

FULL DECISION

CASE REF: APE 0352

HEARING DATE: 25, 26 October and 12, 13 December 2006

RE: REFERENCE IN RELATION TO A POSSIBLE
FAILURE TO FOLLOW THE CODE OF
CONDUCT

RESPONDENT: Councillor Woodrow

REPRESENTED BY: Robert McCracken QC

**RELEVANT AUTHORITY
CONCERNED:** London Borough of Camden

ESO (Ethical Standards Officer): Steven Kingston

REPRESENTED BY: Matthew Horton QC

Case Tribunal Members

Chairman: Simon Bird
Member: Richard Boyd
Member: Stan Szaroleta

1 Preliminary Documents

- 1.1 The Adjudication Panel for England received a reference from an Ethical Standards Officer ('ESO') in relation to an allegation that Councillor Woodrow had brought his office or authority into disrepute, contrary to paragraph 4 of London Borough of Camden Council's Code of Conduct by:
 - 1.1.1 Speaking to *The Architect's Journal* prior to a planning application for the Kings Cross Central site being considered by the Council.
 - 1.1.2 Failing personally to write to *The Architect's Journal* after the publication by the journal of the comments, which were attributed to him in relation to the proposed Kings Cross Central development.
 - 1.1.3 Telephoning a member of staff of English Heritage and improperly discussing the proposed Kings Cross Central development planning applications.

2 Oral Submissions (procedural)

- 2.1 At the hearing on 12 December 2006, the Tribunal having reached its findings of facts, Councillor Woodrow's counsel stated that Councillor Woodrow had become aware that Ms Alison Lowton the Council's monitoring officer who initiated the complaint to the ESO which led to the reference before the Tribunal, was a member of the Adjudication Panel for England (APE). He expressed concern that the APE had not informed his client of this fact and reserved his position.
- 2.2 The Tribunal had assumed that Councillor Woodrow was aware of this fact. The Chairman repeated what he had said on opening the Tribunal, namely that the Tribunal would reach its own independent view on whether there had been a breach of any provisions of the Code uninfluenced by views expressed by any other person. Each of the Tribunal members confirmed that they had not sat on any Case Tribunal with Ms Lowton and that any contact with her was limited to attendance at judicial training events organised by the President. There had been no contact between any of the Panel Members and Ms Lowton in relation to the reference.

3 Findings

The Case Tribunal has found the following undisputed facts:

Background

- 3.1 The Council adopted the Model Code of Conduct for Local Authorities on 1 May 2002.
- 3.2 Paragraph 1(1) of the Code states:
- A member must observe the authority's code of conduct whenever he-
- (a) conducts the business of the authority;
- (b) conducts the business of the office to which he has been elected or appointed; or
- (c) acts as a representative of the authority,
- and references to a member's official capacity shall be construed accordingly.
- 3.3 Paragraph 4 of the Code states:
- A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

3.4 Section 59 of the Local Government Act 2000 states:

(1) The functions of ethical standards officers are to investigate-

(a) cases referred to them by the Standards Board for England under section 58(2), and

(b) other cases in which any such officer considers that a member or co-opted member (or former member or co-opted member) of a relevant authority in England has failed, or may have failed, to comply with the authority's code of conduct and which have come to the attention of any such officer as a result of an investigation under paragraph (a).

3.5 Section D "Planning and Licensing Protocols" ("The Protocols") contained in Part 5 "Codes and Protocols" of the Council's Constitution as adopted on 27 June 2001 provides the following:

PART 2

ADVICE TO MEMBERS OF THE SUB-COMMITTEE

1. ADVICE ON MEMBERS' INTERESTS

Involvement in Planning Matters prior to Meetings of the Sub-Committee

Members of the Sub-Committee are advised to take steps to minimise their involvement in any planning matter prior to its consideration by the Sub-Committee so that they take all decisions at the meeting with an open mind.

3.6 Paragraph 5.13 of Section B "Guidance on the Camden Code of Conduct" contained in Part 5 "Codes and Protocols" of the Council's Constitution as adopted on 27 June 2001 also provides the following:

Planning and licensing decisions are quasi-judicial and members may only take decisions on the information formally before them. You must not appear to have made up your mind before receiving all that information. If you have fixed views about an underlying policy issue which might affect a number of applications, you should consider whether it is appropriate to be a member of the relevant Sub-Committee.

3.7 Planning Policy Guidance 15 ("PPG15") was issued jointly in September 1994 by the Department of Environment and Department of National Heritage. PPG15 provides a full statement of Government policies for the identification and protection of historic buildings, conservation areas, and other elements of the historic environment.

3.8 Paragraph 2.11 of PPG15 states:

The Secretary of State attaches particular importance to early consultation with the local planning authority on development proposals which would affect historic sites and structures, whether listed buildings, conservation areas, parks and gardens,

battlefields or the wider historic landscape. There is likely to be much more scope for refinement and revision of proposals if consultation takes place before intentions become firm and timescales inflexible. Local planning authorities should indicate their readiness to discuss proposals with developers before formal planning applications are submitted. They should expect developers to assess the likely impact of their proposals on the special interest of the site or structure in question, and to provide such written information or drawings as may be required to understand the significance of a site or structure before an application is determined. The principle of early consultation should extend to English Heritage and the national amenity societies on cases where a formal planning or listed building consent application would be notifiable to them by direction or under the GDO.

3.9 Paragraph 4.18 of PPG15 states in relation to conservation areas:

Local planning authorities will often need to ask for detailed plans and drawings of proposed new development, including elevations which show the new development in its setting, before considering a planning application. In addition to adopted local plan policies, it may be helpful to prepare design briefs for individually important 'opportunity' sites. Special regard should be had for such matters as scale, height, form, massing, respect for the traditional pattern of frontages, vertical or horizontal emphasis, and detailed design (eg. the scale and spacing of window openings, and the nature and quality of materials). General planning standards should be applied sensitively in the interests of harmonising the new development with its neighbours in the conservation area.

3.10 Councillor Woodrow was elected as a member of the Council on 3 May 1990. During May 1990, Councillor Woodrow was made a member of the Planning, Transport and Employment committee and the three area sub-committees of the Planning, Transport and Employment committee, which at the time were exercising most development control functions. He was first elected as the Chair of the Council's committee which was carrying out the development control function at that time in the early 1990s. The development control function of the Council is now carried out by the Council's General Purposes (Development Control) Sub-Committee ("the Sub-Committee"). Councillor Woodrow was at all material times Chairperson of the Sub-Committee.

3.11 On 4 May 2002 Councillor Woodrow undertook in writing to observe the Code.

Proposed Kings Cross Central development

3.12 In May 2004, Argent St George, London Continental Railways and Exel plc ("the Developers") submitted outline planning applications to the Council for the development of a 27-hectare site north of King's Cross and St Pancras stations, known as King's Cross Central.

- 3.13 The Developers submitted separate applications for a main site within the boundaries of the Council and a triangle site, which falls within both the boundaries of Camden Council and the London Borough of Islington Council. These outline planning applications were for planning permission from the Councils to establish the overall mix and amount of development and other principles, subject to the approval of further details by the Council. This site is one of the most significant developments in the country.
- 3.14 The application site is large and the development is complex, involving alterations to listed buildings, development impacting on the setting of listed buildings and the character and appearance of the conservation areas, as well as involving a large amount of new build. If approved, the outline planning applications were to be followed by further applications for individual building designs. The building work on site will take approximately 20 years.
- 3.15 The Developers, English Heritage and Planning Officers from the Council worked closely for approximately three and a half years prior to the outline planning applications being submitted to ensure a common understanding of the complex and unusual circumstances of the proposed development. The parties agreed that it would be appropriate for an outline application to be submitted to the Council to allow the Developers some flexibility to amend the plans to reflect the market at the time of building given that the Developers would not get possession of the site until 2007 and that the building work on site will take approximately 20 years. Mr Paddy Pugh, Head of Advice at English Heritage, stated that “the decision for Camden to accept an outline application was not taken lightly, exactly the opposite.”
- 3.16 The outline planning applications included development specifications for both the main site and the triangle site. They formed the main documents that define and describe many of the fixed rules and commitments for future developments. Development specifications contained:
- 3.16.1 the maximum and minimum amount of floor space and land uses including housing, office, shopping, leisure and others;
 - 3.16.2 the maximum and minimum amount of floor space for each of these land uses in different parts of the site;
 - 3.16.3 drawings, including plans, which fix many parts of the street layout, ranges of building height and position, public spaces, access points onto existing streets and show how people, buses and cars will move around the site; and
 - 3.16.4 illustrative drawings showing what the development could look like.
- 3.17 Within the main site, the Developers also submitted four listed building consent applications and four conservation area consent applications.
- 3.18 The applications were accompanied by a number of supporting documents prepared to help in making a decision, including an environmental statement and a planning statement.

