that the number of gifts and hospitality recorded is not in dispute. I also find that Cllr Davis has followed the Code of Conduct in registering his gifts and hospitality appropriately.
- I am of the view that the acceptance of gifts and hospitality is not unlawful provided that gifts and hospitality over £25 is registered.
- I am also of the view that the acceptance of a large number of gifts and hospitality is not in itself unlawful. There is no precise limit set on the numbers of gifts and hospitality.
- The instances where Cllr Davis has accepted gifts and hospitality from developers/ agents before or after planning decisions is not of itself evidence of any inappropriate conduct by Cllr Davis but I find that it also does not rule out a conclusion that he has placed himself in a position where people might seek to influence him in the performance of his duties (paragraph 2.2 of the Code of Conduct)
- I am satisfied that Cllr Davis was given advice which did not affect his conduct until after September 2017.
- More importantly, it is my view that the Code of Conduct imposes the obligations on Members individually. It is Cllr Davis' judgement that is in question and this is relevant to paragraph 2.10 of the Code.
- I find that by accepting the large scale of gifts and hospitality Cllr Davis has not promoted and supported high standards of conduct through leadership and by example. His conduct has attracted media and public attention which has an impact of the Council as a whole.

Comments of the Independent Person

7.2 Having completed the final draft of my report I had a telephone conference with the Independent Person and Mr Goudie QC on 5 October 2018 to discuss my draft report. I have cut and paste below the comments the Independent Person sent by email following the telephone conference

“I have read the report prepared by Hazel Best on the case of Cllr Robert Davis.

I agree that Cllr Davis has properly followed the Code of Conduct in registering gifts and hospitality of which he has been the beneficiary, even though he may in practice have registered unnecessarily some of those occasions; and I agree that acceptance of a large number of gifts and hospitality is not in itself unlawful.

I take the view that Cllr Davis’s acceptance of gifts and hospitality from developers before or after a planning decision may thereby have placed him in a position in which people might seek to influence him in the performance of his duties. But I have seen no evidence that this did in fact happen.

The core of this matter is the issue of Cllr Davis’s judgement in accepting such a volume of gifts and hospitality, notwithstanding his personal circumstances. My conclusion is that this could of itself lay open his reputation, and therefore that of the Council, to a perception - fairly or unfairly – that called into question his personal responsibility to promote high standards of conduct.

It is, however, important to put this conclusion properly into its context. If Cllr. Davis’s judgement in this respect has been wanting, it is against the background of his deep commitment over many years to the work and effectiveness of Westminster City Council.”

8. Overall Conclusion

- 8.1 I wish to note that Cllr Davis and his legal team have been cooperative throughout this investigation.
- 8.2 I conclude that I am recommending to the Monitoring Officer that this matter should be referred to the Standards Committee for consideration as to whether Cllr Davis has failed to comply with the Code of Conduct, in relation to paragraphs 2.2 and 2.10.

9. Comments on behalf of Mr Robert Davis received on 10 October 2018

"Councillor Davis is of the view that this report contains significant factual and legal errors. However, he has now resigned and wishes to draw a line under this matter, so does not intend addressing these errors in detail. Nonetheless, for the record, he would like to state as follows: (1) he does not recall ever being advised by anyone that he was accepting too much hospitality; and (2) he does not believe that he

mistakenly failed to declare 85 items – he is confident that he declared these items and assumes this was an administrative error made by the Council."

Note: Appendices seven and eight are not published with this report as I do not have consent to publish those. Here is the list of appendices.

Appendix one	Email from Cllr Davis to the Monitoring Officer 1 March 2018
Appendix two 2018	Letter from the Monitoring Officer to Cllr Davis dated 5 March
Appendix three	WCC Members Code of Conduct
Appendix four	Illustrative text for local codes of conduct published by DCLG April 2012
Appendix five	WCC Arrangements for dealing with complaints alleging a breach of the Members Code of Conduct
Appendix six	Report by Internal Audit
Appendix seven July 2018)	Not published (Statement of Cllr Davis and exhibits dated 17
Appendix eight 17 July 2018)	Not published (Legal submissions on behalf of Cllr Davis dated
Appendix nine	Written opinion by Mr James Goudie QC to the Monitoring Officer dated 24 July 2018
Appendix ten	Anonymised table of queries from residents and others

Hazel Best
Principal Lawyer
Bi-Borough Legal Services

APPENDICES

From: [REDACTED]
Date: Thursday, 1 March 2018 at 20:21
To: "Shawkat, Tasnim: WCC" <tshawkat@westminster.gov.uk>
Cc: "Love, Stuart: WCC" <slove@westminster.gov.uk>
Subject: from Robert Davis

Dear Tasnim

I am writing to you further to the recent reports in the media regarding my register of interests. See below:

<https://www.theguardian.com/society/2018/feb/19/westminster-councillor-received-gifts-and-hospitality-514-times-in-three-years>

<https://news.sky.com/story/deputy-leader-of-westminster-city-council-lists-more-than-500-freebies-in-three-years-11258744>

<http://www.dailymail.co.uk/news/article-5415351/Westminster-councillor-accepts-514-freebies-three-years.html>

<https://www.thetimes.co.uk/article/westminster-council-boss-robert-davis-had-500-perks-in-three-years-d7sqdkkn>

<http://www.independent.co.uk/news/uk/politics/robert-davis-tory-councillor-gifts-hospitality-housing-property-industry-a8218781.html>

<http://www.bbc.co.uk/news/uk-england-43128009>

<http://www.ltv.com/news/london/2018-02-20/cow-bells-and-dinner-at-the-ivy-a-full-list-of-westminster-councillor-robert-davies-freebies/>

<https://news.co.uk/news/politics/westminster-councillor-robert-davis-received-514-gifts-including-tickets-hamilton/>

In light of these reports I am referring myself to you, as monitoring officer, and would like you to investigate whether or not my acceptance of these gifts and hospitality is (a) unlawful, (b) a breach of the code of conduct, (c) inappropriate from a point of view of the council's reputation.

I look forward to you acknowledging receipt of this email and confirmation of the process and timescales.

Yours sincerely

Robert
Councillor Robert Davis MBE DL
Deputy Leader
Westminster City Council
5 Strand, London WC2N 5HR
[REDACTED]

LEGAL SERVICES

**Director of Law
Tasnim Shawkat**

Councillor Robert Davis

My reference:
Your reference:

Please ask for: Tasnim Shawkat

5th March 2018

Dear Councillor Davis

Referral in relation to gifts and hospitality

I acknowledge receipt of your email of 1 March 2018, referring yourself to me, as the Monitoring Officer, for investigation into your acceptance of gifts and hospitality and to consider whether your acceptance of large number of gifts and hospitality is:

- (a) unlawful
- (b) a breach of the code of conduct
- (c) inappropriate from a point of view of the council's reputation

I will be considering your referral as a complaint against Councillors and deal with it in accordance with the City Council's *Arrangements for dealing with complaints alleging a breach of the Members' Code of Conduct* (The Arrangements).

In accordance with the arrangements it is my view that your complaint merits investigation, as it meets the following criteria:

- b) The complaint is sufficiently serious to warrant investigation
 - i) The Member complained about has not already apologised and/or admitted making an error

The Arrangements provide that the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was in breach of the Code and offering an apology, or other remedial action such as correcting the Register of Interests. Given that you have referred yourself to me I will assume that an informal resolution will not be acceptable or suitable. In the circumstances I have decided that an investigation is appropriate.

Tel: 020 7641 2774
Fax: 020 7361 3488
Email: tshawkat@westminster.gov.uk
DX: DX 84015 KENSINGTON HIGH STREET 2
Address: Legal Services, The Town Hall, Hornton Street, London, W8 7NX


It is my normal practice to either deal with complaints myself or ask a member of my team to investigate the complaint. However, in this case it is my view that it would be more appropriate for external lawyer to undertake the investigation.

This is because I and my Chief Solicitors have been involved in advising you in relation to this issue. At two meetings and one training session we advised that your acceptance of gifts and hospitality was not unlawful but the issue was one of perception and reputational risk. Furthermore, I understand that there has been adverse comment in the media stating "monitoring officer in Westminster apparently not being proactive when it comes to the conduct of Councillors". Therefore, I am keen to be advised by an external lawyer what the Monitoring Officer could and should have done other than advise you as I have.

Therefore, I consider that it would be fairer to you and also more appropriate in the circumstances that I refer the investigation to an external lawyer, who can provide independent advice in concluding the investigation. I will also consult with one of our two Independent Persons, as required by the arrangements.

I will ensure that the investigation is completed as soon as possible.

Yours sincerely



Tasnim Shawkat
Monitoring Officer

cc Stuart Love, Chief Executive

Westminster City Council - Members' Code of Conduct

1. Application

This Code of Conduct applies to Members and Co-opted Members whenever they are acting in a capacity as a Member or Co-opted Member of the City Council. The definitions in Appendices 1 and 2 apply to this Code. This Code is consistent with the Nolan Principles as explained in Appendix 3.

2. General Conduct

Members must comply with the following standards of conduct/behaviour.

- 2.1 To act solely in the public interest and never to improperly confer or seek to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, friends or close associates.
- 2.2 Not to place themselves under a financial or other obligation to any individual or organisation that might seek to influence them in the performance of their official duties.
- 2.3 To make all decisions on merit when carrying out public duties, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits.
- 2.4 To be accountable for their decisions to the public and to co-operate fully with whatever scrutiny is required.
- 2.5 To be open and as transparent as possible about decisions and actions and the decisions and actions of the City Council and to give reasons for those decisions and actions
- 2.6 To register and declare any disclosable pecuniary interests and to declare non-disclosable pecuniary interests and non-pecuniary interests, as set out in this Code.
- 2.7 When using or authorising the use by others of the resources of the City Council, to ensure that such resources are not used improperly for political purposes (including party political purposes) and to have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 2.8 To behave in accordance with all legal obligations, alongside any requirements contained within the City Council's policies, protocols and procedures, including on the use of the Council's resources and dealing with confidential information appropriately.
- 2.9 To value and respect colleagues, staff, partners and the public, engaging with them in an appropriate manner that underpins the mutual respect between them that is essential to good local government, and not to act in a manner that could be deemed to be bullying, harassment or intimidation.

2.10 To promote and support high standards of conduct through leadership and by example.

3. Disclosable Pecuniary Interests

3.1 Members must

- a) comply with the statutory requirements to register, disclose and withdraw from participating in respect of any matter in which they have a disclosable pecuniary interest, as defined in Appendix 2.
- b) ensure their register of interests is kept up to date and notify the Monitoring Officer in writing within 28 days of becoming aware of any change in respect of their disclosable pecuniary interests.
- c) make an oral declaration of the existence and nature of any disclosable pecuniary interest at any meeting at which they are present at which an item of business which affects or relates to the subject matter of that interest is under consideration, at or before the consideration of the item of business or as soon as the interest becomes apparent.

3.2 "Meeting" means any meeting, either formal or informal, organised by or on behalf of the City Council.

3.3 It is a criminal offence for a Member to:

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that they have disclosed to a meeting
- Participate in any discussion or vote on a matter in which they have a disclosable pecuniary interest
- As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, to fail to notify the Monitoring Officer within 28 days of the interest.
- To knowingly or recklessly provide information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting

3.4 The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

4. Other Interests

- 4.1 In addition to the requirements of Section 3, if Members attend a meeting at which any item of business is to be considered and they are aware that they have a “non-disclosable pecuniary interest” or a “non-pecuniary interest” in that item, they must make an oral declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent.
- 4.2 Members have a “non-disclosable pecuniary interest” or a “non-pecuniary interest” in an item of business of the City Council where –
- 4.2.1 a decision in relation to an item of that business might reasonably be regarded as affecting their well-being or financial standing or that of a member of their family, or a person with whom they have a close association, to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward for which they have been elected, or
- 4.2.2 it relates to or is likely to affect any of the interests listed in the Table in Appendix 1 of this Code but in respect of a member of the Member’s family (other than a “relevant person”) or a person with whom they have a close association.

5. Gifts and Hospitality

- 5.1 Members must, within 28 days of receipt, notify or arrange for the Monitoring Officer to be notified in writing of any gift, benefit or hospitality with a value in excess of £25 which they have accepted as a Member from any person or body other than the City Council.
- 5.2 The Monitoring Officer will place the contents of the notification on the register of interests of the relevant Member.
- 5.3 Where the Monitoring Officer is of the view that such gift or hospitality is clearly below £25 in value they may decline to include this on the register.

6. Sensitive Interests

- 6.1 In cases where they have an interest and the nature of the interest is such that the Member and Monitoring Officer both consider that disclosure of the details of the interest could lead to the Member or a person connected with the Member being subject to violence or intimidation:
- the register of interests will not include details of the interest but may state that the Member has an interest about which details have been withheld and

- where required by this Code to declare the interest at a meeting, the Member may only be required to declare the fact that s/he has an interest in the matter.

7. Dispensations from the Restriction from Participating and Voting In Meetings

- 7.1** This provision applies to a situation where a Member or Members have an interest, which prevents them from taking part in a decision but they feel they ought to be able to participate or that it is necessary to allow them to participate in the interests of proper decision making, as explained below.
- 7.2** One or more Members may apply for a dispensation from the requirement not to participate in or vote in respect of a matter at a meeting by written request to the Monitoring Officer, so that they are able to participate in respect of that matter at the meeting.
- 7.3** The Monitoring Officer (or in his/her absence the Deputy Monitoring Officer) may agree the dispensation on behalf of the City Council, where s/he considers, after having had regard to all relevant circumstances such as follows:
- 7.3.1** that without the dispensation the number of persons prohibited by section 31(4) of the Act from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
 - 7.3.2** that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
 - 7.3.3** that granting the dispensation would be in the interests of persons living in the Council's area,
 - 7.3.4** that without the dispensation each member of the Cabinet would be prohibited by section 31(4) of the Act from participating in any particular business to be transacted by the Cabinet , or
 - 7.3.5** that it is otherwise appropriate to grant a dispensation.
- 7.4** If granted the dispensation will be granted by the Monitoring Officer in writing and citing the ground or grounds on which it is agreed and it will be published on the Council's website within 7 days of the decision.
- 7.5** The dispensation must be for a fixed time not exceeding a period beyond the next City Council elections and will normally cover only a specific matter or meeting.

7.6 A Member may seek a review of the Monitoring Officer's decision not to grant a dispensation to the Standards Committee. The Monitoring Officer may choose to refer any application for dispensation to the Standards Committee and may, in doing so, consult one of the Council's Independent Persons. The Monitoring Officer may also, if s/he chooses, consult one of the Council's Independent Persons prior to granting a dispensation referred to in 7.3 above.