- 3.19 The Developers submitted revised outline planning applications to the Council at the end of September 2005.
- 3.20 The outline planning applications were not determined until March 2006.

Councillor Woodrow's comments in *The Architect's Journal*

- 3.21 Mr Edward Dorrell, News Editor of *The Architect's Journal*, telephoned Councillor Woodrow between 25 August 2004 and 27 August 2004 to ask him about a particular story unrelated to the Kings Cross Central application, the exact subject of which is not recalled by Mr Dorrell. Mr Dorrell stated that at the end of the conversation about the initial story, he asked Councillor Woodrow about his thoughts on the Argent master plan for the Kings Cross Central site as it had at the time been recently submitted for planning approval. Mr Dorrell stated that he is "almost certain" that Councillor Woodrow proceeded to speak for several minutes on the topic without a great deal of prompting from him. Mr Dorrell stated that "the interview was more of a conversation than a formal Q&A interview" and that he believed "that Woodrow was happy, even pleased, to expand on his opinions on the proposed King's Cross scheme".
- 3.22 The 2 September 2004 issue of *The Architect's Journal* included an article on page 4 written by Mr Dorrell titled "King's Cross future under threat". The article stated:

"The backers of the massive King's Cross regeneration plan were left reeling this week after Brian Woodrow, the chairman of Camden's planning committee, launched a searing attack on the planning application.

Woodrow condemned the design of the project, drawn up by Allies and Morrison in collaboration with Demetri Porphyrios, and attacked the decision to submit the scheme as an outline application.

'We don't want to end up with something that resembles the Paddington Basin, with these massive 19-storey blocks overshadowing the Regent's Canal towpath,' he said.

'A lot of the bulk and style of the buildings proposed are not the sort of things we are interested in for this kind of site.'

If the scheme, which was drawn up for developer Argent St George, is given the green light it will include the mixed-use regeneration of a massive 27ha site north of King's Cross and St Pancras stations over a four-year period.

However, Woodrow insisted that he could only see problems ahead for the project because the application has been submitted in outline form alone.

'A large part of the southern area of this scheme falls within a conservation area and there is no way we should have to make a decision based on just an outline application,' he said.

‘What we don’t want is for it to come to us for a final decision in this current form because we would probably turn it down, and that would annoy the developer.

‘But what is true is that if they choose to stick to a scheme this size, then we will have to leave it for the secretary of state to decide,’ Woodrow added.

But the scheme has won the support of Camden planners, and Argent chief executive Roger Madelin maintained that the project is continuing apace.

‘Almost everyone we have spoken to in our extensive consultation period has been pleased with, and sympathetic to, the project that we have drawn up,’ he said.

‘It would just be nice to talk to Mr Woodrow face to face to explain to him what it is we are trying to achieve,’ Madelin added.”

- 3.23 When asked about the telephone conversation he had with Mr Dorrell and the comments subsequently attributed to him in *The Architect's Journal*, Councillor Woodrow stated:

“we were coming to the end of the consultation period and he was one of a number of journalists who were saying how's it going? ... and my recollection is that - again, I haven't recorded our conversation - I gave him the background information I'd given to other journalists; he's the only one who sexed it up into a ... you know, hyped it up into something which has hit the headlines. Which I should have been more careful; Ed Dorrell tends to do that in the Architect's Journal”.

- 3.24 Mr Dorrell stated the following to the ESO's investigator:

“I stand by the quotes in my story ... the AJ prides itself in its journalistic standards and I am happy to state categorically that I have never knowingly misquoted anybody”.

- 3.25 There is an issue as to whether or not Councillor Woodrow was misquoted in *The Architect's Journal* article. This required the Tribunal to hear oral evidence and to make findings of fact on what Councillor Woodrow said to the Mr Dorrell (see disputed facts section below).

- 3.26 Councillor Woodrow did not himself challenge *The Architect's Journal* over the accuracy of the comments attributed to him in the article.

- 3.27 After the article was published the Council's Monitoring Officer (Ms Lowton) wrote to Councillor Woodrow on 10 September 2004 stating:

“I am writing to you formally in my role as monitoring officer in relation to a report in the Architect's Journal of 2 September (Kings Cross Future Under Threat) in which you are extensively quoted in respect of the Kings Cross planning applications.

In that article (a copy of which I attach), you appear to have expressed views which, if accurately recorded, clearly indicate that you have a pre determined view of the applications. The overall impression given by the article is that you are opposed to the applications in their current form and indeed oppose the process of submitting an outline application.

As you know, if you have or can be seen to have a predetermined view, this would preclude you from participating in any planning decisions in respect of Kings Cross Central and related applications. All members of DC Sub-Committee are required to approach each decision with an open mind and a failure to do so might mean that the authority faces challenge by way of judicial review. The current guidance on the Code of Conduct states that:

Planning decisions are quasi-judicial and members may only take decisions on the information formally before them. Members must not appear to have made up their minds before they have received all that information.

My view is that the article in the Architect's Journal has fundamentally compromised your position in relation to the Kings Cross Central planning applications and you should take no further part in any of the decision making around them.

It also compromises the Council's position and we need to make clear to the Journal and other interested parties as necessary that the Council's position is not compromised and you will not be participating in decision making on the Kings Cross applications in the future. If, however, you have been misrepresented or misquoted I would be grateful if you could let me know immediately, together with details as to how, so a letter can be sent which clarifies the Council's position. It will be necessary in any event to write to the Journal to correct the statement that the applications have gained the support of Camden planners.

There have already been press inquiries about the Council's response to the article and we therefore need to write to the Journal as a matter of urgency. If I do not hear from you by the end of Tuesday morning (14) I will assume that you do not consider yourself to have been misrepresented or misquoted and that you accept the advice that you will not participate as a member of DC Sub-Committee in respect of the Kings Cross applications and we will advise the Journal accordingly."

- 3.28 Councillor Woodrow replied to Ms Lowton's letter by an email on 13 September 2004. Councillor Woodrow's email stated :

"I was amazed at the speed with which you have dealt with the matter of the AJ article, in stark contrast to the three-month delay in responding to my committee's inquiries about the suitability of an outline application for this major site at King's Cross. Had you responded promptly back in June the current situation would have never arisen.

The view I expressed in the AJ article indicated no pre-determined view of the applications, although it did suggest concern about the outline issue, on which it is your sluggish performance that should be the subject of a monitoring inquiry.

As I have expressed no pre-determined view, I see no reason to withdraw from the determination of the Kings Cross application and I do not intend to do so.

The AJ article also stated that Camden Council officers supported the scheme. On another page of the same issue, the AJ reported that the Victorian Society was opposed to the application for the conversion of St Pancras Station. This report was not true, and a correction letter was published in their issue of 9 September. All this suggests that the AJ is not a journal of record and that its reliability, accuracy and credibility must be questioned.

I do not object to signing a short letter to be sent to the AJ simply stating that neither I nor the officers have pre-determined views of the Kings Cross applications.”

- 3.29 The Leader of the Council, Councillor Jane Roberts, wrote a letter to *The Architect's Journal*, which was sent to the publication by email on 20 September 2004. The letter stated:

“I am writing in responses to the article Kings Cross Future Under Threat which appeared in the 2 September edition.

The Kings Cross development is of enormous importance, not only to Camden but to London as a whole, and we are very conscious of our responsibilities in this. We have worked for many years with our local communities and with a range of partners, including Network Rail, LUL, the GLA, the LDA, TfL and the Police to secure a future for Kings Cross which is genuinely beneficial, and is of a quality which London, Camden and Kings Cross communities deserve. The Council has a number of roles, including as planning development control authority, and all rely on maintaining trust and consistency. This article therefore caused me great concern.

The article gave the very strong impression that the Chair of Camden’s Development Control Sub-Committee (Councillor Woodrow) and Council officers had reached firm (allegedly opposing) views on the applications for the major redevelopment at Kings Cross.

The tone of the article and the direct quotes from Councillor Woodrow strongly suggested that he had a pre-determined view of the applications, in terms of both content and the fact that they included an outline application. Camden fiercely guards its reputation for fair and professional handling of planning matters and that is a very damaging suggestion to make. It may also open the Council to challenge on future decisions on the applications.

I have been assured by Councillor Woodrow that he has not reached a view on the applications and has been badly misrepresented by the article. I understand that he has not yet seen any assessments of the applications so is not in a position to know whether it is likely to be favourably considered or not. Nor in his view is this a matter which the Secretary of State should decide by way of an inquiry.

In the same article you stated that “the scheme has won the support of Camden planners”. This is untrue, as a simple question to any of the planning officers involved in consideration of the scheme would have told you. The position is that the applications have been received and accepted as valid applications. Planners are still assessing the thirteen applications and their supporting material before advising members.

This development is a hugely important one for Camden and for London and it is vital that the Council is seen to approach them in a fair and professional manner. I will absolutely ensure that we shall continue to do so. Please therefore ensure that this misrepresentation of our position is corrected by publishing this letter in full.”

3.30 Councillor Roberts's letter was printed in full in *The Architect's Journal* on 23 September 2004.

3.31 Councillor Woodrow did not write to *The Architect's Journal* himself about the article. At interview with the ESO's investigator, he stated:

“It needed a reply but I wasn't too agitated about it because I know the reputation of the Architect's Journal, and the fact that the applicant who is the only other person who could be upset about this said well, in general terms, he'd like to meet me, which he hasn't done actually. But, you know, I thought well if that's the response he knows the Architect's Journal as well as I do so it wasn't being taken that seriously. It's been jumped on now and, as I say, I can't - well I suppose I could reply on behalf of but I'd have to spend time discussing with officers how to make it quite certain, but they haven't given the impression in saying that it was something I did. I'm pretty certain there was a meeting with Jane Roberts, a draft was done - I agreed a draft - and at the very last minute it expanded enormously with a preface, which I wasn't happy about but I let it go. Under the council's protocols, anything to do with an application, and it was an application at that stage, it comes under my responsibilities and I authorised it, although it was much longer than I would have preferred. I just felt that the AJ, you could write just a simple straightforward rebuttal - this is what you said, this is untrue stop.”

3.32 Roger Madelin of Argent wrote to the Chief Executive of the Council on 12 November 2004. That letter contained the following:

“At officer level, we have the normal, professional relationship that one would expect on a major development and

regeneration project. We are very concerned, however, that the stance apparently being taken by the Chair of Camden's Development Control Committee, Councillor Brian Woodrow, could undermine our efforts and inhibit the fair and proper determination of our applications.

In September, the Architect's Journal reported Mr Woodrow as stating, first, that our applications could and should not be determined, because of their 'outline' status; and second, that the Council would "probably turn it [the scheme] down", leaving it "for the Secretary of State to decide."

The Leader of Camden, Jane Roberts, has recognised the damaging nature of the suggestions made in the article and taken the matter seriously. She has written to the Architects Journal (23rd September), stating that she has been assured by Mr Woodrow that he has been badly misrepresented; has not reached a view on the applications; and is not in a position to know whether they are likely to be favourably considered or not.

Of course, we are not in a position to know what Mr Woodrow did, or did not, say to the Architect's Journal, who published Jane Roberts' letter without editorial comment or retort.

This is not the first time, however, that reporters have approached Argent St George, seeking a comment on an alleged negative 'briefing' by Mr Woodrow. I, and other representatives of Argent St George, have been asked to respond to such comments attributed to Mr Woodrow on several occasions over the last 2-3 years.

In our view, it would be difficult to dismiss all of this as simply bad journalism.

In addition, we understand that Mr Woodrow has lobbied representatives of other organisations consulted about the applications, seeking to persuade them that the applications are defective/should be rejected.

More generally, the senior planning partner at our lawyers, Lovells, heard, at first hand, Mr Woodrow make disparaging comments about Cabe, and its former Chairman, Sir Stuart Lipton, at the committee meeting on 17th June 2004. At the same meeting, Mr Woodrow referred to King's Cross Central and commented that applications of this type "are licences for the developer to print money".

Such comments are clearly inappropriate.

We have been advised by our lawyers to register our concerns before any determination of our applications is made. However, our purpose is not to make waves within the Council or pursue a point against Mr Woodrow. Rather, we wish to stress the importance of putting in place a process of determination that is fair, impartial and professional. Of

course, we are in agreement on this - Jane Roberts has already acknowledged, in her letter to the Architects Journal, that this development is a hugely important one for Camden and for London, and it is vital that the Council is seen to approach it in a fair and professional manner. Jane Roberts commits herself to ensuring that this takes place.”

- 3.33 Councillor Woodrow’s solicitor, Mr Richard Buxton, wrote to Ms Lowton by way of an undated letter received by the Council on 3 February 2005. In that letter, Mr Buxton stated that he had seen the relevant papers relating to the matter and provided a response to the issues.

- 3.34 Ms Lowton wrote to Councillor Woodrow by way of letter dated 3 February 2005. In that letter, Ms Lowton stated:

“The article in the AJ itself would have been sufficient for you to be excluded from consideration of the Kings Cross applications as I said in my letter to you of 10 September 2004. In response, you indicated that the article did not indicate a predetermined view and you did not intend to withdraw from the determination of the Kings Cross applications.

Nonetheless, the perception remained that you may have had such a view. I know that the Leader wrote to the AJ indicating that you may have been misrepresented. However, the issue is not so much whether you were misrepresented in the article but whether this representation had been allowed to remain in the public arena and whether you have done anything since then to dispel that misrepresentation. In the absence of anything from you, there is still the risk that you would be seen not to be impartial.

As it happens, the Leader’s letter failed to dispel the perception of bias from the developers, as evidenced from their letter to the Chief Executive in November. I understand you have seen a copy of this letter but I am attaching a further copy for completeness.

This failure to dispel the perception has in part occurred because since the date of the AJ article, you have done nothing on your own account to counter the views attributed to you in the AJ. In fact, many of the issues set out above have occurred since the date of that article.

The letter from Argent St George confirms that the Leader’s letter to the AJ did not dispel their concern and raises other examples of comments made by you which give them concern that you may not be impartial. Obviously, I would not necessarily take at face value concerns raised by an applicant for planning permission although I would need to take seriously any risk to the Council that such concerns may pose.

In this instance there is clearly an enormous risk to the Council if the developers lose confidence in the impartiality of the process. Not only would the Council run the risk of legal

challenge and the delay and cost that would entail but also may well lose many of the significant benefits to be obtained through the planning process if the matter was dealt with by the Secretary of State through appeal or call-in. There is also the reputational risk to the Council if it is perceived not to be handling the applications with the utmost professionalism by both officers and members, and which spreads beyond King's Cross to other planning applications."

3.35 Mr Buxton wrote again to Ms Lowton on 5 February 2005 clarifying the date of his letter received by Ms Lowton on 3 February 2005 and asking for a full response to that letter before any further steps are taken.