APPENDIX 1

Disclosable Pecuniary Interests

The duties to register, disclose and not to participate in respect of any matter in which a member has a Disclosable Pecuniary Interest are set out in Chapter 7 of the Localism Act 2011. Disclosable Pecuniary Interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as either the interest of the Member or the interest of a relevant person and the Member is aware that the other person has an interest as follows-

<i>Interest</i>	<i>Prescribed Description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority- (a) Under which goods or services are to be provided or works are to be executed; and (b) Which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any license (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge) (a) The landlord is the relevant authority; and (b) The tenant is a body in which the relevant person has a beneficial interest
Securities	Any beneficial interest in securities of a body where – (a) That body (to M's knowledge) has a place of business or land in the area of the relevant authority (b) Either – (i) The total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) If the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

APPENDIX 2

Definitions

"the Act" means the Localism Act 2011;

"body in which the relevant person has a beneficial interest" means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

"director" includes a member of the committee of management of an industrial and provident society;

"land" excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

"M" means a member of a relevant authority;

"member" includes a co-opted member;

"Non-Pecuniary interest" is an interest which is not pecuniary (as defined above) but is nonetheless so significant that a member of the public with knowledge of the relevant facts, would reasonably regard to be so significant that it would materially impact upon the Member's judgement of the public interest;

"relevant authority" means the authority of which M is a member;

"relevant period" means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;

"relevant person" means M or any other person referred to in section 30(3)(b) of the Act;

"securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

APPENDIX 3

The following principles, commonly known as the “Nolan Principles”, do not form part of the Code of Conduct but are included as an Appendix simply to remind Members of the ethical standards expected of public office holders.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

APPENDIX 4 - Declaring Interests Flowchart, Questions to ask yourself

Breaching those parts identified as a disclosable pecuniary interest is potentially a criminal offence

Helpful Reminders for Members

- Is your register of interests up to date?
- In particular have you declared to the Monitoring Officer all disclosable pecuniary interests?
- Have you checked the register to ensure that they have been recorded correctly?

When should you declare an interest at a meeting?

- What matters are being discussed at the meeting ; or
- If you are a Cabinet Member making decisions other than in Cabinet what matter is before you for single member decision?



Does the business to be transacted at the meeting

- Relate to; or
- Is likely to affect

any of your registered interests Disclosable Pecuniary Interests include your interests and those of:

- Your spouse or civil partner
- A person you are living with as husband/wife or as a civil partner

where you are aware that this other person has the interest.

Please seek advice from the Monitoring Officer about disclosable pecuniary interests.

What is a non-disclosable pecuniary interest or a Non-Pecuniary Interest? – this is an interest which is not a disclosable pecuniary interest (as defined) but is nonetheless so significant that a member of the public with knowledge of the relevant facts, would reasonably regard to be so significant that it would materially impact upon your judgement of the public interest.

DPI

If the interest is not already in the register you must (unless the interest has been agreed by the Monitoring Officer to be sensitive) disclose the existence and nature of the interest to the meeting.

If the interest is not entered in the register and is not the subject of a pending notification you must within 28 days notify the Monitoring Officer of the interest for inclusion in the register,

Unless you have received dispensation upon previous application from the Monitoring Officer, you must:

- Not participate, or participate further, in any discussion of the matter at a meeting;
- Not participate in any vote or further vote taken at the meeting; and
- Leave the room while the item is being considered/ voted upon

If you are a Cabinet Member they may make arrangements for the matter to be dealt with by a third person but take no further steps

Non-DPI

Declare the nature and extent of your interest including enough detail to allow a member of the public to understand its nature. You should declare the interest and decide whether you can properly speak and remain in the meeting or should not participate further..

If you consider the interest would not be regarded as materially impacting upon your judgement you may participate and vote in the usual way.

Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity

You are a member or co-opted member of the [name] council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member -

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

You must declare any private interests, both pecuniary and non-pecuniary, including your membership of any Trade Union, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register or which you consider should be included if you are to fulfil your duty to act in conformity with the Seven Principles of Public Life. These non-pecuniary interests will necessarily include your membership of any Trade Union.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non pecuniary interest as defined by your authority.

¹ A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

Westminster City Council
Arrangements for dealing with complaints alleging a breach of the
Members' Code of Conduct

1. Context

- 1.1 Under Section 28 of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a member or co-opted member of the Council, or of a Committee or Sub-Committee of the Council, has failed to comply with Code of Conduct can be investigated and decisions made on such allegations.
- 1.2 These "Arrangements" set out how you may make a complaint that an elected or co-opted member of Westminster City Council ("the Council") has failed to comply with the Members' Code of Conduct ("the Code") and sets out how the Council will deal with allegations of a failure to comply with the Code.
- 1.3 Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a member or co-opted member against whom an allegation has been made.

2. The Code

- 2.1 The Code adopted by the Council is on the Council's website and paper copies can be requested from Council, Cabinet and Committee Services, 15th Floor, City Hall, 64 Victoria Street, Victoria, SW1E 6QP.

3. Making a complaint

- 3.1 If you wish to make a complaint, please complete a copy of the complaint form, available on the Council's website or on request from Council, Cabinet and Committee Services, and send or email it to:

The Monitoring Officer
Legal and Democratic Services
64 Victoria Street
Victoria
London SW1E 6QP

Or email the Head of Council, Cabinet and Committee Services Mick Steward: msteward@westminster.gov.uk

- 3.2 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering these arrangements.
- 3.3 Please provide all the details requested on the complaint form. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request but in the interests of fairness the presumption is that the member concerned is entitled to know who has made the complaint. If, in exceptional circumstances, your request is granted we will not disclose your name and address to the Member against whom you make the complaint, without your prior consent.
- 3.4 The Council will not investigate anonymous complaints unless the Monitoring Officer considers that there is a strong and clear public interest in doing so.
- 3.5 The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it and will keep you informed of the progress of your complaint.

4. Will your complaint be investigated?

- 4.1 The Monitoring Officer will consider each complaint received and will decide, on the basis of the information set out in the complaint form or submitted with the complaint, whether it merits formal investigation. Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, investigating a complaint involves spending public money as well as the cost of officer and Member time. The Council, therefore, takes a proportionate approach to the issue of whether or not a complaint merits investigation bearing in mind the sanctions which can be imposed, if a Member is found to be in breach of the Code, and the costs to the Council and, therefore, to the public of undertaking an investigation. The performance of Members in terms of how they represent those in their wards, is ultimately a matter for the electorate if a Member seeks re-election.
- 4.2 A complaint will only be considered to merit formal investigation if it complies with all the criteria in paragraph 4.3 or one or more of the criteria in paragraph 4.4. The Monitoring Officer will consult the Independent Person before coming to a final decision as to whether

or not a complaint which meets the relevant criteria should be investigated.

4.3 The relevant criteria referred to in paragraph 4.2 are:

- a) The complaint raises matters which would be a breach of the Code;
- b) The complaint is sufficiently serious to warrant investigation;
- c) The complaint is not "tit-for-tat";
- d) The complaint appears not to be politically motivated;
- e) It is about someone who is still a Member or co-opted member of the Council;
- f) The complaint has been received within 3 months of the alleged failure to comply with the Code unless there are exceptional circumstances for the delay and the delay does not mean that it would be difficult for a fair investigation to be carried out;
- g) The same, or similar, complaint has not already been investigated;
- h) It is not an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code;
- i) The Member complained about has not already apologised and/or admitted making an error; and
- j) If the complaint reveals a criminal offence and a complaint has been made to the police, the police investigation and any proceedings have concluded or the police have confirmed no proceedings will be issued.

4.4 The relevant criteria referred to in paragraph 4.2 are:

- a) The complaint reveals a continuing pattern of behaviour that is significantly and unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or

b) The complaint is made by the Chief Executive or the Monitoring Officer

- 4.5 This decision will normally be taken within 28 working days of receipt of your complaint. The Monitoring Officer will inform you of his/her decision and the reasons for that decision.
- 4.5 In appropriate cases, where the Monitoring Officer has decided in accordance with the criteria set out above, that a complaint would merit investigation the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was in breach of the code and offering an apology, or other remedial action such as correcting the Register of Interests. Where the Member makes a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint should be investigated.
- 4.6 Where the Monitoring Officer considers that the complaint should not be investigated further, he/she shall advise the complainant that they are entitled to appeal the decision. The Chief Executive will consider any appeal in consultation with an independent person.

5 How is the investigation conducted?

- 5.1 If the Monitoring Officer decides that a complaint merits investigation, he/she may conduct the investigation but will normally appoint an Investigating officer, who may be another senior officer of the Council, an officer of another Council or an external investigator ("the Investigating Officer"). The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the detail of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.
- 5.2 The Investigating Officer will normally write to the Member against whom you have complained and provide him/her with a copy of your complaint, and ask the Member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview.
- 5.3 In exceptional cases, where the Monitoring Officer has decided to keep your identity confidential your name and address will be deleted from the papers given to the Member.

- 5.4 Prior to concluding the investigation the investigating Officer will discuss the matter with the Independent Person. At the end of his/her investigation, the Investigating Officer will produce a draft report ("the Investigation Report") and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to correct any factual inaccuracies.
- 5.5 Having received and taken account of any comments which you may make on the draft Investigation Report, the Investigating Officer will send his/her final report to the Monitoring Officer who will then arrange for the Standards Committee to consider the complaint.
- 5.6 The Standards Committee will consider the Investigation Report, the written opinion of the Independent Person and any written representations from the Member concerned before deciding whether the Member has failed to comply with the Code and, if so, whether to take any action in respect of the Member.

What happens at the Standards Committee hearing where the Investigation Report will be considered?

- 6.1 The meeting will be held in public so you may attend the meeting as can other members of the public. There may be occasions where the Investigating Officer and/or the Member consider that there are reasons why the meeting should exclude the press and public. In such circumstances representations will be invited to enable the Committee to make a determination at the outset of the meeting. The Committee will usually consider the matters on the papers but, in exceptional cases, the Member may be permitted by the Committee to make representations on his or her own behalf, although he or she will not be entitled to be represented by a solicitor or other legal representative.
- 6.2 The Committee, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code, and dismiss the complaint. If the Committee concludes that the Member did fail to comply with the Code, the Chairman will inform those present at the meeting of this finding and the Committee will then consider what action, if any, the Committee should take as a result of the Member's failure to comply with the Code. In doing this, the Committee may give the Member an opportunity to make representations but will consider any written representations from the Member and take into account the views of the Independent Person, before deciding what action, if any, to take in respect of the matter.

7 What action can the Standards Committee take where a Member has failed to comply with the Code of Conduct?

The Committee may choose to take one or more of the following actions:-

- Censure the Member;
- Report its findings to a meeting of the Council for information;
- Recommend to the Council that the Member be Issued with a formal censure;
- Recommend to the Member's Group Leader that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.

8 What happens at the end of the hearing?

- 8.1 At the end of the hearing, the Chairman will announce the decision of the Committee as to whether the Member failed to comply with the Code and as to any sanctions imposed.
- 8.2 As soon as reasonably practicable thereafter, the Monitoring Officer will write to you and the Member concerned confirming the decisions taken.

9. Appeals

- 9.1 There is no right of appeal against the decision of the Standards Committee for you as complainant. If you feel that the Council has failed to deal with your complaint properly and that this failure has caused you Injustice, you may make a complaint to the Local Government Ombudsman.
- 9.2 However if it is resolved that the Member has breached the Code, the Member will have an opportunity to appeal against the decision by advising the Monitoring Officer in writing within 14 days of the Committee meeting. The Member will be required to detail the grounds upon which an appeal is sought.

- 9.3 Upon receipt of notification of appeal the Monitoring Officer will consult an Independent Person for their views. The Monitoring Officer will forward a report detailing the allegations, views of the Independent Person and the findings of the investigation to a second Standards Committee who will determine the appeal case. This Committee will comprise of different membership to that of the first Committee.

10 What are the responsibilities of the Standards Committee?

- 10.1 The Standards Committee is charged with considering those written complaints, that a Member or co-opted Member has failed to comply with the Code, referred to it following an investigation of the complaint. The Committee may decide to impose a sanction if it finds that the Member has failed to comply with the Code.

11 Who is the Independent Person?

- 11.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and has been appointed by the Council. There are a number of statutory restrictions on who may be appointed. For example, a person cannot be appointed as an independent person if he or she is, or has been within the past 5 years, a Member, co-opted Member or officer of the Council.
- 11.2 The Independent Person may be invited to attend meetings of the Committee and their views are sought and taken into consideration before the Committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Code and as to any action to be taken following a finding of failure to comply with the Code.

12 Revision of these arrangements

- 12.1 The Council may by resolution agree to amend these arrangements.

Westminster City Council
Director of Audit, Fraud, Risk and Insurance

Internal Investigation Report

**Councillor Robert Davis
Gifts and Hospitality Declarations**

CONFIDENTIALITY	
Protective Marking	Distribution List:
Not Protectively Marked <input type="checkbox"/>	Tasnim Shawkat, Director of Law ✓
Confidential <input checked="" type="checkbox"/>	Hazel Best, ✓
Author: David Hughes	

EXECUTIVE SUMMARY

BACKGROUND

Following concerns raised through media articles regarding the gifts and hospitality declarations made by Councillor Robert Davis, the Director of Law requested that Internal Audit undertake a review of the gifts and hospitality items recorded by Councillor Davis and to examine these in the context of matters considered by the Planning Committee chaired by Councillor Davis for the period from June 2014 until January 2017.

KEY FINDINGS

The investigation has reviewed the six areas as requested by the Director of Law and the findings of the review are summarised as follows:

Declarations of gifts and hospitality

- Councillor Davis followed the procedure and form provided to him and was not required to provide certain details, including the value of the item(s) received and the employing organisation of the individual providing the gift/hospitality. This was in part due to the special arrangement set up by the Committee and Governance Services team in response to the significant levels of declarations and gifts/hospitality being received by Councillor Davis.
- As a result, in most cases, it was not possible, from the information provided on the declaration form, to establish whether potential conflicts existed.
- Councillor Davis subsequently provided some further information regarding specific declarations which enabled further analysis to be undertaken. However, this did still not enable a comprehensive analysis to be completed to rule out the potential for conflicts in all cases because he did not provide the details of the employing organisation of the individual providing gifts/hospitality in all cases.
- Based on the information provided, it was evident that Councillor Davis had declared items which he was not required to declare and is likely to have also declared items below the agreed reporting threshold, as well as not clearly identifying items of more significant value to allow appropriate scrutiny by the Monitoring Officer and others.
- A further 85 items came to light when Councillor Davis submitted information to the Monitoring Officer in July 2018 (relating to four months not previously submitted during 2015 and 2016).

Links between those providing gifts and hospitality and developers (or those representing developers) who have applied for planning permission in Westminster

- Analysis of the original declarations and subsequent information provided by Councillor Davis identified a number of circumstances where the Planning Sub-committee 1 chaired by Councillor Davis had taken actions against the recommendation of officers. In several cases, Councillor Davis was found to have declared receiving gifts/hospitality from the applicant/agent some time prior to or shortly after an application which was determined against officer recommendation coming before the sub-committee.
- Councillor Davis received a gift or hospitality linked to 5 applications from an applicant/agent or linked individual, either in the period before or shortly after the sub-committee granted consent to the applications (either in full or with conditions) where officers had recommended refusal. In one further case, the officers had sought committee consideration where the sub-committee granted conditional permission.
- The receipt of gifts or hospitality from an applicant/agent or linked individual before or shortly after an application was considered could be perceived as seeking to influence the planning decision making process or to reward instances where applications had been granted when officers had recommended refusal.

- Based on further information provided by Councillor Davis, 3 further applications were identified where Councillor Davis had recorded receiving gifts or hospitality where the Planning Sub-committee 1 decision was in line with the officer recommendation.
- Given the lack of detail provided in Councillor Davis' returns it is possible that there were more instances where gifts or hospitality were received, either prior to or shortly after applications were considered, than have been identified through the review.