3.36 Ms Lowton replied to Mr Buxton's letters by way of a letter dated 7 February 2005 in which she stated:

"What I have done is to advise Councillor Woodrow that, in relation to the Kings Cross planning applications, his position is untenable. I listed a number of issues (including but not restricted to, the article in the Architect's Journal), which raise concerns about your client's ability to approach consideration of the applications with an open mind. These concerns were not solely as a result of the letter from the developers, although there is clearly an enormous risk to the Council if the developers lose confidence in the ability of the Council to handle the applications with the utmost professionalism. The Council does therefore have to take their concerns very seriously.

As I am sure you are aware, the issue is not whether your client has in fact got an open mind but whether he will be perceived to have an open mind. There is no doubt that Councillor Woodrow is a very experienced member of the Development Control Sub-Committee. That is not in question. What is however in question is whether he has or may be perceived to have a predetermined view on the Kings Cross applications.

You say that the only issue is whether the Council can provide the developers with an assurance that their application would be treated in the "fairest possible" way. Whilst I do not believe that this is the only issue, I cannot see how, on the basis of the matters set out in brief in my letter to him, the Council can provide the reassurance which you say is all the developers are seeking."

3.37 Councillor Woodrow read the following statement to the Sub-Committee on 10 February 2005:

"I have no pre-determined views on King's Cross applications. I have expressed legitimate concerns, along with many others, and the developers are currently amending their plans. When their revised plans come before my committee they will be considered impartially and professionally."

- 3.38 Ms Lowton wrote to the Standards Board For England by way of letter dated 22 September 2005 in which she alleged that speaking to the press prior to the planning application being considered by the Sub-Committee amounted to Councillor Woodrow giving the perception of pre-judging the issue of whether the Council should approve the planning application.

Telephone calls to English Heritage – Kings Cross Central development

English Heritage

- 3.39 The Historic Buildings and Monuments Commission for England, known as English Heritage, is the Government's statutory advisor on the historic environment. English Heritage is a Non-departmental Public Body sponsored by the Department for Culture, Media and Sport.
- 3.40 English Heritage works in partnership with central government departments, local authorities, voluntary bodies and the private sector to conserve and enhance the historic environment, broaden public access to the heritage and increase people's understanding of the past.
- 3.41 English Heritage advises local planning authorities and, where necessary, the Office of the Deputy Prime Minister, on significant alterations to selected listed buildings, conservation areas, scheduled monuments and registered parks and gardens or the demolition of any listed building.
- 3.42 Conservation areas are localities, rather than individual buildings, which are considered worthy of preserving because of their architectural or historic interest. The individual buildings within them may not be worthy of listing in their own right, but as a group they give a definite character or historical significance to that area. Often they are built using local materials and in a distinctive local style.
- 3.43 Mr Paddy Pugh is Head of Advice for the London Region of English Heritage. He manages four area teams that look after all statutory advice and grant giving powers of English Heritage for the Greater London Area. He has worked at English Heritage for 17 years, and previous to that worked in the London Borough of Camden's planning department.

Role of English Heritage regarding Kings Cross Central

- 3.44 English Heritage was a statutory consultee on the Kings Cross Central planning application.
- 3.45 English Heritage had two functions relating to the planning application. Firstly, the Council was not legally empowered to make decisions on the planning applications relating to changes to listed buildings without authorisation from English Heritage. Secondly, the Council were obliged to take due account of English Heritage's advice on how the proposed development impacted on either conservation areas or other listed buildings; although the Council did not have to follow this advice.

- 3.46 There are six listed buildings within the Kings Cross Central development area. Those buildings are known as The Granary, Eastern Coal Drops, Gasholder No. 8, German Gymnasium, Northern Stanley Building and Southern Stanley Building. The Council were only able to grant listed building consent to significantly alter any of these buildings with the written authority of English Heritage. Any application to demolish a listed building, in this case, the Northern Stanley Building and Gasholder No. 8, could only be granted with the authority of the Secretary of State. In authorising consent, the Secretary of State would be advised by English Heritage.
- 3.47 Further, as Kings Cross Station and St Pancras Station are both listed buildings which are on the boundary of the Kings Cross Central development area, before the Council could grant planning permission, it had to take account of English Heritage's advice on whether the development would affect the setting of those buildings.
- 3.48 Mr Pugh stated that English Heritage's role in the planning process relating to Kings Cross Central was "absolutely crucial" as "there are some decisions on all of this, which Camden are not legally empowered to take without our [English Heritage] authorisation." Mr Pugh stated, "I think it's fair say that we're absolutely a key party in all of this and we're a key decision maker in it as well."

Telephone conversations between Councillor Woodrow and Mr Pugh

- 3.49 Councillor Woodrow and Mr Pugh have known each other on a professional basis for more than 20 years from Mr Pugh's previous employment at the Council and then his working for English Heritage.
- 3.50 During the 14 years that Councillor Woodrow has been a member of the Council, he has spoken to Mr Pugh on many occasions to discuss matters of common interest between the Sub-Committee and English Heritage. Councillor Woodrow is the only councillor that telephones Mr Pugh on what Mr Pugh described as a "fairly regular basis". Mr Pugh stated that most members of the Council deal with the Council's officers rather than directly contacting English Heritage. Mr Pugh stated that English Heritage tries to be an open organisation and as such receives telephone calls from a wide variety of people to give their views on particular applications.
- 3.51 Councillor Woodrow telephoned Mr Pugh on two occasions during the period from June 2004 to August 2004 to discuss the proposed Kings Cross Central development. When asked about these telephone conversations Councillor Woodrow stated the following:
- "We have discussed various issues about Kings Cross, the process, the procedure, background on all outline applications and that sort of thing, for mutual advantage".
- 3.52 There is a dispute of fact as to what was said by Councillor Woodrow in these conversations and the Councillor's purpose in telephoning Mr Pugh. This required the Tribunal to hear oral evidence in order to resolve the dispute (see disputed facts section below).
- 3.53 On 27 July 2004, Councillor Woodrow sent an email to Ms Lowton and Aidan Brookes and copied it to Ms Gibb, Mr Bishop, Anne Doherty,

Jake Sumner, Dawn Somper and Flick Rea which included the following:

“I have just read the First Secretary of State’s decision letter dated 21 July dismissing an appeal against the non-determination of an outline planning application for redevelopment of railway lands adjoining East Croydon Station, the “Croydon Gateway” landmark regeneration site.

It appears that the main reasons for refusal relating to the outline application are particularly relevant for us at King’s Cross.”

- 3.54 On 28 July 2004, Councillor Woodrow forwarded his email of 27 July 2004 to Mr Pugh. In that email, Councillor Woodrow stated “Interesting?” and signed the email as “Councillor Brian Woodrow – Holborn + Covent Garden Ward – Chair, Development Control”.

4 Disputed Facts

Summary of Oral Evidence before the Tribunal on the Disputed Facts.

Mr Patrick Pugh

- 4.1 Mr Pugh is the Head of Advice and Grants for English Heritage a post he has held for one year. Prior to that he had been English Heritage’s Assistant Director for the London Region for about five years and managed a team which included control of responses on planning applications including in the London Borough of Camden. He had known Councillor Woodrow for 22-23 years and prior to joining English Heritage he had been a planning officer with Camden and first met Councillor Woodrow before he had become a Councillor.
- 4.2 English Heritage has the power to direct the Council on applications to alter and extend listed buildings. If a listed building is proposed to be demolished that power rests with the Secretary of State on the advice of English Heritage. The Kings Cross development involved both. English Heritage is a statutory consultee on planning applications and the Council are required to take their views into account.
- 4.3 Councillor Woodrow had initiated the telephone conversations between them. He could not recall the precise dates although his recollection was that they were in the summer of 2004, probably July and August but he could not be precise. As to the purpose of the calls, he would say that Councillor Woodrow was a friend of conservation and has a great interest in such matters. His recollection was that he had two conversations. One about the Croydon Gateway decision and one about Kings Cross. His view on the purpose of the conversations was that it was on the margin/on the line; both to chat around the issues and to seek support for the view that this was too large a scheme. His impression was that Councillor Woodrow thought that the outline form of the application and the scale of the office floorspace were inappropriate.
- 4.4 One of the conversations touched upon the demolition of the Great Northern Hotel. He was certain of that. It was then a current issue as there were TfL proposals to demolish it as part of the creation of a

southern access to the development. This was highly contentious and had to be taken to the Secretary of State for an informal view. The Argent proposal did involve radical ground floor alterations to the building but not its demolition.