Declarations relating to gifts or hospitality received by Councillor Davis from developers, who subsequently applied for planning permission

- Councillor Davis had for some time made standard declarations at the commencement of each Planning Sub-committee meeting. In some instances, he also made specific references to relationships with parties who had applications on a particular meeting agenda. However, instances were identified, based on the information available to the review, where specific instances of receiving gifts and hospitality from donors who were submitting applications at a particular meeting. However, there is no requirement to disclose specific items of gifts and hospitality received when considering application at Sub-committee meetings.

Decisions were made along officer recommendations or against officer recommendations and how many in each category and any voting pattern

- Around 10% (32) of applications put before Planning Sub-committee 1 for the period of the review were found to have been approved against officer recommendations in favour of the applicant. Of those where the committee had granted permission when recommended by officers to refuse, 6 of the cases related to the same agent (DP9), while a further two cases related to other agents (Daniel Rinsler & Co and Gerald Eve LLP) where Councillor Davis had recorded receiving gifts/hospitality from the applicant/agent prior to the applications being considered.

Changes in declaration levels for gifts and hospitality since training was provided in October 2016 and a meeting was held in September 2017.

- The extent of declarations of gifts/hospitality recorded by Councillor Davis appeared to increase (in comparison with previous years and activity prior to the training) following the one-to-one training session held in October 2016. However, the level of recording appeared to decrease following the meeting held with the Monitoring Officer in September 2017.

SCOPE OF INVESTIGATION

The purpose of the review requested by the Director of Law was to establish the following:

- (i) Whether all the entries made fall into the category of gifts and hospitality that should have been registered and, if not, how many such entries are there which needed to be registered.
- (ii) If there is a link between all those providing gifts and hospitality and the City Council and how many of them are from developers (or those representing developers) who have applied for planning permission in Westminster. This will include reviewing any applicants who have made repeated gifts to check for any patterns of approval e.g. have all applications been approved and is this ratio out of the ordinary.
- (iii) If gifts or hospitality were given to Councillor Davis by developers, who subsequently applied for planning permission, whether Councillor Davis made appropriate declarations.
- (iv) At the meetings Chaired by Cllr Davis (about 10 per year) whether decisions were made along officer recommendations or against officer recommendations and how many in each category and any voting pattern.
- (v) Whether there has been any reduction of the number or the types or any change in pattern in the gifts and hospitality since training was provided in October 2016 and a meeting was held with the Monitoring Officer in September 2017.

The review included an examination of documents held on the Council's website and external open source information; interviews conducted with the Head of Committee and Governance Services and Director of Law and documents provided by them; correspondence received from Councillor Davis.

APPENDICES

1	Declaration of Interests Form – Councillor R Davis
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FINDINGS

1. Process for recording gifts and hospitality

1.1 The Westminster Member Code of Conduct states the following:

“5.1 Members must, within 28 days of receipt, notify or arrange for the Monitoring Officer to be notified in writing of any gift, benefit or hospitality with a value in excess of £25 which they have accepted as a Member from any person or body other than the City Council.

5.2 The Monitoring Officer will place the contents of the notification on the register of interests of the relevant Member.

5.3 Where the Monitoring Officer is of the view that such gift or hospitality is clearly below £25 in value they may decline to include this on the register.”

1.2 Councillors are required to submit an e-mail to the Head of Committee and Governance Services for each item of gifts and hospitality received. These are then entered onto a central record by the team. Members also complete a Member's Register of Interests form which contains a section for gifts and hospitality accepted. The completed forms are published on the Council's website.

2. Recording of gifts and hospitality by Councillor Davis

2.1 Due to the number of declarations of gifts and hospitality being made by Councillor Davis, a separate system of recording was devised by the Committee and Governance team, namely a template to be completed on a monthly basis for Councillor Davis to complete and submit to the Head of Committee and Governance Services. The items on the schedules submitted by Councillor Davis would then be entered onto the central record.

2.2 The template created for and used by Councillor Davis sets out the date, description of the gift/hospitality received and the donor. The template does not require Councillor Davis to set out the value of the gift/hospitality received or the organisation(s) which the donor represents.

2.3 As a result, it is not clear a) whether all items being disclosed were above the threshold under the gifts and hospitality policy (currently £25) or b) whether a specific gift/hospitality might be connected to parties submitting planning applications which would be considered by Cllr Davis' sub-committee.

2.4 An examination of the declarations made by Councillor Davis for the period 5 January 2015 to 8 February 2018 (Appendix 1) showed that at least 240 of the entries (over 40%) only contained the name of the individual providing the gift/hospitality, with no indication of the organisation(s) they may have represented in making providing the gift or hospitality.

2.5 The 530 entries for gifts and hospitality recorded by Councillor Davies covered over 280 different named parties. The table below sets out the top ten donors by recorded by number of instances recorded:

Donor	Items
New West End Company	17
Lord Mayor of Westminster	18
Westminster Property Association	16
The Crown Estate	15
Open Air Theatre, Regents Park	14
Westminster Council	13
Nica Burns	12
Regents Street Association	10
Cameron Mackintosh	10
Lilly Newell	7

2.6 A detailed submission regarding gifts and hospitality declarations was provided by Councillor Davis to the Monitoring Officer in July 2018 which was subsequently passed to the Director of Audit, Fraud, Risk and Insurance for review. The information provided was compared with the original declarations made by Councillor Davis.

3. Whether all the entries made fall into the category of gifts and hospitality that should have been registered and, if not, how many such entries are there which needed to be registered

3.1 An initial examination of the 530 items for gifts and hospitality for the period recorded by Councillor Davis identified a number of entries, including those set out below, which it would appear were not appropriate or necessary to record as they would not pose a conflict and where Cllr Davis was not attending in his capacity as a Councillor but in another role, for example, as Chair of the Regents Park Open Air Theatre. It is possible that further entries, relating to gifts/hospitality provided by friends/neighbours not related to the City Council or its business had been included by Councillor Davis which are not included in this analysis.

Recorded Donor	No of Items
Lord Mayor of Westminster	18
Open Air Theatre, Regents Park	14
Westminster Council	13
Lord Mayor of London	5
London Mayors' Association	4
Charlie Parker	3
Church Commissioners	3
Dean of Westminster	3
Regents Park Open Air Theatre	3
Cllr Lindsey Hall	2
Baroness Couttie	1
Canon David Hutt	1
City of London	1
Cllr Andrew Smith to Salma Shah	1
Councillor Jonathan Glanz	1
Councillor Paul Church	1
Duke of Edinburgh Awards	1
Her Majesty The Queen and the City Corporation	1
Her Majesty's Government	1
John Barradell	1
Leader of Westminster	1
Lord Mayor of Westminster	1
Total	80

3.2 Of the 530 items examined, there were only two items where the value of the item was explicitly identified and in both instances was below the Council's agreed reporting threshold at the time of receipt:

Month reported	Date received	Description	Donor
Sep 15	27/09/15 to 04/10/15	A number of gifts [such as civic badges, teddy bears, chess sets, pens, t-shirts, bags and books] given by local Mayors and US schools but none individually worth more than £20.00 during US speaking tour [see above]	Various US Mayors and Schools
Sep 16	17/09/16 to 26/09/16	A number of gifts [such as civic badges, a teddy bear, a marching band helmet, a musical box, a number of pens and t-shirts, bags and books] given by local Mayors and US schools but none individually worth more than £25.00 during US speaking tour [see above]	Various Mayors and Band Directors from a number of cities/towns across the USA visited during the tour referred to above

- 3.3 As a result of the above, the initial examination found that it would appear that between 15 and 20% of items recorded were not required to be recorded. However, given the lack of recording of the value of items received, it is possible that the level of recording of items below the threshold may be higher.
- 3.4 As identified in 2.5 above, further information regarding the gifts and hospitality declarations was provided by Councillor Davis in July 2018, which was compared with the original record of declarations.
- 3.5 In his submission, Councillor Davis clarified that a significant proportion of the original declarations he had previously made were not in fact relevant as they had been received in relation to various other roles he occupies.
- 3.6 The additional information provided was reviewed to identify any instances of gifts and hospitality which had originally been declared as being received from an individual where links may exist to property developers or related bodies.
- 3.7 This review has identified 43 cases which may be of relevance, where the additional information provided suggests that the individual donors may have links to parties with interest in the planning process, these are summarised in the table below:

Date	Declaration on Register	Additional Detail Provided
05/01/2015	Lilly Newell	Caprice Holdings
10/01/2015	Marc Pennick	Property Consultant
13/01/2015	Daniel Van Gelder	Chairman of WPA
16/01/2015	Rafael Serrano	Chief Exec of Prime Investors Capital
20/01/2015	Lucy Musgrave	Publica Ltd
25/01/2015	Annie Walker	Chief Exec of The Regent's Street Association
24/02/2015	Lilly Newell	Caprice Holdings
13/04/2015	Gail Ronson	Property developer
26/04/2015	Marc Pennick	property consultant
14/05/2015	Irvine Sellers	Property developer
19/05/2015	Rafa Serrano	Chief Exec of Prime Investors Capital
11/06/2015	Brian Bickell	Chief Exec of Shaftesbury Plc
01/12/2015	Shiraz Lalji	Hotelier
03/12/2015	Nick Deluca	Public affairs consultant – but not working in Westminster
17/01/2016	Terry Farrell	Architect
28/01/2016	Rafael Serrano	Chief Exec of Prime Investors Capital
13/06/2016	Sir Stuart Lipton	Property Developer
16/06/2016	Sir Stuart & Lady Lipton	Property Developer
19/07/2016	Robin Birley	Owner of 5 Hertford Street
12/09/2016	Brian Bickell	CEO of Shaftesbury Plc
30/09/2016	Lilly Newell	Runs Caprice Holdings
03/11/2016	Soho Estates	Property owner and developer
11/11/2016	Nick Deluca	Public affairs consultant
23/11/2016	Lilly Newell	CEO of the Caprice Group
01/12/2016	Abhishek Lodha	Property Developer

Date	Declaration on Register	Additional Detail Provided
01/12/2016	Lilly Newell	Runs Caprice Holdings
01/12/2016	Linda Morely Burrows	Architect
01/12/2016	Robert Stern	Architect
01/12/2016	Robin Birley	Owner of 5 Hertford Street
12/01/2017	Marc Pennick	Property Consultant
19/01/2017	Michael Squire	Architect
20/01/2017	Martin Miesowicz	Architect
30/01/2017	Gabriele Cerrone	A developer
31/01/2017	Nick Deluca	Runs a public affairs consultancy in US
09/02/2017	Charlie Baxter	Developer
13/03/2017	Harvey Sonning	Estate Agent
05/04/2017	Sir Stuart Lipton and a number of property companies	Property owners and developers
05/04/2017	Sir Stuart Lipton and a number of property companies	Property owners and developers
13/04/2017	Brian Bickell	CEO of Shaftesbury Plc
17/06/2017	Marc Pennick	Property Consultant
17/10/2017	Abhishek Lodha	Property Developer
18/10/2017	Simon Gartshore	Public affairs consultant with Four Comms
17/11/2017	Michael Squire	Architect

3.8 In addition to the above details, there are 85 instances of hospitality which were not previously included on the register which have been provided in the additional submission made by Councillor Davis.

3.9 It is noted however that these omissions cover four periods of whole months (October 2015, April and May 2016 and August 2016) and given Councillor Davis' otherwise extensive submissions to the register it may be reasonable to believe that these omissions resulted from an administrative oversight rather than a deliberate failure to disclose the information.

4. If there is a link between all those providing gifts and hospitality and the City Council and how many of them are from developers (or those representing developers) who have applied for planning permission in Westminster. This will include reviewing any applicants who have made repeated gifts to check for any patterns of approval e.g. have all applications been approved and is this ratio out of the ordinary.

4.1 A review of planning applications considered by Planning Sub-Committee 1, which Councillor Davis chaired, was undertaken for the period July 2014 to January 2017 to identify any decisions where the sub-committee made a decision contrary to officer recommendations and reference this with the declared gifts and hospitality of Councillor Davis.

4.2 The analysis was limited to these decisions as it was believed that it would not be possible to infer that the committee members had not acted in good faith when following the recommendations of Planning Officers. Details of the applicant and their agent were therefore only recorded on those applications where a contrary decision was made.

4.3 333 decisions were reviewed which were made by the Planning Sub-committee 1 between 15 July 2014 and 17 January 2017.

4.4 41 decisions were identified where the Committee had made a decision contrary to the recommendation of officers, of these 32 decisions were made to grant planning permission against officer recommendations, It is noted that for the period February 2017 to February 2018, Planning Sub-committee 1 considered 116 applications of which none were granted permission where officers had recommended refusal.

4.5 Six of the applicants or agents, or individuals linked to them, involved with these decisions are recorded as having provided Councillor Davis with gifts or hospitality (as set out below), with only one appearing on more than one application:

- The Montcalm Hotel Group
- Really Useful Theatres Group Ltd
- Turley
- Gerald Eve (3 applications)
- Soho Estates
- 5 Hertford Street Ltd

- 4.6 Further to the draft investigation report produced on 21/09/2018, further enquiries and analysis were requested by Hazel Best in respect of table 4.6 in the first report.
- 4.7 41 applications (just over 12% of those considered by the Planning Sub-committee 1) were identified where the sub-Committee had made a decision contrary to the recommendation of officers.
- 4.8 Further analysis identified 6 planning applications where Councillor Davis had received gifts/hospitality from the application/agent, or individuals linked to them, either before or after the application had been considered.
- 4.9 The table on the following page now includes the officer recommendation and committee decision in respect of each application and the gifts/hospitality recorded as being received by Councillor Davis. The further analysis carried out identifies that Councillor Davis received gifts and/or hospitality linked to 5 applications from an applicant/agent or linked individual, either in the period before or shortly after the sub-committee granted consent to the applications (either in full or with conditions) where officers had recommended refusal. In one case, the officers had sought committee consideration where the sub-committee granted conditional permission.
- 4.10 In these 6 cases, the receipt of gifts or hospitality from an applicant/agent or linked individual before or shortly after an application was considered could be perceived as seeking to influence the planning decision making process or to reward instances where applications had been granted when officers had recommended refusal.