- 4.5 He stood by his evidence in interview that Councillor Woodrow was unhappy with the development proposals and hoped that English Heritage would say the right thing i.e. raise objections to the scheme. As to the suggestion that the purpose of the calls was one of mutual benefit, although it was no doubt beneficial for Councillor Woodrow to see how English Heritage's view was emerging, it was no benefit to English Heritage to know what Councillor Woodrow's view was.
- 4.6 The Kings Cross site involved development in two conservation areas. The advice in PPG15 was, in essence that outline planning applications were not appropriate in such areas. That is the normal starting point. Councillor Woodrow raised this with him and Mr Pugh's view was that he was seeking support for the view that the Council should not be accepting an outline application. English Heritage however had formed the view that the circumstances here were wholly exceptional and had made a carefully considered decision that an enhanced outline application was acceptable. This was a view formed over several years after much soul searching. There had been discussions involving English Heritage since 2001. The Councillor's view was a reasonable view to hold.
- 4.7 At the time of the telephone conversations with Councillor Woodrow English Heritage had not sent their formal consultation response to the Council and he would have expected Councillor Woodrow to know that.
- 4.8 Mr Pugh had no difficulty with a Councillor of any authority ringing him up although as a courtesy the relevant Director of Service should know because there is an inevitable sensitivity. Directors consider that it is they who should be talking to the members of the planning committee and not others. He would not collude with anything he regarded as improper but he had not read the Camden's Code of Conduct.
- 4.9 He considered that Councillor Woodrow was quietly lobbying i.e. quietly seeking support from English Heritage for his view. It was not unusual for people to seek to do that although to his knowledge no other chair of a development control committee of a London planning authority had done so. Councillor Woodrow had never tried to pressurise him. The essence of what he was saying was that Councillor Woodrow told him his views. Mr Pugh had told Councillor Woodrow his views. Councillor Woodrow would have been pleased if Mr Pugh had agreed with his views but he did not pressurise him.

Councillor Woodrow

- 4.10 Councillor Woodrow had worked in an architectural practice from 1962 to the present day mainly on design and project management although he was not a qualified architect. In 1965 he moved to Camden and became closely involved in community planning, conservation, housing and local architectural issues. In 1968 he assisted the Council in establishing the Bloomsbury Conservation Area

Advisory Committee. He was its first Chair and remained so for 21 years.

- 4.11 In the 1980s the Council had a troubled reputation in respect of its planning function and a concern that permissions were being distorted by excessive planning gain. Councillor Woodrow given his experience and record for integrity was persuaded by a number of senior Camden councillors to stand for election to the Council with a view to improving the Council's planning performance and public perception.
- 4.12 He was elected in 1990 to represent the ward in which he lives and immediately resigned from membership of all organisations with interests in Camden. He was appointed to and elected as Chair of the then Planning, Transport, and Employment Committee. This Committee was responsible for the then current King's Cross transport and development proposals. He became Chair of the new Development Control Sub-Committee between May 1993 and May 1995 and again from May 1998 to November 2005. He was re-elected to the Council in May 2006 with an increased share of the vote and ceased to be a member of the newly established Development Control Committee. Unsurprisingly, over this period he had come to hold strong views over local government and how it functions.
- 4.13 During his time on the Council he had primarily been involved with planning and development control and was regarded as among the most experienced and skilled. He is similarly respected by journalists, local amenity and resident's groups as well as developers and their agents.
- 4.14 Over 15 years he has led in improving Camden's planning procedures, performance and public perception as well as changing the ethical culture of their quasi-judicial regulatory responsibilities. At no time has his integrity or impartiality been seriously questioned until now.
- 4.15 In relation to Committee procedures, reports are published eight days before the meetings which are held at three weekly intervals. Six days before each meeting the Chair discusses the agenda with officers, legal advisers and the committee clerk in a call-over meeting. At these meetings the Member's role is to advise officers of the likely response of the Committee to the reports and to indicate where further information or clarification is likely to be required. These call-over meetings are regarded as essential for the smooth running of the planning service by officers and members. It has never been suggested that participation in such meetings compromised members.
- 4.16 Members have regular training on the Council's protocols including the Planning and Licensing Protocols. The Council also has Procedures and Protocols for dealing with media relations, a copy of which he provided, that requires the committee chair to have sole responsibility for authorising and responding to media enquiries about the Committee's work. He recognised that the media protocols recognised the importance likely to be attached to anything said by the Chair of the Sub-Committee.
- 4.17 The Council has adopted the Cabinet system. Prior to this, the development Control Sub-Committee had had responsibility for agreeing development briefs. Now it is an executive function and he

considers that is a problem because the views of the Sub-Committee can vary from those of the Executive. The consultation on the Kings Cross Brief was exemplary. It was the outcome where it fell down. Councillor Woodrow's feeling of exclusion or excommunication stemmed from the finalisation of the Brief.

- 4.18 In terms of the allegations against him Councillor Woodrow, relied upon the response contained in his solicitor's letter of 11 November 2005 which deals with all of the disputed facts.
- 4.19 It had always been his understanding that it was his responsibility as chair of the Development Control Sub-Committee to ensure that all relevant information was formally put before members.
- 4.20 On 17 June 2004 the committee received its first report on the Argent applications. It did not deal with the substance of the applications. It was confined to the way in which officers and the applicant intended to progress the applications within a definite timetable. At the call-over meeting officers had been requested to supplement the report with advice regarding how outline applications for this scheme were to be considered. However, that advice was not made available and the Sub-Committee agreed on 17 June that its chair, vice chair and minority group lead members should meet informally with officers to pursue the matter. It became clear within a matter of days that this would not prove possible because of the holidays. He did not consider that his concerns which were matters of planning judgement were grappled with by officers. There was a breakdown of communication. A Director at Camden does not deal with ordinary members. Mr Bishop the Director of Environment had only been to two committee meetings in 5 years. He considered that the Committee and Members were treated quite disgracefully by the Executive and officers. At the relevant time all normal relations with Ms Lowton had broken down.
- 4.21 He felt that the level of trust was very low. It appeared that there was a juggernaut going in a particular direction and he was very concerned as to how they could bring it back onto a course which they could defend.
- 4.22 He was careful to minimise contact with officers or other colleagues who deal with actual applications. In 2004 Mr Pugh was Assistant Regional Director with English Heritage and he had not appreciated that he was personally involved in English Heritage's comments on the application. Mr Pugh had not considered their conversations inappropriate or amounted to Councillor Woodrow trying to pressure him.
- 4.23 He believed that Mr Pugh was mistaken as to his memory of the conversations. The conversations were probably on 23 June 2004 and 25 August 2004. His conversation in June followed the Committee decision on 17 June 2004 and related to his enquiries regarding how outline applications were to be considered. It was to do with practicalities. Mr Pugh was on his hit list of people to talk to. He did not tell officers of his approach to Mr Pugh. Councillor Woodrow had been involved in the previous proposal in 1990 when the Council had received an horrendous application when they had been told that the Council had committed to a quantum of floorspace which required the erection of high storey towers. The call on or about 25 August 2004

related to whether the Croydon Gateway decision was an indication of how the Secretary of State viewed the matter. On 3 September 2004 he eventually received an undated legal advice from Ms Lowton which still failed to address the issue. His nightmare was to grant outline permission without satisfactory elevations or visual evidence which would lead to problems over the next 5 or more years with the reserved matters applications.