Date of Decision	Officer Recommendation	Sub-committee decision	Application (address)	Applicant/ Agent	Donor	Date of Gift/ Hospitality	Description of Gift/ Hospitality
11/11/2014	Refuse Permission	Consent Granted	34-40 Great Cumberland Place	The Montcalm Hotel Group	Shiraz Lalji (director of Montcalm London Hotels Ltd)	Dec 2015	Christmas gift of six wine bottles
					The Montcalm Hotel Group	15/02/2016	Tour of the Montcalm Hotel in City Road followed by lunch in the hotel
14/07/2015	Refuse Permission	Consent Granted	67-70 Drury Lane	Really Useful Theatre Group	Madeline Lloyd-Webber	03/08/2015	Lunch in her home in Mallorca
					Lord Lloyd-Webber	04/04/2016	Attended the first night of Sunset Boulevard at the Coliseum and after party
					Lord Lloyd-Webber	25/07/2016	Lunch with Andrew Lloyd Webber at his home in Mallorca
					Andrew Lloyd-Webber	14/11/2016	Attended the first night of "School of Rock" and after show party
20/10/2015	Committee Consideration	Conditional Permission	26-32 Romilly Street, 13-21 Old Compton Street	Gerald Eve/ Soho Estates	Gerald Eve	11/03/2015	Attended a Reception at MIPM hosted by Gerald Eve
					Gerald Eve	14/05/2015	Attended the Annual Gerald Eve Reception at Claridges
					Soho Estates	03/11/2016	Dinner at Soho House
14/06/2016	Refuse Permission	Granted with Conditions	55 Victoria Street	Gerald Eve	Gerald Eve	11/03/2015	Attended a Reception at MIPM hosted by Gerald Eve
					Gerald Eve	14/05/2015	Attended the Annual Gerald Eve Reception at Claridges
17/01/2017	Refuse Permission	Consent Granted	18, 20-24 Broadwick Street	Gerald Eve	Gerald Eve	11/03/2015	Attended a Reception at MIPM hosted by Gerald Eve
					Gerald Eve	14/05/2015	Attended the Annual Gerald Eve Reception at Claridges
17/01/2017	Refuse Permission	Consent Granted	55 Shepards Market	5 Hertford Street Ltd	Robin Birley	19/07/2016	Lunch at 5 Hertford Street
					Robin Birley	01/12/2016	Christmas present of a book of 5 Hertford Street

4.11 A further comparison was undertaken between the additional information provided by Councillor Davis (as summarised in the table in 3.7 above) and the applications considered by Planning Sub-committee 1 from July 2014 to 17 January 2017, to establish any potential connections between gifts and hospitality received and applications considered by the committee. From the small number of instances where the employing organisation was identified, the following was found:

Committee decision not in line with officer recommendation

- 3 applications relating to 5 Hertford Street Ltd where 2 gifts and hospitality declarations preceded one application considered by the sub-committee on 17/01/2017 (see below) and where the sub-committee's decision was contrary to officer recommendation:

Date of Meeting	Application Details	Officer Rec	Committee Decision	Planning Agent	Applicant	Date of Hospitality
15/07/2014	55 Shepards Market	Refuse Permission	Consent Granted	Daniel Rinsler & Co	5 Hertford Street Ltd/The Reuben Foundation	n/a
19/05/2015	Site at 2-8 Trebeck Street, 2-5 Hertford Street	Conditional Permission	Conditional Permission	GVA	5 Hertford Street Ltd	n/a
17/01/2017	55 Shepards Market, W1J 7PU	Refuse Permission	Consent Granted	Daniel Rinsler & Co	5 Hertford Street Ltd	19/07/2016 & 01/12/2016 *

* Gift/Hospitality received from Robin Birley (owner of 5 Hertford Street) as detailed in the table which follows paragraph 4.10 above.

Committee decision in line with officer recommendation

- 7 declarations relating to Lilly Newell/Caprice Holdings. However, only one planning application was approved in the period, which predated the 7 gifts and hospitality entries, three of which were shortly after the application had been granted conditional permission.

Date of Meeting	Application Details	Committee Decision	Applicant/ Agent	Date of Hospitality	Gift/Hospitality received
11/11/2014	4-6 Berkeley Square, W1	Conditional Permission	Bidwells/ Caprice Holdings Ltd	05/01/2015	Dinner at The Ivy Grill, Covent Garden
				24/02/2015	Dinner at Annabel's in Berkeley Square
				09/06/2015	Dinner at The Ivy
				Jan-16	Christmas Gift of a Christmas Hamper
				30/09/2016	Dinner and show at 46 Berkeley Square
				23/11/2016	Thank you dinner at Marks Club for committee of the Sir Simon Milton Foundation Gala Dinner
				Dec-16	Christmas present of a Christmas hamper

- 4 applications relating to Shaftesbury where 2 gifts and hospitality items received preceded applications considered by the sub-committee (see below):

Date of Meeting	Application Details	Committee Decision	Applicant	Date of Hospitality	Gift/Hospitality received
14/07/2015	Development Site Bounded by 10-18 Newport Place	Conditional Permission	Shaftesbury Chinatown Ltd	11/06/2015	Lunch at 28-50 in Marylebone *
26/01/2016	57 Broadwick Street, W1F 9QS (Site 1), Shaftesbury Mansions 52 Shaftesbury Avenue W1D 6LP (Site 2)	Conditional Permission	Shaftesbury PLC	n/a	n/a
26/01/2016	Shaftesbury Mansions 52 Shaftesbury Avenue W1D 6LP (Site 2)	Conditional Permission	Shaftesbury PLC	n/a	n/a
17/01/2017	57 Broadwick Street, W1F 9QS	Conditional Permission	Shaftesbury Carnaby Ltd	12/09/2016	Lunch at M Restaurant

* All hospitality items identified above were received by Cllr Davis from Brian Bickell, Chief Executive of Shaftesbury Plc

5. If gifts or hospitality were given to Councillor Davis by developers, who subsequently applied for planning permission, whether Councillor Davis made appropriate declarations.

- 5.1 A review of the Planning Sub-committee 1 minutes for the meetings covered in the table in 4.6 above was undertaken to establish whether appropriate declarations had been made.
- 5.2 It is noted that Councillor Davis has not declared receiving any hospitality from the Montcalm Hotel Group prior to December 2015 which is after the applications above and there would therefore have been no declaration to be made in respect of this application.
- 5.3 It is also noted that Councillor Davis had not declared receiving any hospitality from Soho Estates Ltd until 3 November 2016 which is after the application above and there would therefore have been no declaration to be made in respect of Soho Estates Ltd in this application.
- 5.4 In addition to a broad declaration of interests at the start of each planning meeting Councillor Davis made additional declarations about each of the above applications, details of the relevant entry in the meeting minutes are included in the table below:

Date of Decision	Application	Declaration Made
14/07/2015	67-70 Drury Lane	In his capacity as Deputy Leader and the Cabinet Member responsible for theatre, he had got to know a number of people in the theatre business, and that included Andrew Lloyd-Webber, he had met with a director of the applicant's representatives with regard to this application and had in the past received hospitality from RUG and Lord Lloyd-Webber.
15/09/2015	St John's Wood Police Station	He knows the applicants' planning consultants, Turley.
20/10/2015	Soho House	He has had meetings with the applicants, knows the Directors of Soho Estates and Nick Jones of Soho House. He also knows the Directors of Gerald Eve as well as the Architects and one of the objectors.
14/06/2016	55 Victoria Street	That he knew the Directors of the applicant, had meetings and received hospitality from them and had toured the building. He also knew the architect.
17/01/2017	18, 20-24 Broadwick Street	He knows the directors of Gerald Eve and the architects and had meetings with the applicants.
17/01/2017	55 Shepards Market	He knows the applicants and has received hospitality from them. He also knows the architects and had received a tour of the premises for different purposes.

- 5.5 It is therefore noted that notwithstanding the fact that an ongoing relationship with the applicants and their agents was declared in each decision, receiving hospitality from the applicants or their agents was not explicitly declared in each of the applications. However, it is recognised that this was not a requirement during the period examined.
- 5.6 In the meeting held on 15 September 2015 Councillor Davis declared that he knew Turleys but did not declare having received hospitality from them in January 2015.
- 5.7 In the meetings held on 20 October 2015 and 17 January 2017 Councillor Davis declared that he knew the applicants and their agents and had held meetings with them but did not declare having received hospitality from them in March 2015 and May 2015.
- 5.8 It is noted, however, that Councillor David did declare having received hospitality from them in the meeting held on 14 June 2016.

6. At the meetings Chaired by Cllr Davis (about 10 per year) whether decisions were made along officer recommendations or against officer recommendations and how many in each category and any voting pattern.

- 6.1 The Head of Committee and Governance Services stated that the votes of individual councillors on the planning sub-committees was not recorded and this was confirmed through a review of the minutes. In addition, the committees had been established in their current form (at the time of the review) as four separate sub-committees meeting on a four weekly cycle with four members on each sub-committee. In the event of the sub-committee being split on a particular application the chair would have an additional and casting vote. However, the instances where the chair's casting vote was used was also not recorded in the minutes. The Head of Committee and Governance Services believed that this was a rare occurrence.
- 6.2 Analysis of all applications considered by Planning Sub-committee 1 from July 2014 to January 2017 shows they have considered 333 applications, with the sub-committee made decisions contrary to the officer recommendations on 41 occasions, the majority (32) of these were to grant consent (either in full or with conditions) where refusal had been recommended.
 - 6 out of 32 applications related to DP9 (who also had one refused) but no evidence of link between gifts recorded/named individuals and DP9 found.
 - 2 of the applications related to Gerald Eve (both granted – one in June 2016 and one in Jan 2017) – two items of gifts and hospitality were recorded as being received from Gerald Eve in March 2015 and May 2015 (see table at paragraph 4.10).
- 6.3 The table below provides a summary of the 32 instances where the sub-committee went against officer recommendation to grant an application (either in full or with conditions):

Agent	Application Granted	Conditional Permission	Total
A3Associates	1		1
Cunnane Town Planning LLP	1		1
Daniel Rinsler & Co	2		2
DP9	2	4	6
DTZ	1		1
Georgina Church	1		1
Gerald Eve	1	1	2
GVA		1	1
Indigo Planning	1		1
John and Rowan and Partners	1		1
Jon Dingle Ltd	1	1	2

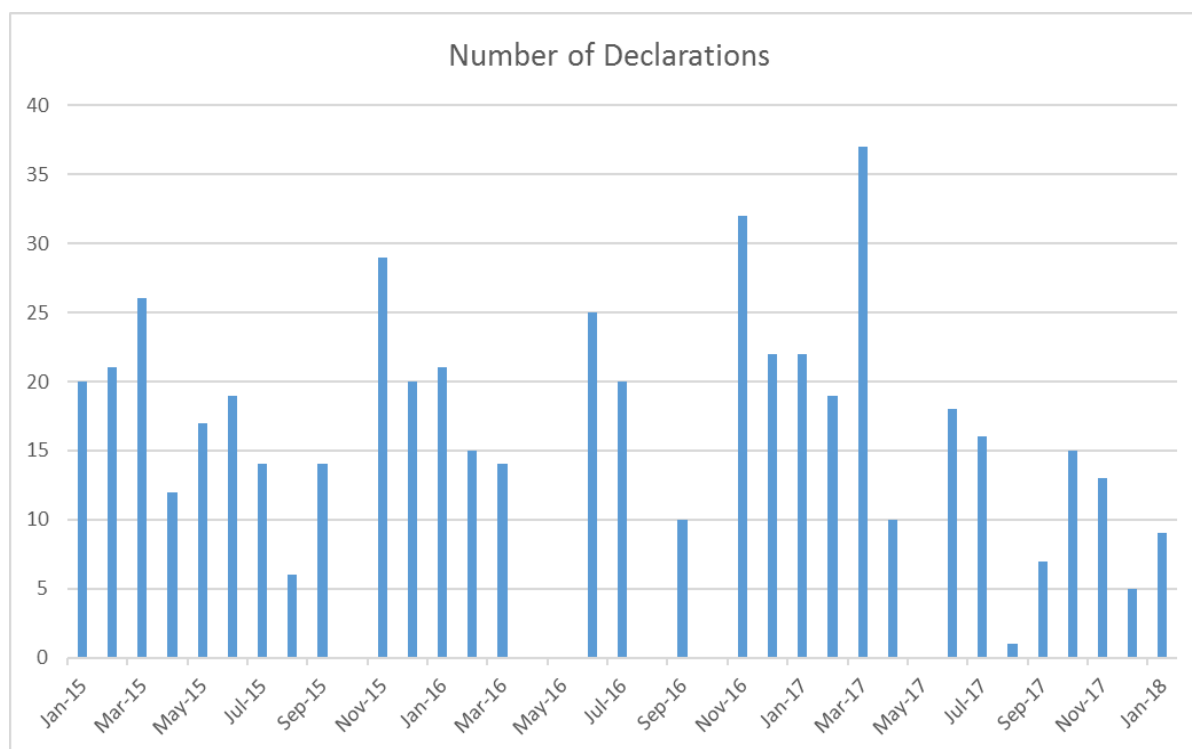
Agent	Application Granted	Conditional Permission	Total
Jonathan Clark Architects	1		1
Jones Lang LaSalle Limited		1	1
Mr Claire Treanor		1	1
Mr Robert Hinkley		1	1
Ms Rosalind Price	1		1
Purcell		1	1
Rolfe Judd Planning Ltd	2		2
RPS CgMs	1		1
Savills	1	1	2
Turley		1	1
Treanor Consulting	1		1
Totals	19	13	32

- 6.4 Further analysis undertaken in respect of the agent where this occurred most frequently (DP9 Ltd) has not identified a link to the gifts and hospitality declared by Councillor Davis, although the previous note around the completeness of this data should be borne in mind. The table below sets out the six cases where applications submitted by DP9 (as the agent) were granted contrary to officer advice.

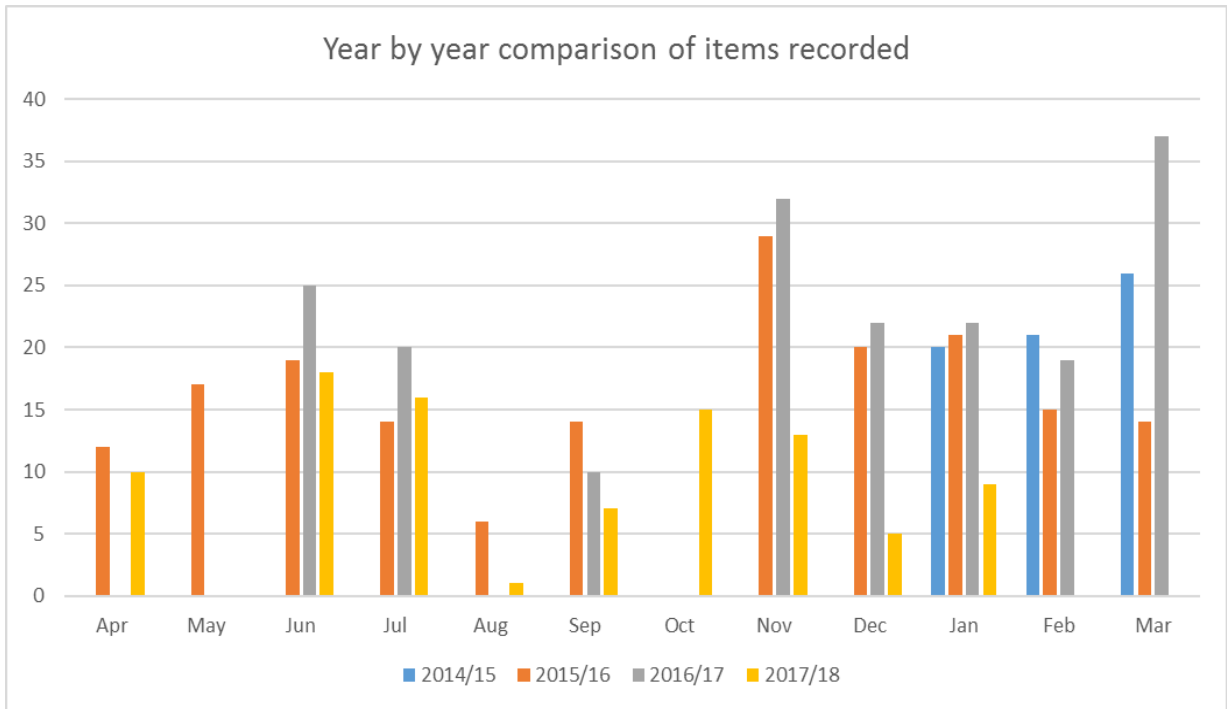
Date of Meeting	Application Details	Officer Recommendation	Committee Decision	Applicant
16/09/2014	154 Bayswater Road & 6 Palace Court, W2	Refuse Permission	Consent Granted	Westland Hotel
14/10/2014	1 Chadwick Street, 2 Monck Street, SW1	Refuse Permission	Conditional Permissions	Taylor Wimpey Central London
13/01/2015	20 Grosvenor Square, W1	Refuse Permission	Conditional Permission	Grosvenor Square Ltd
26/01/2016	Harcourt House, 19 Cavendish Square, W1G 0PL	Refuse Permission	Conditional Permission	Harcourt Investments Ltd
13/09/2016	33 Westbourne Terrace, W2 3UR	Refuse Permission	Consent Granted	West Two Properties
13/09/2016	Vogue House, 1-2 Hanover Square, W1S 1JX	Refuse Permission	Conditional Permission	Conde Nast

- 6.5 Analysis of further information provided by Councillor Davis in July 2018 also identified two instances where another agent, Daniel Rinsler & Co, had applications approved against officer recommendation, one where gifts and hospitality had been provided by the application shortly before the application was considered by the sub-committee (see table in 4.8).
- 6.6 Of the 333 applications reviewed (from July 2014 to January 2017), there were 81 instances where the outcome was not in line with the officer recommendation. This included 8 where the report was withdrawn, 16 instances where the application was deferred and 24 cases which were put forward for sub-committee consideration. Of the remaining 33 applications (10%):
- Officers recommended refusal in 32 cases, with the sub-committee granting 19 applications and granting with conditions in 13 other cases
 - Officers recommended granting with conditions in 1 case where the sub-committee granted the application.
- 6.7 Of the 24 cases which were recommended for sub-committee consideration, 15 were refused, 4 were granted and 5 were granted with conditions.
7. **Whether there has been any reduction of the number or the types or any change in pattern in the gifts and hospitality since training was provided in October 2016 and a meeting was held with the Monitoring Officer in September 2017.**

- 7.1 The Director of Law identified that as the Council’s Monitoring Officer she met with Councillor Davis in May 2016 as part of an investigation into a complaint regarding the level of gifts and hospitality he was receiving and declaring. While the complaint was not upheld, the Director of Law did take the opportunity to advise Councillor Davis that there were likely to be further such complaints if he continued to accept gifts and hospitality in this way.
- 7.2 The Director of Law and a colleague, met with Cllr Davis on 12 October 2016 to provide training on the updated Code of Conduct, on a one to one basis. At that training they stressed that in addition to complying with the letter of the Code / law it was extremely important to be aware of perceptions.
- 7.3 The Director of Law met with Councillor Davis again on 14 September 2017, at his request, to discuss a press article. Councillor Davis had asked whether he was over declaring certain matters. The Director of Law provided further advice and stressed again that complaints and adverse press comments would continue unless he cut down the number of gifts and hospitality received significantly.
- 7.4 The declaration of gifts and hospitality recorded as received by Councillor Davis was analysed and the chart below shows the number of items recorded, on a monthly basis, on schedules submitted by Cllr Davis and in line with his published Declaration of Interests for in January 2018 which included all items of gifts and hospitality recorded since January 2015:



- 7.5 The above chart shows that the number of items recorded by Councillor Davis increased in the period after October 2016 (when one-to-one training had been provided by the Monitoring Officer) in comparison with previous activity and that it appears to have reduced beyond September 2017 (following the further meeting with the Monitoring Officer) when compared with previous years. The chart below provides a year by year comparison.



**IN THE MATTER OF AN INVESTIGATION INTO
THE CONDUCT OF COUNCILLOR ROBERT DAVIS**

LEGAL SUBMISSIONS ON BEHALF OF COUNCILLOR ROBERT DAVIS

Introduction

1. These legal submissions are made on behalf of Councillor Robert Davis in response to the investigation currently being conducted by Westminster City Council (“WCC”) to determine whether, in his capacity as a Councillor, he breached WCC’s Members’ Code of Conduct (“the Code”).

Background

2. The investigation concerns allegations made in the press in February and March 2018 relating to the hospitality and gifts that Councillor Davis received and registered on the Members’ Register of Interests between 5 January 2015 and 8 February 2018. The press articles refer to an allegation that his receipt of hospitality and gifts has influenced his conduct as a Councillor, in particular in his capacity as the Chair of one of WCC’s four Planning Applications Sub-Committees.
3. By email dated 1 March 2018, Councillor Davis referred himself to WCC’s Monitoring Officer, requesting an investigation into whether his conduct was:
 - (1) Unlawful;
 - (2) A breach of the Code;
 - (3) Inappropriate from a point of view of WCC’s reputation.
4. The Monitoring Officer considered the request pursuant to WCC’s “Arrangements for dealing with complaints alleging a breach of the Members’ Code of Conduct”. These arrangements have been put in place pursuant to section 28 of the Localism Act 2011. This section provides that any allegation of a failure to comply with a code of conduct adopted under section 27 (such as the Code) must be dealt with in accordance with “arrangements” put in place pursuant to section 28(6).

5. WCC have instructed James Goudie QC to assist with the investigation.

Legal framework

6. The conduct of members of local authorities was previously regulated by the Standards Board for England, a non-departmental public body established under the Local Government Act 2000. Pursuant to that Act, the Secretary of State for Communities and Local Government made the Local Authorities (Model Code of Conduct) Order 2007, which came into force on 3 May 2007. This replaced the earlier 2001 Model Code of Conduct.
7. The 2007 Model Code of Conduct, set out in the Schedule to the 2007 Order, was a national code which all local authority members had to comply with. Various obligations were set out under the heading “General Obligations”. Paragraph 5 provided:

“You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.”
8. The Localism Act 2011 abolished the Standards Board for England and the Model Code of Conduct, and instead imposed a duty on local authorities to adopt their own code of conduct under section 27. Section 28(1) requires the adopted code, “when viewed as a whole”, to be consistent with the so-called “Nolan Principles”, namely selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Scope of submissions

9. Our current understanding is that the investigation is confined to item (2) of Councillor Davis’ original request, namely whether there has been a breach of the Code. Our submissions are therefore confined to this item.
10. Section 2 of the Code provides that Members must comply with a number of standards of conduct/behaviour. A list of ten standards are then set out. We understand that the investigation is focusing on whether Councillor Davis breached either/both of two requirements of the Code in particular, namely:
 - (1) Not to place themselves under a financial or other obligation to any individual or organisation that might seek to influence them in the performance of their official duties (paragraph 2.2);

(2) To promote and support high standards of conduct through leadership and by example (paragraph 2.10).

11. We will therefore consider these provisions in turn. We note that no other provision in the Code is even arguably relevant.

Paragraph 2.2

12. This provision requires evidence that Councillor Davis has placed himself under a financial or other obligation to an individual or organisation that might seek to influence him in the performance of his official duties.

13. To assist with the investigation, Councillor Davis has reviewed the 621 declarations he made from 5 January 2015 to 8 February 2018 and has produced a schedule setting out (a) his relationship with the host of the event in question; (b) the reason he was invited; (c) the profession of the host; (d) whether the host is a developer and, if so, whether he has been involved in any applications made by them; (e) if he has been so involved, whether the committee went against WCC officers' recommendations; (f) whether it should have been declared; and (g) any other information.

14. He has also linked columns (d) and (e) to a separate schedule setting out the planning applications which came before the committee he chaired since 2013, where he received hospitality from the applicants (this information is contained in the main schedule). The final column of this schedule is blank where the committee simply followed the recommendation of officers. Where there is a departure from the recommendation, Councillor Davis has summarised the reason.

15. He has also submitted a large number of testimonials from significant individuals who known him and worked with him, which were invited on broad terms and cover a range of perspectives and reflections.

16. Councillor Davis has also produced a witness statement setting out the history of his political career, his approach to declarations of gifts and hospitality received, his role and responsibilities as Deputy Leader of WCC from 2008 to 2018 and his relationships with stakeholders in Westminster. The statement summarises and explains the review of his declarations and explains the approach he took whilst sitting on one of WCC's planning

committees. Finally, he personally addresses the question of whether he has acted in breach of the Code, and summarises the impact of the allegations on him.

17. Section 5 of the Code provides that Members must, within 28 days of receipt, notify the Monitoring Officer *“of any gift, benefit or hospitality with a value in excess of £25 which they have accepted as a Member from any person or body other than the City Council”*.
18. It is important to note that a declaration is required only for gifts/hospitality accepted “as a Member”. As Councillor Davis explains in his witness statement, he has taken a precautionary approach to declarations, in the interests of transparency. This has led him to declare hospitality even where it has been received in a personal capacity, or in connection with his roles at the Lord Mayor’s Association, the Mayors' and Regents Park Open Air Theatre, the Sir Simon Milton Foundation, or any other civic or charitable role. He has also made some declarations where the value was less than the minimum £25.
19. We note that:
 - (1) His review of the declarations has led him to conclude that, for 43% of the declarations (265 out of 621), it was not necessary for him to declare, but he did so voluntarily for transparency reasons.
 - (2) Other councillors and officers, including the Monitoring Officer (who was required to be notified under the Code), knew about the declarations he was making during the period in question and never raised concerns.
20. In respect of the review of planning decisions, we note that 4.35% of the declarations made related to hospitality received from applicants whose applications involved the Members departing from the WCC officers’ recommendation. According to Councillor Davis, each of these departures was justified on design grounds (and never in relation to the provision of affordable housing). This is an exercise of planning judgement, on which officers and members may reasonably disagree. It is notable that he only used his casting vote as Chair on very rare occasions.
21. There is a perception in the media that Councillor Davis has accepted more gifts and hospitality than would be expected of a local councillor. However, it is submitted that the number and nature of the gifts/hospitalities can be explained once one understands

(a) the personal circumstances of Councillor Davis as a widower with many personal friends who have interests in Westminster, and (b) the ambassadorial responsibilities of the Deputy Leader of WCC.

22. It is submitted that Councillor Davis has undertaken a comprehensive assessment of his declarations and his participation in planning decisions. This assessment reveals no evidence at all of Councillor Davis placing himself under a financial or other obligation to any individual or organisation that might seek to influence him in the performance of his official duties. It must be borne in mind that this is a very specific requirement in the Code. The mere receipt of hospitality or gifts does not constitute the imposition of any obligation. The witness statement of Councillor Davis points out that there was no reason for him to place himself under an obligation, being well-off financially and a man of high reputation. It further states that Councillor Davis felt under no financial or other obligation to anyone in relation to the declarations he made (or otherwise), nor was he influenced by any hospitality he received.
23. It is submitted that there is no evidential basis upon which to conclude that:
- (1) Councillor Davis has placed himself under any obligation;
 - (2) Allowed himself to be influenced in the performance of his duties.
24. It follows that Councillor Davis has not breached paragraph 2.2 of the Code.

Paragraph 2.10

25. Paragraph 2.10 of the Code requires Members “to promote and support high standards of conduct through leadership and by example”.
26. This is not a requirement which existed in the Model Code of Conduct 2007. It is submitted that this paragraph appears to be derived from the final “Nolan Principle”, which is found in Appendix 3 to the Code. This appendix states that the Nolan principles “do not form part of the Code of Conduct but are included as an Appendix simply to remind Members of the ethical standards expected of public office holders”. The final principle states:

“**LEADERSHIP:** Holders of public office should promote and support these principles by leadership and example.”

27. It can therefore be seen that the principle is a requirement to promote and support the other principles. Accordingly, if no other breach of the other principles is identified, then there can be no “stand-alone” breach of the leadership principle.
28. It is submitted that this should inform the proper interpretation of paragraph 2.10. If no other breach of the Code is identified, then it is not clear how paragraph 2.10 can be breached. Given our submissions on paragraph 2.2, we therefore do not see how it can be possible for paragraph 2.10 to be breached. Further, we do not consider this principle to be justiciable at all. There is no clarity on what a “high standard of conduct” is, and what would constitute a breach. It sits uneasily with the other requirements, which are all more tangible obligations where it is clear what would constitute a breach. Paragraph 2.10 is, by contrast, vague and general and has been transferred from the Nolan principle without consideration for how it should be framed as an obligation on individual Members.
29. In any event, even if paragraph 2.10 is justiciable and can give rise to a stand-alone breach, it is submitted that the evidence is clear that Councillor Davis has – throughout the relevant period – promoted and supported high standards of conduct through his leadership and by example.
30. In particular:
- (1) He has been scrupulously and meticulously transparent in his registration of gifts and hospitality, beyond what was strictly required of him by the Code. He has done this in the public interest of transparency, ensuring full disclosure to other Members, WCC officers including the Monitoring Officer, and the public. This sets an example of good practice for other Members.
 - (2) At the beginning of every planning committee meeting he chaired, he would read a declaration setting out his connections, if any, with the applicant in question. This too is a model of transparency and openness.
 - (3) His record of public service is extensive, and indicates that Councillor Davis has devoted a significant amount of his career to serving WCC. He left his job as a partner at law-firm Freeman Box in 2015 to further concentrate on his work at

WCC. His attendance at events as an ambassador for WCC is a material part of this service.

- (4) His decision to refer himself to the Monitoring Officer is also an indication of his integrity and willingness to fully participate in resolving the allegations made against him.
- (5) His full co-operation with the investigation, including the provision of a comprehensive review of declarations and planning decisions, is a commendable approach for the holder of a public office to take.
- (6) The written testimonials speak consistently to the high standard of his conduct in public office, and reject the allegations made against him.

31. It is submitted that there is no breach of paragraph 2.10 (if it is justiciable at all).

Concluding the investigation

32. Based on the submissions above, it is submitted that there is no *prima facie* case for Councillor Davis to answer. On this basis, the investigation should be concluded as soon as practicable with a full exoneration of Councillor Davis and without the matter being referred to the Standards Committee. There is no legally sustainable basis for such a reference, which should only be made where there is at least a *prima facie* case.

RICHARD DRABBLE Q.C.

MATTHEW FRASER

**Landmark Chambers
180 Fleet Street
London**

17 July 2018

**WESTMINSTER CITY COUNCIL
("WCC")**

**MONITORING OFFICER
("MO")**

**COUNCILLOR ROBERT DAVIS MBE DL
("Cllr Davis")**

OPINION

INTRODUCTION

1. I am instructed to advise the MO of WCC. The advice sought arises out of gifts and hospitality that Cllr Davis has accepted. This has been on a very large scale.
2. Cllr Davis has for many years been a senior member of the majority group on WCC. In particular he has had senior roles and responsibilities in relation to planning.
3. The situation has attracted critical media and other attention, especially since 19 February 2018. On 1 March 2018 he formally referred himself to the MO. She decided that an investigation was appropriate. This is being carried out internally by a Solicitor in her team, Hazel Best ("the IO").

4. It is in connection with this investigation into gifts and hospitality that I am asked to advise. Cllr Davis has meanwhile stepped aside while the investigation is being undertaken.

THE FRAMEWORK

5. Pursuant to the Localism Act 2011 (“LA 2011”), WCC has:-

- (1) A Member Code of Conduct (“the Code”) updated in 2016;
- (2) A Register of Disclosable Interests, including Gifts and Hospitality; and
- (3) Statutory “Arrangements” for investigations, including involvement by the statutory “Independent Person”.