- 4.24 Mr Pugh was trying to be very fair in his evidence. Had he been seriously lobbying he would have started earlier and it would have been wrong for him to do so. It was nonsense to suggest that he was trying to influence the formal position of English Heritage.
- 4.25 Mr Pugh's open enthusiasm for wanting the King's Cross scheme to go ahead developed over three years of private meetings with the landowners, the developers and council planning officers, expresses his "pre-determined view". His own view, formed by considering the information formally presented to the committee on 8 and 9 March 2006 is in the public record.
- 4.26 Councillor Woodrow did not consider that there was anything wrong about the Chair of the Development Control Sub-Committee speaking to journalists. Planning is an esoteric subject which journalists do not understand quickly. He finds it helpful in order to get informed press comment to provide background information and to educate. The radio interview with CC Radio in June 2004, a transcript of which he produced was an example of this kind of briefing.
- 4.27 When Mr Dorrell had approached him for an interview it was not about Kings Cross but about another scheme but it had switched over to Kings Cross. At the time it was clear to him that there was massive opposition to the application itself. He was asked by many journalists about the proposal and saw his role as giving background information as to the problems. He had been aware of the public concerns and his concern was as to how they would be handled in the context of an outline application. None of the matters discussed were not material planning considerations. Mr Dorrell had not sent him any drafts of the proposed article or notes of what he had said. By August officers had begun their consideration of the applications but members had not.
- 4.28 Councillor Roberts had written to the Architect's Journal on behalf of both himself and the officers. He had given the Leader a full explanation of the interview in a meeting with her. He could not have responded to the article's assertion that officers were already in support of the applications and Councillor Roberts having done so, there was no need for him to write individually. With hindsight he could have responded but the Architect's journal is not a journal of record and has a habit of sexing up i.e. a degree of divergence from careful reporting. The story had not been taken up by anyone else.
- 4.29 Councillor Woodrow had made up his mind as to an awareness of the issues surrounding the applications. He had not made up his mind on the outcome. The issues were over the nature of the application and the scale of the development proposed. Some of the issues which concerned him have come to fruition. EarthRights solicitors have sent the Council a pre-action protocol letter in respect of the recent resolution to grant.

The Tribunal's Findings on the Disputed Facts and Other Matters Relevant to its Determination

- 4.30 The principal disputes of fact for the Tribunal to resolve relate to three matters. Firstly the substance of what Councillor Woodrow said to Mr Pugh in the telephone conversations between them and the substance of what he said to Mr Dorrell of the Architect's journal. Secondly, the purpose of Councillor Woodrow's telephone calls to Mr Pugh. Thirdly, Councillor Woodrow's mindset at the relevant times in relation to the development proposal as contained in the Argent planning applications.
- 4.31 The Tribunal was also invited on behalf of Councillor Woodrow to make a number of other findings of fact. Where those bear on the principal disputes of fact and the Tribunal's resolution of them or where they are material to the second stage of the Tribunal's procedures the Tribunal have made findings of fact in relation to them. Where they relate to matters which are undisputed or are not material the Tribunal have not have done so.
- 4.32 In relation to the disputes of fact the onus is on the ESO to discharge the burden of proof on the balance of probabilities. The Tribunal accept the submission made on behalf of Councillor Woodrow that an alleged breach of paragraph 4 of the Code is a serious allegation, that the likelihood of an experienced Councillor of good reputation (see the Tribunal's findings under the heading of Other Matters) offending paragraph 4 of the Code is low. This means that the evidence required to find facts which would support a finding of such a breach needs to be strong.

The Telephone Conversations with Mr Pugh

- 4.33 The Tribunal found Mr Pugh to be an entirely reliable and honest witness. His evidence was considered and scrupulously fair and the Tribunal accepts it as being accurate in all respects as to the substance of Councillor Woodrow's telephone calls to him and as to his understanding of the purpose of Councillor Woodrow's telephone calls to him. In so far as Councillor Woodrow's recollection of those telephone calls differs from that of Mr Pugh, the Tribunal prefers the evidence of Mr Pugh.
- 4.34 Mr Pugh's evidence is more consistent with Councillor Woodrow's contemporary actions and statements than Councillor Woodrow's recollection.
- 4.35 The Tribunal notes that Councillor Woodrow clearly had concerns about the Council's Planning Brief for the Kings Cross site and in particular the appropriateness of the Council accepting outline applications for the scheme; an approach which was accepted as part of the advice within the Brief. This is clear from the transcripts of the Executive Meetings of 3 September 2003, 17 December 2003 and 14 January 2004. The Executive nonetheless resolved to adopt the Brief.
- 4.36 The Argent application was made in May 2004 and, on 17 June 2004, a meeting of the Development Control Sub-Committee received a report dealing not with the substance of the applications but with the proposed processes for dealing with them. It appears from the

contemporary documentation that the issue of the appropriateness of outline applications was raised at the call-over meeting held on 11 June 2004 prior to the 17 June 2004 and further discussed at the Sub-Committee meeting itself on 17 June 2004. There are no minutes of that meeting before the Tribunal but the email of 4 August 2004 from Ms Lowton to Councillor Woodrow states that *"...members asked officers to arrange an informal meeting with the Chair and Vice chair and the lead opposition members to try to tease out some of the issues around the Kings Cross process (including the form of the applications and the range and type of information which is included in them)".* Councillor Woodrow's email of 16 June 2004 as Chair of the Sub-Committee to its members states *"The last item in that proposed group relates to the proposed processes for dealing with Outline Planning plus listed building and conservation area applications for the Railway Lands that have now been submitted. (Due last December remember?) This highly controversial and muddled. There is a deputation request on this. I will be forwarding a note on this overnight."*

- 4.37 The note did not materialise because Councillor Woodrow says he was expecting to receive advice from officers on this issue which he claimed had been requested from them at the call over meeting on 11 June 2004. According to Ms Lowton's email of 4 August 2004 officers did not appreciate that such advice had been requested. There is no written note of the meeting before the Tribunal and the Tribunal is not able on the evidence before it to conclude that officers were aware that a specific request had been made. Officers were, however, aware that Councillor Woodrow believed such a request had been made as from 4 August 2004 and he repeated that request on number of occasions thereafter.

- 4.38 The Tribunal is satisfied from all the evidence it has heard, and in particular from Councillor Woodrow as to the problems experienced by the Council in relation to the 1990 proposal for the Kings Cross development, that he was the driving force behind the concerns over the outline nature of the planning applications.

- 4.39 This conclusion is reinforced by the content of the emails from Councillor Woodrow to Alison Lowton in July and August 2006. In the email of 26 July 2006 he stated *"I have been concerned for some time now about the advisability of considering an outline planning application for Kings Cross, a landmark site and one which contains numerous listed buildings and conservation areas".* On 27 July 2004 he referred to the Croydon Gateway decision and stated that *"It appears that the main reasons for refusal relating to the outline application are particularly relevant for us at Kings Cross".* In the email of 9 August 2004 he went further and stated *"It should not take much time to establish that these are outline applications and therefore on the face of it unsuitable for further consideration unless withdrawn and re-submitted as fully detailed applications. Clearly this is the only safe course of action given the Secretary of State's recent decision in Croydon. It seems unnecessary and wasteful of time and resources to "fully assess" unsuitable applications".*

- 4.40 In the Tribunal's view this indicated a strong pre-disposition against any proposal advanced by way of an outline application for the site.