THE INVESTIGATION

6. In accordance with Cllr Davis’ reference, the MO/IO have been inquiring whether or not any of Cllr Davis’ acceptance of gifts and/or hospitality has been:-

- (1) Unlawful or given rise to illegality; and/or

- (2) In breach of the Code; and/or
- (3) “Inappropriate”, from the point of view of WCC’s reputation.

7. I have seen Cllr Davis’ List of Gifts and Hospitality over a number of years. It does not appear that Cllr Davis has failed to declare gifts or hospitality that he should have disclosed. Indeed much of what he has declared did not have to be declared.

8. The MO and her team have I understand advised Cllr Davis on a number of occasions against accepting so much by way of gifts and hospitality. However, no breach of the Code has been found. The advice has been I believe that it is lawful for Members to accept gifts and hospitality so long as they are registered, but that the highly exceptional scale is problematic, given the negative perception it is liable to create.

CONTEXT

9. In 2016 allegations were raised. A complaint was made. Ultimately, by letter dated 25 May 2016, it was dismissed. I see no reason to re-open that.

10. However, shortly before that, Cllr Davis was I gather warned that there is an issue of perception of which he needed to be aware, given the extensive nature of the gifts and hospitality in his case.

11. Cllr Davis was seen again on 12 October 2016 to provide training on the updated Code of Conduct, on a one to one basis. At that training it was I believe stressed that, in addition to complying with the letter of the Code/law, it was extremely important to be aware of perceptions. There was discussion that perceptions of wrongdoing were even more important in the context of social media and the ability of persons to damage the reputation of Members and the Council, instantly.

12. As recently as on 14 September 2017 the MO met with Cllr Davis, at his request, when Cllr Davis wanted to discuss a press article and asked whether he was over declaring certain matters. She advised that he was and, for example, it was not necessary to declare a lunch with his neighbor who happened to be a developer, with no connection with the Council. Cllr Davis also declares attending events arranged and hosted by the Council. At that meeting she stressed again I believe that complaints and adverse press comments would continue unless he cuts down the number of gifts and hospitality significantly.

13. On 7 March 2018, in the face of further press queries, Cllr Davis decided to step aside from his responsibilities as the Deputy Leader of WCC and Cabinet Member for Business, Culture and Heritage. He is one of the longest serving Councillors, if indeed not the longest serving. He was one of the Chairs of Planning Committee for a long time. For much time he was also the Cabinet Member responsible for Planning.

14. From time to time the MO's team has had to advise Cllr Davis on conflict issues and advised that he could not perform duties as Cabinet Member and Planning Chair in relation to the same matter. Cllr Davis has duly taken on board that advice and recused himself from Cabinet Meetings.

15. This arrangement was changed soon after the current Leader, Cllr Nickie Aiken, took office, in January 2017. Cllr Davis ceased to be the Chair of Planning Committee. His Cabinet portfolio also changed to Business, Culture and Heritage, so that Planning went to another Cabinet Member.

PRESENT POSITION

16. On 5 March 2018 the MO wrote to Cllr Davis as follows:-

“It is my normal practice to either deal with complaints myself or ask a member of my team to investigate the complaint. However, in this case it is my view that it would be more appropriate for external lawyer to undertake the investigation.

This is because I and my Chief Solicitors have been involved in advising you in relation to this issue. At two meetings and one training session we advised that your acceptance of gifts and hospitality was not unlawful but the issue was one of perception and reputational risk. Furthermore, I understand that there has been adverse comment in the media stating “monitoring officer in Westminster apparently not being proactive when it comes to the conduct of Councillors”. Therefore, I am keen to be advised by an external lawyer what the Monitoring Officer could and should have done other than advise you as I have.

Therefore, I consider that it would be fairer to you and also more appropriate in the circumstances that I refer the investigation to an external lawyer, who can provide independent advice in concluding the investigation. I will also consult with one of our two Independent Persons, as required by the arrangements.

I will ensure that the investigation is completed as soon as possible.”

- 17. She has consulted with, and I have with her met one of the Council’s two distinguished Independent Persons, Sir Stephen Lamport GCVO DL.**

THE NOLAN PRINCIPLES

18. As Green J explained in Hussain v Sandwell MBC (2017) EWHC 1641 (Admin), at para 123, LA 2011 was intended to strengthen in some respects the regime to govern standards set out in the Local Government Act 2000 and to incorporate the “Nolan Principles on Standards in Public Life”. The Parliamentary purpose behind such change as was made in 2011 was, as Green J indicated, twofold. First, to move away from a centralised regulatory system to a decentralised system based on “localism”. Second, to move away from a system which could amount to a vehicle for vexatious and politically motivated complaints.

19. Green J makes further reference to the “Nolan Principles” at paragraph 128. Their importance cannot be overstated.

20. The Nolan Principles are indeed set out as Appendix 3 to the Code. They are of course the ethical standards expected of public office holders.

21. They are:-

“SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain

financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.”

LA 2011

22. Chapter 7 of Part 1 of LA 2011 relates to Standards. WCC is a “relevant authority” Section 27 is headed “Duty to promote and maintain high standards of conduct”. Subsections (1) and (2) provide:-

- (1) A relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority.
- (2) In discharging its duty under subsection (1), 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.”

23. The purpose of a Code is therefore to promote and maintain high standards of conduct.

24. Section 28 is headed “Codes of Conduct”. Subsection (1) provides that a relevant authority must secure that a code adopted by it under Section 27(2) is when viewed as a whole consistent with the seven Nolan Principles, that are there set out.

25. Important provision is also made in Section 28 for “Arrangements” and “Independent Persons”.

THE CODE

26. The Code itself is for present purposes at the heart of the matter. Paragraph 1 relates to its application. It:-

- (1) Applies to Members whenever they are acting in a capacity as a Member; and
- (2) Is expressed to be consistent with the Nolan Principles.

27. Paragraph 2 of the Code relates to General Conduct. It specifies the standards of conduct/behaviour with which Members must comply. They are:-

- “2.1 To act solely in the public interest and never to improperly confer or seek to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, friends or close associates.
- 2.2 Not to place themselves under a financial or other obligation to any individual or organisation that might seek to influence them in the performance of their official duties.

- 2.3 To make all decisions on merit when carrying out public duties, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits.
- 2.4 To be accountable for their decisions to the public and to co-operate fully with whatever scrutiny is required.
- 2.5 To be open and as transparent as possible about decisions and actions and the decisions and actions of the City Council and to give reasons for those decisions and actions
- 2.6 To register and declare any disclosable pecuniary interests and to declare non-disclosable pecuniary interests and non-pecuniary interests, as set out in this Code.
- 2.7 When using or authorising the use by others of the resources of the City Council , to ensure that such resources are not used improperly for political purposes (including party political purposes) and to have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 2.8 To behave in accordance with all legal obligations, alongside any requirements contained within the City Council's policies, protocols and procedures, including on the use of the Council's resources and dealing with confidential information appropriately.
- 2.9 To value and respect colleagues, staff, partners and the public, engaging with them in an appropriate manner that

underpins the mutual respect between them that is essential to good local government, and not to act in a manner that could be deemed to be bullying, harassment or intimidation.

2.10 To promote and support high standards of conduct through leadership and by example.”

28. Paragraph 3 of the Code relates to Disclosable Pecuniary Interests; and paragraph 4 to “Other Interests”.

29. Paragraph 5 of the Code is concerned specifically with “Gifts and Hospitality”. It provides:-

“5.1 Members must, within 28 days of receipt, notify or arrange for the Monitoring Officer to be notified in writing of any gift, benefit or hospitality with a value in excess of £25 which they have accepted as a Member from any person or body other than the City Council.

5.2 The Monitoring Officer will place the contents of the notification on the register of interests of the relevant Member.

5.3 Where the Monitoring Officer is of the view that such gift or hospitality is clearly below £25 in value they may decline to include this on the register.”

GENERAL ADVICE

30. I have seen no evidence that Cllr Davis has acted unlawfully in relation to gifts and hospitality. On what I have seen:-

- (1) He has throughout been punctilious about making declarations;
and
- (2) He has recused himself at meetings and encounters with officers when he should have done so.

31. As regards the Code, in my opinion:-

- (1) The Code should be construed so far as reasonably possible in accordance with the Nolan Principles;
- (2) Compliance with specific provisions of the Code, e.g. re gifts and hospitality, or abstinence from participation in the event of a conflict of interest, are a necessary, but not a sufficient, condition for compliance: a specific provision may be complied with but there nonetheless be a breach of the general provisions;
- (3) The Code is not to be construed narrowly or restrictively;

- (4) The focus for present purposes is on paragraphs 2.2 and 2.10 of the Code;
- (5) Transparency and declaration of gifts and hospitality is one matter: their substantive suitability and their scale, individually and cumulatively, are no less important.

32. Paragraph 2.2 requires a member not to place himself under an obligation to any individual or organisation that might seek to influence him in the performance of his official duties. It is to be noted that:-

- (1) The question is whether the individual or organisation “might” seek to influence, not whether there has been any actual attempt to influence; and
- (2) The obligation on the member is not to place himself under an obligation, whether or not the member is actually influenced.

33. Paragraph 2.10 of the Code requires a member proactively both to promote and to support “high” standards of conduct and to do so both by leadership and by example. That is much more than merely measuring up to a threshold of permitted actions.

34. The key question under paragraph 2.10 seems to me to be whether a series of gifts and hospitalities each one of which looked at in blinkered isolation is in order can be disregarded when looking at an overall cumulative picture, i.e. whether standing back from the volume of gifts and hospitality, and giving due weight to Cllr Davis' role and municipal activities, the scale does not square with promoting and supporting high standards of conduct by leadership and example.

35. There may also be a question whether:-

- (1) Cllr Davis' admitted conduct was otherwise than inappropriate from a point of view of WCC's reputation; and, if so,
- (2) How it could be inappropriate from that point of view and yet not come within paragraph 2.10 of the Code.

CLLR DAVIS

36. With the MO, I have met Cllr Davis and his Solicitors twice, most recently on 24 July 2018. His Solicitors, Mishcon de Reya, have provided:-

- (1) Witness Statement of Cllr Davis, dated 17 July, together with Exhibit file; and

- (2) Legal Submissions on his behalf, by Richard Drabble QC and Matthew Fraser of Landmark Chambers.

37. Cllr Davis in his Witness Statement sets out his role as principal ambassador for the Council's leadership. He says that it is therefore not surprising that he has made the most declarations of all Westminster Councillors.

38. He reviews all the declarations he has made in the past three years. He has helpfully produced a Schedule, with Appendix.

39. He concludes:-

- (1) Of the 621 declarations he reviewed, it was not necessary to declare 266 of them;
- (2) Of these 621 declarations, there have been 27 instances where the Planning Committee upon which he has sat has made a decision against the Officer's recommendation, on design grounds;
- (3) When he attended events as a Councillor this was work as a Councillor for the Council's benefit.

40. Cllr Davis addresses:-

- (1) His approach to meetings with applicants; and
- (2) His approach to Planning (Sub-)Committees.

41. From paragraph 50, he explains his Declarations, including with respect to the Sir Simon Milton Foundation. As regards the Code of Conduct he says:-

“103.1 In relation to placing myself under an obligation to others:

103.1.1 I have never placed myself under a financial or other obligation to anyone, and have never felt obliged to act in any way as a result of hospitality given to me. All the decisions I have made have been because I thought they were in the best interests of Westminster.

103.1.2 I left my well remunerated job as partner of a law firm in 2015, in order to concentrate on my career as a Councillor. These are hardly the actions of someone seeking to financially benefit from their position.

103.1.3 Since my partner and parents have died I am lucky enough (in one sense) to have been left some money, such that I do not need anyone to pay for my meals.

103.1.4 I have spent 36 years building up my reputation as a councillor of great integrity, and there is simply no

way that I would risk this for in return for a lunch or a dinner. It makes no sense.

103.2 In relation to high standards of conduct:

103.2.1 I have spent my entire career promoting high standards of conduct and was an influential figure on the Council's standards committee for many years.

103.2.2 I have never acted with anything under than the utmost integrity.

103.2.3 In my role as councillor, I have always put the interests of Westminster above any other.

103.2.4 The declarations I have made are, if anything, evidence of high standards of conduct (although I accept that I over-declared). Greater rather than less transparency should be the aim of all councillors."

THE SUBMISSIONS.

42. As regards paragraph 2.2 of the Code, it is submitted on his behalf that:-

- (1) The number and nature of the gifts/hospitalities can be explained once one understands the personal circumstances of Cllr Davis and his ambassadorial responsibilities as Deputy Leader: paragraph 21;

- (2) Cllr Davis' comprehensive assessment of his declarations and his participation in planning decisions reveals no evidence at all of Cllr Davis placing himself under a financial or other obligation to any individual or organisation that might seek to influence him in the performance of his official duties: paragraph 22; and
- (3) There is no evidential basis upon which to conclude that Cllr Davis has placed himself under any obligation or allowed himself to be influenced in the performance of his duties: paragraph 23.

43. As regards paragraph 2.10 of the Code, it is submitted (paragraphs 27 and 28) that the final Nolan Principle (Leadership) is a requirement to promote and support the other principles, and if no breach of the other principles is identified, then there can be no "stand-alone" breach of the leadership principle.

44. It is submitted that, in any event, even if paragraph 2.10 is justiciable and can give rise to a stand-alone breach, the evidence is clear that throughout the relevant period Cllr Davis has promoted and supported high standards of conduct through his leadership and example. Paragraph 30 of the Submission provides particulars.

45. The conclusion of the submission is that:-

- (1) There is no prima facie case for Cllr Davis to answer;
- (2) A reference should be made to the Standards Committee only where there is at least a prima facie case; and
- (3) The matter should not be referred to the Standards Committee.

ADVICE

46. I agree with the prima facie case test. The MO's task is no less and no more than to assess on that basis whether there is in the light of the IO's Report a case to go to the Standards Committee, subject to the views of the Independent Person. Only the Standards Committee can ultimately rule whether there is a breach of the Code, and, if so, what sanction may be appropriate. The Independent Person has an important role.

47. I fundamentally disagree that paragraph 2.10 of the Code has no independent existence. On the contrary, it is in my opinion plainly in its own right a significant element of the overall Code.

48. My advice is that as regards paragraph 2.2 of the Code:-

- (1) There is a prima facie case; and
- (2) The matter should be referred to the Standards Committee.

49. My reason can be shortly stated. I accept that there is no evidential basis in the materials before me upon which to conclude that Cllr Davis allowed himself to be influenced in the performance of his duties by gifts or hospitality or felt under any conscious obligation to those from whom he received gifts or hospitality.

50. I do not however regard this as a sufficient answer with respect to paragraph 2.2 in circumstances where there might well be attempts by donors to influence. One may place oneself under an obligation even if the potential influence will be resisted. It is an objective, not a subjective matter. It is a matter of an appropriate culture.

51. My advice is that as regards paragraph 2.10 of the Code:-

- (1) There is a prima facie case; and
- (2) There should be a reference to the Standards Committee.

52. Again, my reason can be shortly stated. I do not consider that the question is whether Cllr Davis has in general promoted and supported high

standards of conduct through his leadership and by example. He makes out a strong case that he has, supported by impressive references.

53. Rather, I regard the question as being whether there has been a lapse from that requirement specifically by reference to the scale and totality of his gifts and hospitality. I consider that there is a prima facie case in that respect.

54. The Standards Committee has broad terms of reference. However, I do not consider it appropriate for the MO to take a position on or refer to the Standards Committee the question of inappropriateness from the point of view of WCC's reputation.

55. I shall be happy to advise further as may be required and to discuss with the MO and her team any point that may arise.

11 King's Bench Walk
Temple EC4Y 7EQ

goudie@11kbw.com


JAMES GOUDIE QC
24 July 2018

WESTMINSTER CITY COUNCIL
("WCC")

MONITORING OFFICER
("MO")

COUNCILLOR ROBERT DAVIS MBE DL
("Cllr Davis")

OPINION

JG
24/07/18

Tasnim Shawkat
Monitoring Officer
Westminster City Council

	Contact	Nature of query
1	<p>Residents Association</p> <p>Email to Head of Governance and Committee Services</p>	<p>Since you are now investigating Cllr Robert Davis as a result of the article in the Guardian, I wish you to answer some very specific questions. Note I have cc'd Robert Booth, author of the article, because your previous responses on this matter appear to be biased.</p> <p>With respect to planning application 14/11837/FULL over which Robert Davis presided can you answer the following:</p> <ol style="list-style-type: none"> 1. Why did Robert Davis declare Dukelease as his friends during the planning meeting? 2. Why did Robert Davis attempt to give a priceless Banksy painting to Dukelease during the planning meeting but the action was later removed from the minutes? <p>[REDACTED]</p> <ol style="list-style-type: none"> 5. Robert Davis had a meeting in Cannes, 16th March 2017 hosted by Dukelease. It was a public meeting, please provide the minutes of that meeting. 6. Why does Robert Davis have all his meetings outside of Westminster offices and outside of office hours? Can you provide the minutes of any of those meetings? 7. Why did Robert Davis grant planning permission to Dukelease on a Westminster Freehold for 0% social housing and 10% affordable housing? 8. Why did Robert Davis first attempt to appeal an ICO decision for Westminster Council to hand over the viability report of the development? The ICO declared it was in the public interest to know why only 0% social housing and 10% affordable housing was being built. <p>Based on your response, we will take appropriate action</p>

2	Organisation	Email to Leader asking for details of investigation
3	<p>Email to Cllr from resident, forwarded to Chief Executive</p> <p>09.03.18</p> <p>Cllr forwarding letter from residents</p>	<p>Stuart</p> <p>I thought you would like to see this letter to B&DS ward Councillors as I am sure other similar letters will follow to other Councillors on other planning permissions where Cllr Davis declared hospitality from developers and their agents.</p> <p>Will the Inquiry look in to matters such as this and others brought to your attention?</p> <p>Will other Councillors on the Planning Committee who accepted hospitality be included in the Inquiry? Cllr Mitchell is mentioned here. Cllr Glanz has declared very many occasions when he accepted hospitality. There may be others.</p> <p>Will the Inquiry be taking evidence generally? I have spoken to a number of people in the development industry who may have useful information to give to the Inquiry, particularly if they are able to give the information in confidence.</p> <p>Will the Inquiry also be looking at the donations given to the Sir Simon Milton Foundation by developers and agents? As you know, Cllr Davis is very closely involved with this Foundation and questions are being asked about some of these donations.</p> <p>Please can I have details of how the Inquiry will operate? I have already received a number of enquiries from residents wanting to know the details of the appointed QC, when the Inquiry will report and whether residents can give evidence to the Inquiry.</p>

Dear Councillors

You will no doubt be aware of this and other press coverage and the increasing level of concern among Westminster residents regarding the probity of the planning system here. Concerns we have expressed for a long time with regard to our experience on the 19-35 Baker Street application and there is now a considerable groundswell of concern within the Marylebone community

With regard to 19-35 Baker Street, Councillor Davis accepted 42 hospitality gifts from developers and advisors on this project alone. The figure for Councillor Tim Mitchell is 8.

Furthermore there is some direct correlation between the timing of these gifts and key dates in the process of the planning application - ie initial submission, first committee, second "revised" application and second committee.

As you will recall the Resolution to Grant Consent was made on the basis of the casting vote of the Chair, Councillor Beddoe.

Residents attended the meeting on the 14 November and I have listened to the recording - it is shocking. Both officers and members resorted to bamboozlement and bullying to try to persuade the dissenting members to vote for grant of consent, neither of whom, incidentally, had accepted any gifts whatsoever in relation to the scheme. When bullying and bamboozlement failed, the casting vote was used. This most certainly is NOT democracy.

Given the unquestionable evidence in this article and others of Councillor Davis "endorsed" schemes being given consent and Westminster Council using the Chair's casting vote to ensure this happens when there is opposition within the committee any such Resolutions to Grant must now be reviewed as part of the investigation. I think that the Paddington Cube is another example of the use of the casting vote - now, quite rightly, the subject of court proceedings.

I suspect, on further investigation the value of the 42 gifts received by Councillor Davis will far exceed the £100,000 the residents of Blandford Street had to spend in order to try and have a voice.

		<p>We failed because the consent was a forgone conclusion.</p> <p>This decision absolutely must be reviewed as part of the investigation. Please can you confirm, for the record, what action you will be taking on our behalf.</p> <p>I look forward to hearing from you</p> <p>Kind regards</p> <p>██████████</p>
4	<p>██████████</p> <p>13.03.18</p>	<p>Dear Councillor Aiken</p> <p>Thank you for inviting us to make a formal observation to you, the investigating officer and independent QC - no doubt others will be doing the same. Our observations are based on our experience in relation to the application for the redevelopment of 19-35 Baker Street and adjacent properties (application no. 16/11376/FULL).). As detailed below this planning application secured a resolution to grant planning permission at Planning Committee 1 in November 2017 following a previous deferral in May 2017. The application remains undetermined and we consider that it is essential that an independent assessment is undertaken as a matter of priority on the robustness (or lack of) of this committee decision.</p> <p>We copied you in on an e-mail to our Marylebone High Street Ward members at the end of last week. We understand that Councillor Rowley has been in touch with you about our deep concerns regarding the probity of the planning process surrounding this application, particularly in the light of recent press revelations regarding the extent of “gifts” received by Councillor Robert Davis and, indeed, others connected with consideration of this application. We are in no doubt that in the case of this application, the developers believed that consent was a “done deal” whatever the objections of the local community. Unsurprising given that some 42 of the “gifts” from the developers/landowners or their advisors are related to this site alone.</p> <p>As we stated repeatedly to members, officers and the developers we are not nimbys - we would have been more than happy to support the appropriate and considered redevelopment of this site. In the pre-</p>

	<p>application “consultation” we (and our neighbors) were deeply concerned by the extent to which the developers were unwilling to amend their proposals in any meaningful way to take into account our substantial and valid objections. This was the case both pre-application and during the course of formal consideration of the application.</p> <p>Further we sought a meeting with Councillor Davis as a cohesive group of local residents which took place 11 May 2016. The very clear message from that meeting (not minuted of course) was that the Council was fully supportive of the proposals despite at this point of time an application not having been submitted for consideration. It was noted that Councillor Davis stated that this was the first time he had met with residents on such a planning matter.</p> <p>It is now evident from the members register that discussions with the then Chairman of planning and developers had been ongoing for a considerable time, “23rd April 2015 – Attended a tour of Derwent London developments outside Westminster followed by lunch at Shoreditch House (Derwent London)”. This is confirmed in the planning statement (para 7.7) that the pre application process began in the summer of 2015.</p> <p>We continued to try to make our voice heard during the course of the following 6 months but with no success and in complete frustration made an FOI application on 16 November 2016. We quote the quite unbelievable response we received on 14 December 2016 (WCC Ref: 2763847).</p> <p>“Pre-application information was submitted with some technical information however this was not scanned and we do not have a hard copy of the documents so this cannot be provided the Council did not send any written response to the pre-application proposals submitted”</p> <p>There was no information within WCC regarding any pre-application discussions between the developers and WCC officers and members which we have been advised is an extraordinary position given the scale and complexity of the proposals. This is further contradicted by the fact that the submission documentation confirms that various baseline assumptions (views for THVIA etc.) had been formally agreed with WCC pre-submission. No one has given an explanation for this.</p> <p>In the meantime the application was submitted on 29 November 2016 and validated on 2 December. Surely a national record where no pre-application advice was given and there were over 250 documents</p>
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	<p>submitted. It transpired that between December 2015 and the application in November 2016 no less than 12 meetings took place between members and the developers all prior to the FOI response. Indeed the submitted planning application confirms at paragraph 2.18 that “The proposals have been subject to extensive pre-application consultation meetings with planning, design, highways, energy and housing officers at Westminster City Council” with paragraph 7.7 then stating “The pre-application process commenced in summer 2015 and continued into autumn 2016”.</p> <p>The application form itself refers to pre-application advice being given by the planning officer and the planning statement submitted by Gerald Eve refers to meetings with Westminster City Council officers in planning, design, highways, energy and housing. Again all prior to the FOI response. How is this democratic or transparent?</p> <p>Our planning consultant identified 26 breaches of policy, some of them very substantial, and advised that we had strong grounds for objection. Not least is the woeful provision of affordable housing (on a large underdeveloped central London site), decimation of the existing residential amenity in a predominantly residential area and impact on valuable heritage assets. We are able to forward a copy of our submitted representations which sets out the extent of the various policy breaches should you require</p> <p>The developers remained intransigent to our objections - understandably they clearly believed in the pre-determination by Councillor Davis. Meanwhile over the period 2015-2018 whilst this process was taking place Councillor Davis received 42 “gifts” from the developers or their advisors and Councillor Tim Mitchell, a member of Planning Committee 1, received 8.</p> <p>Given the number and extent of breaches in policy, at that stage we still believed that democracy and the probity of officers and members would come good and therefore appointed a full team of consultants to prepare strong and valid objections on behalf of a collaboration of the residents of 73-89 Blandford Street. We also identified a considerable number of inaccuracies and misleading information readily apparent in the application documentation which we raised repeatedly with the developers and officers during the course of last year. It seems such errors, inaccuracies and misinformation are acceptable to all at Westminster in order to achieve the objectives of Councillor Davis.</p> <p>It is apparent that the applicants and officers were indifferent to errors and mis-information because of the pre-determined status of the application.</p>
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		<p>The application went to planning committee in May 2017 and was deferred on 4 grounds - all reflecting some of our objections but certainly not addressing the major deficiencies surrounding affordable housing provision, impact on existing residential amenity and heritage impact. Of particular note was that the chairman said “the servicing simply does not work”</p> <p>The deferral may well have been prompted by our QCs’ opinion that it would be unlawful to grant planning consent. Of particular note is Councillor Beddoes’ comment is summing up that “I say very loudly and clearly to the residents that my opinion is overall, this is a good scheme”. Furthermore members said to us immediately after the meeting that the application would “without a doubt” be approved next time. How could that be, given the amendments were unknown at that point unless we were, of course talking about pre-determination?</p> <p>Immediately after the meeting we wrote to the developers repeating our willingness to support a scheme that respected our position as well as their own. We were rejected out of hand - a further clear indicator of their (correct) belief in a “done deal”. They were clearly as certain as members that consent would be granted next time.</p> <p>The grounds for deferral, which whilst not the most significant of our objections, were certainly strong and valid. We were advised that we should have a reasonable expectation that if the issues were not addressed the scheme would not get consent, particularly as the Chairman advised that there was further work required.</p> <p>It is noted that the revised application was submitted in August 2017 following a meeting between the developers and the Chairman of Planning where no minutes were kept. None of the reasons for deferral were addressed in any meaningful way, if at all. It is important to note that objections from key consultees were similarly ignored at this stage with Historic England setting out that “we do not consider these amendments to address our concerns.....as such, we still consider the proposed building to cause harm to the Character of the Portman Street Conservation Area and the setting of a number of listed terrace houses within the conservation area” We again made representations and that application went to committee in November 2017. One would logically assume there should be a recommendation for refusal as there had been only minor modifications.</p>
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	<p>To quote the officers report:</p> <p>“It is accepted that with respect to the four deferral points raised by Committee the amendments to the scheme are relatively minor”.</p> <p>Officers acknowledged that they had recommended approval to the original application and that they were therefore unable to recommend refusal to the “revised” application, despite the relatively minor nature of the amendments. Why ever not? The applicants did not address the issues raised and the scheme should logically have been refused, this again shows a clear indication at the lack of transparency in decision making and the predetermination of the application.</p> <p>Residents who attended the meeting on 14 November and those who have subsequently read the transcript were horrified by the manner in which officers and members resorted to bamboozling and bullying dissenting members who did not agree to a resolution to grant consent. Of great significance here is that the two dissenting members of the committee had not accepted any “gifts” whatsoever from the developers, landowners and their advisors,</p> <p>When the disgraceful tactics of those in favour of granting consent failed the chair used his casting vote to push through approval.</p> <p>Subsequently we note that, despite our chasing, the S106 has not being diligently pursued with regard to referral back the Mayor for a Stage 2 report. The 6 week period permitted in the draft S106 which forms part of the resolution to grant has now extended to 17 weeks with no identified deadline. How can this be acceptable to anyone but the developer?</p> <p>In any event there is a whole different issue surrounding the use of S106 conditions - we have been in correspondence for months now with WCC regarding the enforcement of such conditions on the developers of 55 Baker Street. WCC entirely fail in their duty to impose such conditions which are designed to benefit the community rather than the developer.</p> <p>We are in no doubt whatsoever that at every step of this process members and officers have been acting on behalf of the developers with scant regard to existing planning policies, the views and well-being of the local community because of the promises made by the previous chairman of the Planning Committee.</p>
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		<p>The developers continue to hide behind the heavily redacted cloak of viability to avoid the stated policy requirement to provide 35% affordable housing imposed by the casting vote of the current chair.</p> <p>Officers based their recommendations on submissions that were inaccurate and misleading and did not challenge the information provided to anything like the degree that we did. Indeed Councillor Beddoe in making his casting vote to grant stated “servicing arrangement might just work” clearly suggesting he is far more qualified to make a judgement on such matters than our professional traffic consultants who demonstrated beyond doubt that the proposed servicing arrangements absolutely do not work. The people who will pay for that highways decision, made by a family lawyer, will be us.</p> <p>From day one the developers believed and, it now transpires with good reason, that they would get a consent regardless of existing WCC planning policies, the views of local residents most directly affected by the overbearing nature of the proposals and the terrible impact this awful greedy overdevelopment will have on the local community. Indeed the developers did not feel the need to compromise on any aspect of the scheme to accommodate our objections at any stage. There is no doubt that the 42 “gifts” bought it for them. The monetary cost to us in trying to make our voice heard with valid, strong and substantial objections has been more than £100,000 thus far, probably substantially less than the value of the “gifts” accepted by Councillor Davis and, indeed, other members.</p> <p>It is clear that the constant flow of gifts and entertainment must have influenced the recipients, we have been told by many that “the decision was made long ago why bother?”</p> <p>The proposed development at 19-35 Baker Street will have a completed value in excess of £750,000,000, making decisions at cozy property clubs by industry grandees or at jollies in the South of France should not be the method of decision making or be part of the administration of 21st century Westminster.</p> <p>Please do not underestimate the level of disillusionment and disgust within the Westminster community surrounding the probity of the planning process.</p> <p>We would welcome the opportunity to meet with you, the investigating officer and independent QC to discuss this further at the earliest opportunity as we consider it is essential that this undetermined planning application is independently assessed against the policies of WCC’s Development Plan. In addition</p>
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		<p>we would request that WCC place a hold on this application being formally determined until a review of the process is complete.</p> <p>Yours sincerely,</p> <p>[REDACTED]</p>
5	<p>[REDACTED]</p> <p>Resident</p> <p>14.03.18</p>	<p>Dear Mr Goudie,</p> <p>I am a Westminster resident with information concerning the activities of the planning committee which I believe should form part of any enquiry.</p> <p>I would like to understand whether you are employed by Westminster Council or whether you are truly independent? Please could you explain in what way you are independent of Westminster Council.</p> <p>Yours sincerely,</p> <p>[REDACTED]</p>
6	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>Organisation</p>	<p>We would like to understand more about the process for this investigation:-</p> <p>are you going to ask for evidence from the public? amenity societies such as the [REDACTED]</p> <p>The [REDACTED] has commented on planning applications for [REDACTED] for some 40 years and we are concerned that all applications that we objected to and where council officers recommendations were ignored which went before one of Davis's committees and approved are now properly investigated.</p> <p>Would you be able to provide a list of such applications for the last 5 years?</p>

15.03.18

[REDACTED]

Does privilege attach to communications to you about the investigation?