- 4.41 Contemporary documentation also supports the conclusion that, notwithstanding that Councillor Woodrow had not seen the Argent applications (and did not do so until March 2006) he also had personal concerns over its substance and not just their form. In June 2004 he gave an interview and background briefing to CC Radio at the Camden Green Fair in which he said of the proposed scale of the employment development that *"personally it does not make sense to me because it's hardly sustainable to get another 20,000 you know commuters coming into central London even if, you know, Cross Rail, even if Thames Link and all the other things are there, its not very healthy and that's basically used for other purposes"*. He also addressed other issues but in a more neutral way, saying of the adopted Brief that *"It is lacking on the restraints whether it's on the restraints of the capacity of the, you know, the railway system or the transport system to cope, or with the impact on the setting. Because this is a very important site with Grade One listed buildings, its got conservation area status including the canal which is very important and the whole site has been considered to be marginal for, you know, World Heritage Status because of its, you know history. Those are factors which don't appear to have been taken on board sufficiently strongly in the planning brief yet, so that is the area which I think the local groups and local organisations and outside professionals and outside people will be looking at very closely and I'm sure that we will be looking at as well."*
- 4.42 This is the context within which the two telephone calls from Councillor Woodrow to Mr Pugh sit and in the Tribunal's view it strongly supports Mr Pugh's evidence. In the Tribunal's view, Councillor Woodrow's contention that in the telephone conversations he was expressing third party concerns over the Argent application rather than reflecting any views of his own is not credible. Councillor Woodrow clearly had a strong disposition against the form of the application and concerns about its substance. The nature of the relationship between Councillor Woodrow and Mr Pugh over time was that Councillor Woodrow would contact him when he had personal concerns over an issue of mutual interest for example, the Great Court Scheme at the British Museum. In relation to the Kings Cross scheme, he had failed to persuade the Executive to his way of thinking on the Design Brief, officers were clearly intent on proceeding in accordance with the Brief in considering the Argent applications and as Councillor Woodrow said in his evidence in chief he felt that *"there was a juggernaut going in a particular direction and I was very concerned as to how I could bring it back onto a course which we could defend"*. He felt, perhaps for the first time on a major scheme within Camden, excommunicated. In these circumstances, Mr Pugh was on what Councillor Woodrow called his *"hit list"* of people to talk to. Within this context, in the Tribunal's view the suggestion that Councillor Woodrow would telephone Mr Pugh simply to seek advice or to express the concerns of others is implausible. The only credible purpose of the calls was to expound his views in the hope that it might serve to influence the view of Mr Pugh to Councillor Woodrow's way of thinking. The Tribunal also does not accept that Councillor Woodrow did not understand that Mr Pugh was involved in English Heritage's consideration of the Argent applications. The Tribunal considers it highly unlikely, given the longstanding nature of their relationship that Councillor Woodrow was unaware of Mr Pugh's

general responsibilities within English Heritage, if not his precise job title.

- 4.43 Looking at the totality of Mr Pugh's evidence, his assessment of the purpose of the calls, that they fell on the margin of a statement of Councillor Woodrow's views and of seeking to influence Mr Pugh, is an apt description of what was a dual purpose. The Tribunal does not consider that the fact that Mr Pugh did not conclude that there was any impropriety over the calls reduces the weight to be given to his evidence as to what was said by Councillor Woodrow. The issues raised by Councillor Woodrow were planning issues germane to Mr Pugh's expertise and involving a scheme he was familiar with. The propriety of a Councillor who is a member of a Development Control Sub-Committee discussing such matters with him would not, in the Tribunal's view, have been a consideration uppermost in his mind. It certainly involved no impropriety on his part.
- 4.44 In addition, the concerns over the scale of the office floorspace within the Argent scheme expressed to Mr Pugh, which reflected Councillor Woodrow's comments made in the CC Radio interview, in the Tribunal's view went beyond concerns which could be said to flow simply from the form of the applications and the ability to assess the impact on the heritage interests on the site and went to the substance of the applications themselves.
- 4.45 The Tribunal finds the following facts on the balance of probabilities:
- 4.45.1 That the appropriateness of an outline application for the Kings Cross development was raised at the call over meeting of 11 June 2004 and at the Development Control Sub-Committee Meeting on 17 June 2004.
 - 4.45.2 Councillor Woodrow requested advice from the Council's officers on the appropriateness of an outline application for the scheme on a number of occasions.
 - 4.45.3 The Argent applications were not reported to the 17 June 2004 meeting but the proposed procedures for their consideration were.
 - 4.45.4 That Councillor Woodrow telephoned Mr Pugh on 23 June 2004 and 25 August 2004 in connection with the Argent applications which were not reported to any Committee until March 2006.
 - 4.45.5 That in both calls Councillor Woodrow expressed his personal concern that the development was far too big with too much office accommodation making it clear to Mr Pugh that he was unhappy with the proposals.
 - 4.45.6 That Councillor Woodrow expressed the view to Mr Pugh that outline applications were unacceptable for the development.
 - 4.45.7 Councillor Woodrow knew that English Heritage had been consulted on the preparation of the Brief and had

exceptionally endorsed the use of outline applications, notwithstanding the heritage interests involved.

- 4.45.8 That Councillor Woodrow raised the Croydon Gateway decision with Mr Pugh and stated that it demonstrated that outline applications were inappropriate in respect of such development proposals.
- 4.45.9 That the demolition of the Great Northern Hotel was a matter discussed between Councillor Woodrow and Mr Pugh. Significant alterations to the Hotel were included as part of the Argent application but demolition was not. However, Transport for London was advocating in consultation responses on the applications that the Hotel should be demolished to make way for a tramway link.
- 4.45.10 That the purpose of Councillor Woodrow's telephone calls was to quietly lobby English Heritage, who he knew were statutory consultees and had yet to respond formally on the applications, in the hope that once they understood his views on both process and substance they would be able to support them.
- 4.45.11 That Councillor Woodrow did not seek to apply pressure on Mr Pugh to support his views.
- 4.45.12 That Councillor Woodrow had a strong disposition against the Argent applications but could ultimately have been persuadable to an alternative view.

The Architect's Journal Article

- 4.46 Mr Dorrell, the journalist who wrote the article which appeared in the Architect's Journal on 2 September 2004 declined to appear as a witness before the Tribunal. Whilst Councillor Woodrow accepts that the topics which the article records his comments on were those discussed with Mr Dorrell, he contends that the article itself sexed up what he said in order to create a story.
- 4.47 Whilst Mr Dorrell stated to the ESO during the course of his interview that he was comfortable with, and stood by, the quotations from Councillor Woodrow and had never knowingly misquoted anyone, the notes which he made at the time of the interview have been destroyed. He also accepted that "*some of my recollections are a little hazy*". Councillor Woodrow was given no opportunity to agree their accuracy before publication. The Tribunal also notes the evidence of letters correcting articles which have appeared over time in the Architect's Journal.
- 4.48 The Tribunal has not had the benefit of hearing evidence from Mr Dorrell or having that evidence tested. In all of the circumstances, although the Tribunal is not prepared to draw any inferences as to why Mr Dorrell did not wish to attend the Tribunal to give evidence, it does consider that it should only give weight to the content of the article where it is consistent with, and supported by, other contemporaneous evidence which it accepts. It is only in those

circumstances in which the Tribunal would conclude that it is more likely than not to reflect what Councillor Woodrow said to Mr Dorrell.