Compliant to LGO

[REDACTED]

[REDACTED]

Dear Mr Goudie,

The [REDACTED] has been a statutory consultee on planning matters in [REDACTED] since the 1970s.

We have been concerned for many years now at the amount of development in [REDACTED] and its impact on residents and those who work here. These issues have been raised with WCC on many occasions largely to no avail. On Broadwick Street we have had no less than 3 major developments - Trenchard House, Amalco House and Marshall Street in 5 years. They are about to commence an eight storey hotel. That is just one street.

There are currently 7 consented hotel schemes in [REDACTED] (many of them quite large). This will lead to loss of small office spaces which in turn will reduce the number of jobs in [REDACTED] and damage its unique nature in London as a place of work, living and entertainment. Residential developers pay a CIL payment to the council and do not provide social housing locally - this is slowly eroding a community that has existed in [REDACTED] for centuries. Many of the new homes appear to be left empty for part of the year or are simply used for AirBNB. Shaftesbury have recently issued eviction notices to 10 families including 4 with children in order to re-develop a building - also on Broadwick Street - for luxury flats. Planning policy as applied to [REDACTED] by WCC has felt disconnected from the local community for the last 15 years.

Once the revelations about Cllr Davis came to national attention (they were already in the public domain) we wrote to the Leader of the council suggesting Davis step down which he has now done pending the outcome of an investigation which you are in charge of.

Our concerns are:-

(1) that Cllr Davis is still standing in the local elections and that your investigation may actually prevent a full debate of these issues during the local elections - candidates may refuse to discuss the matter while your investigation is ongoing - your report will only be available after the elections; and

(2) there are concerns that go beyond the acceptance of gifts and hospitality - specifically, have payments been made by property developers to the Simon Milton foundation - a charity which Davis is closely involved with - or indeed other organisations that Davis has an interest in. Did Davis allow those payments (if they exist) to impact his judgement on decisions that were before planning committees he sat on or chaired? Further, there appears to have been a culture of bullying at WCC which means that Davis may have been able to influence decisions taken by committees that he didn't sit on. See Cllr Paul Church's statement below.

I have requested a meeting with WCC - Ms Shawkat - about these issues.

In Ms Shawkat's email to me about the investigation she said:-

"As you know Cllr Davis has referred himself to me for an investigation. In accordance with the referral made by Cllr Davis I am investigating whether or not Cllr Davis' acceptance of the large number of gifts and hospitality is:

- unlawful
- a breach of the code of conduct
- inappropriate from a point of view of the Council's reputation."

This suggests that any alleged payments made by developers to the Simon Milton foundation (if indeed they exist) are excluded from the investigation. Is that also your understanding?

If you are able to comment on any of the above points at this stage it might be helpful and also increase our confidence that your investigation will be of sufficient scope to be meaningful.

Your sincerely,



7

[Redacted]

10.03.18

Email to Leader forwarded to Chief Executive

Dear Councillor Aiken,

Can you please send me the name and contact details of the QC who has been appointed to investigate Councillor Davis? I have some more evidence which I want to send him.

Many thanks,

[Redacted]

Dear [Redacted]

Thank you for your email.

Just to be clear, the council has not handed the investigation over to an independent QC. An independent QC, James Gaudie, has been appointed to work with the monitoring officer on the investigation.

The advice that you have been given is correct. Any information that you wish to provide should be forwarded to the monitoring officer. This is not an obstacle and neither is it an attempt to suppress information. The monitoring officer will, together with the independent QC, confirm whether or not the evidence is relevant to their investigation.

I am not aware of the previous investigation you refer to, however the fact that the monitoring officer "rejected" your evidence does not equate to either a suppression or prejudicing of evidence.

If you remain dissatisfied with this course of action you are welcome to submit the information to me and I will ensure that it is considered by the monitoring officer and QC."

Thanks

Stuart (sent 12.03.18)

8

[REDACTED]

Resident

19.03.18

Email to Head of Committee Services

Dear Mr Steward,

I understand that Councillor Robert Davis is under investigation by an independent QC for conduct regarding planning approvals and influence etc.

I attended the planning committee which considered the Hathaway House (W9 2BA) application in September 2016, which was chaired by Cllr Davis. I was taken aback by how many potential conflicts of interest the Chairman of the committee declared, relating to the Hathaway House application:

"Councillor Davis then made the following further declarations as they related to the specific applications on the agenda:

"That he had met with the applicants and knew the applicants' [REDACTED]

[REDACTED] He also knew [REDACTED] the architect, and [REDACTED] who were the applicant's representatives."


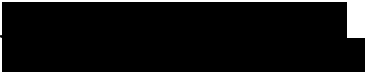
The Hathaway House application received strong local opposition, and a considerable number of objections, I think around 130. The Planning Officers didn't recommend approval, but for the committee only to approve if they considered the location and impact to be acceptable.

"the single most key issue relates to the principle of a high building in this location. As such the committee are asked to consider that given the location and impact of the high building, that it is acceptable in this location. Subject to this, the application is recommended for approval subject to a S106 legal agreement.."

I am aware that Councillor Davis has explained the nature of his contacts with the developer community, however I would ask that the decision to approve the Hathaway House application is included within the investigations of the appointed QC.

If I need to write this request in to another department, please could you advise?

		Thanks very much,
9	<p>Enquiry from office of Mark Field MP re Cllr Robert Davis</p> <p>[REDACTED]</p> <p>20.03.18</p>	<p>Sorry to bombard you with e-mails today but would you please pass on the below correspondence to Stuart to address?</p> <p>The issue of Cllr Davis was brought up in our recent meeting here at Portcullis and it would be good to have a detailed position from the Council which was can use in future for similar enquiries.</p> <p>As ever, many thanks for your help with this.</p> <p>Kind regards, [REDACTED]</p>
10	<p>[REDACTED]</p> <p>23.03.18</p> <p>Email to Councillor</p> <p>Resident</p>	<p>Dear Mr Hug</p> <p>How can I contribute to this enquiry?</p> <p>Cllr Davis approved a highly controversial planning application (16/08557/FULL approved in January 2016 plus subsequent objected-to applications/amendments) that contravened numerous local WCC and national policies, that received a high level of articulate individual residential objections and that was objected to by local Councillors and Mr Davis' fellow Planning Committee members, as well as by some of WCC's planning officers.</p> <p>This very contested and troubling application has had severe adverse affects on we residents whose voices were not heard and whose concerns were ridden roughshod over in favour of the developer, [REDACTED]</p>

		<p>As the Labour opposition in Westminster City Council you have made your concerns about the WCC Planning Committee/process and their relationship with developers well known and have stated your commitment to stand up for residents' interests against avarice and corruption.</p> <p>We have a substantial amount of substantive evidence that points to the misuse of the planning system and process and to abuse of power, position and relationship that we would like to contribute to the enquiry.</p> <p>I am happy to meet with you or your colleagues to discuss further or to provide documentation.</p> <p>kind regards </p>
12	 30.03.18 Email to Councillor	<p>Dear Paul</p> <p>Very many thanks once again for your recent advice on the creation of a community liaison group, in respect of the Carrington Street NCP car park redevelopment in Mayfair. I have received healthy interest from several of the key stakeholders, albeit the developer states that they are not quite ready to work with us. I am of course hoping that this reflects a genuine project delay, rather than an attempt by them to stall us. I'll keep you posted.</p> <p>In respect of the attached news in relation to Mr Davis (who apparently chaired the planning meeting at which the NCP proposal was considered, and the clear breaches of planning guidelines that it contained mysteriously ignored), do you think that the new council, after the elections (and regardless of its political composition) will have any latitude to re-examine some of the more questionable planning consents granted under Mr Davis' stewardship, or is this simply not legally practical?</p>

Best regards



Dear Paul

Thank you for your swift response.

I am not in a position to make specific allegations about malpractice in relation to this case. Indeed, a quick scan of the list of names who seem to have lavished such excessive entertainment upon Mr Davis did not immediately highlight any parties who I knew to be involved in this application (albeit I have not invested time in researching this thoroughly and could therefore very easily be mistaken).

We sent a comprehensive list of our concerns about the development to the planning officer (I attach this, but don't recommend that you plough through it) but, for me, the most striking element (albeit a modest one, in the context of what is a very large development) was perhaps as follows:

The proposed plans show a 728m² (GIA) restaurant adjacent to the southern side of Garrick House at lower ground floor. The entrance to the restaurant is at upper ground floor and is approximately 5m from Garrick House.

Saved UDP Policy TACE 10 states that restaurants of this size (over 500m²) will only be allowed in exceptional circumstances. Paragraph 8.84 of the explanatory text explains the purpose of the policy inter alia:

“Broadly speaking, the largest entertainment premises (those with over 500m² of gross floorspace) generate the largest attendances. They thus have the greatest potential to generate noise and disturbance in streets nearby, to affect adversely the living conditions of residents and local environmental quality, and to bring unacceptable changes to the character or function of areas.”

	<p>Paragraph 8.85 lists the following inter alia exceptional circumstances that may be taken into account when allowing restaurants of over 500m²:</p> <ul style="list-style-type: none"> • • A general reduction in adverse effects on residential amenity and local environmental quality when compared with the existing activity on the site; • • The retention of a use which has a long-standing association with the area; or makes a major contribution to its character of function; • • The retention of a valued Central London activity which is of notional or international importance; and • • Proposals which are shown to be necessary to improve health and safety standards, or access for disabled people. <p>Paragraph 8.85 lists the following inter alia exceptional circumstances that may be taken into account when allowing restaurants of over 500m²</p> <p>The applicant's Planning Statement, whilst acknowledging exceptional circumstances are required to justify the restaurant, fails to consider any of them. No attempt has been made to apply the policy whatsoever. Moreover, the statement states that the restaurant will be very well separated from the nearest residential property, when the plans clearly show that the restaurant at lower ground floor level adjoins one of the flats in GH. In addition, at ground floor level the entrance to the restaurant is extremely close to GH. As such, the comings and goings from the restaurant, particularly at closing times, will create unacceptable levels of noise and disturbance to the detriment of the amenity of GH residents.</p> <p>In summary, the size and location of the restaurant is very poorly conceived and should not be situated immediately adjacent to GH. In addition, no attempt whatsoever has been made by the applicant to apply the exceptional circumstances tests of Saved UDP Policy TACE 10 and therefore it is in direct conflict with development plan policy. The restaurant use alone should warrant a reason for refusing this planning application.</p> <p>I think we all recognise that the consideration of planning applications must involve some degree of compromise. However, this case seemed curious in the extreme, given the complete lack of any attempt to explain the material variance from the council's planning guidelines. The manner</p>
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		<p>in which it was seemingly green-lit was disturbing, and all the more so in light of the revelations that have since materialised in the press.</p> <p>Best regards</p> <p>████████</p>
13	<p>████████████████████ ████████████████████</p> <p>Email to Councillor</p> <p>██████████████████████████████ ██████████████████████████</p>	<p>Dear Paul,</p> <p>I have seen the news about Cllr Davis. I wonder whether there is a chance for him to be investigated about the issue of Marylebone Neighbourhood Forum. I hope you agreed that I found serious errors in the whole process as the application was presented by individuals but suddenly the recognition was given to a limited company. Do you have time to have a coffee?</p> <p>Kind regards,</p> <p>████████████████</p>
14	<p>████████████████████</p> <p>Email from resident</p>	<p>Dear ██████████</p> <p>I have considered your email and am asking my colleagues in the Highways Department to respond to you. Your complaint is about the Council's consultation and decision-making processes in relation to the above project. It does not fall within the Code of Conduct investigation, for which I am responsible.</p> <p>You will receive a substantive response within 10 working days. Many thanks</p>

Tasnim Shawkat
Director of Law

On 15/08/2018, 08:53, "[REDACTED]" > wrote:

Dear Tasnim,

I am writing to request that as part of the investigation into Robert Davis that the Baker Street two way project be investigated.

I am a resident of Dorset Square. I, together with the majority of residents in Marylebone, objected to this two way scheme. Our objections have largely been ignored. It appears that property developers with commercial interests in Baker Street have had undue influence over this scheme and their interests have taken precedence over the interests and opinions of residents.

The consultation exercise which was carried out appears to have been a sham.

The two way project appears to be designed to improve the commercial attractiveness of Baker Street and to increase commercial values on Baker Street to the detriment of neighbouring residential streets, in particular Gloucester Place, which will suffer increased traffic, pollution and noise under the scheme.

Central to the Baker Street two way scheme is that Baker street will only allow buses and taxis to travel North bound on Baker Street from 7am to 7pm from the junction with York Street. This means that all cars, lorries, vans, trucks etc will be routed onto Gloucester Place. This key part of the two way scheme was never raised as a question in the consultation or highlighted in any presentations. In effect it was hidden in the detailed plans for the scheme but was never consulted upon. This is surely procedurally unfair and invalidates the legitimacy of the consultation. Most of the residents I have spoken to who participated in the consultation were unaware of this central, fundamental part of the scheme at the time they completed any questionnaires about the two way scheme as this was never brought to their attention.

Under the two way scheme it is proposed that airport coaches be routed North bound on Gloucester Place. These coaches should clearly be routed on Baker Street but it appears that due to the influence of lobbying on behalf of commercial property owners on Baker Street these

		<p>coaches are to be routed on residential Gloucester Place. Totally unfair and wrong and this decision in particular warrants independent investigation.</p> <p>As part of the flawed plan to route airport coaches North bound on Gloucester Place (as opposed to Baker Street) a new coach stop has been sited at Dorset Square. We have recently discovered that this new stop is to service not only airport coaches but also National Express UK national services. Major disruption to the lives of residents living near this new coach stop is occurring on account of increased noise, pollution and litter in a residential area. Dorset Square is a Georgian garden square and is an important part of London's heritage and is the heart of the Dorset Square designated conservation area. It is wholly inappropriate to site a coach stop in this location and surely in breach of the rules relating to conservation areas.</p> <p>There are many more examples of where the rights and interests of Westminster residents have been ignored under the two way scheme to facilitate the objectives of those with commercial property interests in Baker Street and I and my fellow residents would be very grateful for the opportunity to provide more information as we feel our voices have not been listened to in this scheme so far.</p> <p>I should be grateful if you could ensure that this email is forwarded to the QC who is tasked with undertaking the independent enquiry into Robert Davis's conduct.</p> <p>I look forward to your reply.</p>
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