- 4.49 The reference in the article to Councillor Woodrow condemning “*the decision to submit the scheme as an outline planning application*”, is, in the Tribunal’s view, more likely than not to be an accurate report of what Councillor Woodrow said to Mr Dorrell. The interview is agreed to have occurred between 25th and 27th August 2004. On 25th August 2004 Councillor Woodrow had expressed his view on the inappropriateness of an outline application to Mr Pugh. Throughout August Councillor Woodrow was engaged in email correspondence with the Ms Lowton on the appropriateness of an outline application for the Kings Cross site, making it abundantly clear what his personal view was. Mr Dorrell’s article accurately reflected those views and the Tribunal find that it was accurate on that issue.
- 4.50 Equally, the quotations that Councillor Woodrow “*could only see problems ahead for the project because the application has been submitted in outline form alone*” and that his view was that “*there is no way we should have to make a decision based on just an outline application*” are consistent with the views which Councillor Woodrow had expressed to the Executive and to officers and also reflected his evidence before the Tribunal in relation to the problems associated with the 1990 proposal, a repeat of which he was trying to avoid. The Tribunal find this part of the article to be accurate.
- 4.51 The Tribunal does not accept that the article was accurate in stating that Councillor Woodrow condemned the design of the scheme if that is intended to mean more than criticisms of its overall scale and style. Councillor Woodrow had not seen the applications themselves and they were in outline. Councillor Woodrow was an experienced member of the Development Control Sub-Committee who would have known that any detailed designs were purely illustrative at that stage. However, in so far as the article records concerns over the scale of the development, it is consistent with what Councillor Woodrow had said to Mr Pugh. It is also consistent with the references in his interview with CC Radio in June 2004 to scale and the impact on the canal.
- 4.52 The Tribunal finds that it is more likely than not that scale was raised with Mr Dorrell by Councillor Woodrow and in a way which reflected his personal concerns. To that extent Mr Dorrell’s quotation of Councillor Woodrow saying that “*A lot of the bulk and style of the buildings proposed are not the sort of things we are interested in for this kind of site*” was substantially accurate.
- 4.53 Having had the opportunity to hear evidence from Councillor Woodrow, the Tribunal considers that there is some force in the submission made on behalf of the ESO that, had the article been substantially inaccurate, he would have said so in terms when asked by the Council’s Monitoring Officer but did not. From what it observed of him, the Tribunal does not consider that he is the sort of person who would have stood back and allowed others to seek amends even allowing for the added complication of the article’s reference to the claimed views of Council’s officers on the scheme.

- 4.54 However, on the issue of style, whilst Councillor Woodrow does not dispute that it was a matter raised, the Tribunal is not satisfied on evidence that Councillor Woodrow articulated any concern on this issue which in reality went beyond his concerns as to scale.
- 4.55 Furthermore, the Tribunal does not find that it is more likely than not that Councillor Woodrow, as an experienced Chair of the Development Control Sub-Committee would have stated that, if the application came to them for decision in its current form, *"we would probably turn it down"*. Councillor Woodrow was well aware that he was not speaking for the Development Control Committee in the interview and would have known of the risks of purporting to do so in advance of the consideration of a planning application. It is inherently improbable that he would have said this and it is not supported by any other contemporary evidence indicating that his view coincided with the general view of the Sub-Committee. To this extent the article was sexed up. The Tribunal reaches a similar conclusion in relation to the statement in the article that the Argent scheme had *"won the support of Camden planners"*. The consultation period on the applications had not ended and the Tribunal does not accept that officers would have expressed their views on the merits of applications involving development of this scale at such a time.

Other Matters

- 4.56 There is no dispute as to Councillor Woodrow's personal background and considerable experience as a Councillor and as a member and Chair of the Council's Development Control Sub-Committee. The Tribunal accepts his evidence on these issues.
- 4.57 The Tribunal accepts that he is well respected by other members of the Council of all political persuasions and, as a Chair, has a reputation for balance, fairness and integrity. Before this reference, that reputation had never seriously been questioned.
- 4.58 The Tribunal finds that the concerns Councillor Woodrow voiced were legitimate planning concerns and that the use of outline planning applications in Conservation Areas is advised against by Planning Policy Guidance 15. The acceptability of an outline application for a scheme of the scale of the Argent proposal raises issues of law and planning judgment.
- 4.59 The Argent applications were amended in September 2005 as a result of consultation responses. The Tribunal does not have sufficient evidence before it to reach any conclusion on the significance of the amendments.
- 4.60 The Council's Media Relations Procedures and Protocols provide that it is *"the Press Office"* which will publicise the work of the Development Control Sub-Committee, conveying factual information on key decisions and the reasons for them. They do not anticipate direct briefings to the media by the Chairs of Sub-Committees.
- 4.61 Relations between Councillor Woodrow and senior officers at the Council had broken down at the time of the events with the effect that there was a low level of trust between them. There is, however, no evidence that there was any breakdown in trust between Councillor

Woodrow and the Head of Planning or other development control officers charged with giving advice to the Sub-Committee on matters relating to the Argent applications. Although the Director of Environment may have been inaccessible to Councillor Woodrow, the Tribunal is not satisfied on the evidence before it that this was the case with other Councillors.

5 Whether the material facts disclose a failure to comply with the Code of Conduct

5.1 Councillor Woodrow's Submissions

5.1.1 The charge is bringing into disrepute his office or authority, not failing to comply with Camden's Code of Conduct.

5.1.2 It must be considered in the overall context of all the facts as revealed to the Tribunal--see *National Assembly for Wales v Condon* [2006] EWCA Civ 1573 at [50], [111] and [131].

5.1.3 There are many different ways of being a good councillor. Those ways will vary between authorities. Shire counties have very different issues and pressures to an authority such as Camden. The nature of Councillors and staff is also different. It is important to distinguish between one's own style of operation and what is appropriate within a different context. Equally it is important to recognise that failing to do something in the best way is not synonymous with a breach of the Code.

5.1.4 The context is critical. The scale and importance of the application, the arrangements Camden had for dealing with it and the breakdown of relations with senior officers formed an unusual situation which justified an unusual response. It is doubtful whether there has been a larger more important application in London. Over a year passed between submission of the application and the Development Control Sub-Committee consideration. Officers were talking to the developers. The press were reporting on the applications yet the members were effectively silenced.

5.1.5 Given this context and the scale of the development it would be absurd strictly to apply the guidance in Part 2(1) of the Codes and Protocols that members of the Development Control Sub-Committee should minimise their involvement in any planning matter prior to consideration by the Sub-Committee. When the matter was ultimately reported to the Sub-Committee there was a report of some 900 pages and a very substantial amount of material to absorb before the meeting. The advice in the Codes and Protocols is not in important respects consistent with Article 10 of the ECHR and must not, therefore, form the basis of a decision of public body acting under the powers granted by Parliament. Given the role of political speech in a democracy the scope for restrictions on political expression are highly circumscribed when compared to other forms of speech.

5.1.6 Councillor Woodrow had a duty, if he thought it necessary, to question officers' advice and form an independent judgement

(without being cowed by senior officers, if he thought, whether rightly or wrongly, that they were misguided in agenda or judgment). Fearless pursuit of what he thought was right in circumstances where the easy course was to accept officers' advice enhances rather than diminishes respect for the council and office of councillor alike. Even those who disagreed with Councillor Woodrow would respect the fact that instead of doing the easy thing, he performed his public duty of exercising his own judgement.

- 5.1.7 Councillor Woodrow's impeccable record of caring service over a long period of time and the complete absence of any venal motive (to benefit self, family, friend or business associate) would weigh heavily with a fair minded person as to whether Councillor Woodrow's conduct diminished the reputation of his office or the authority.
- 5.1.8 In terms of the breakdown in relations with senior officers, it is important to bear in mind that paragraph 6.14 of the Codes and Protocols advises that members should always bring concerns about issues affecting a Department directly to the attention of the relevant director or assistant director and not to more junior staff. Paragraph 6.15 states that members should not seek views on policy issues or non-routine business from more junior members of staff.
- 5.1.9 Ms Lowton was the lead officer dealing with the Councillor. Relations between them had broken down. She was a member of the Management Team, which, like the Executive, was keen for Camden to grant permission for the King's Cross development because more 'planning gain' would be won that way than on appeal to an inspector or the Secretary of State.
- 5.1.10 Ms Lowton (who made the complaint against Councillor Woodrow and pressed for the matter to be referred to the APE of which she is a member rather than the Council's Standards Committee of which she is not a member) sought to prevent the Councillor from participating in the Kings Cross decision. The basis of her argument that he should not participate was that any decision involving him would be open to challenge because of his published views on the outline application. This argument was fundamentally flawed because of her failure to appreciate the important distinctions set out below.
- 5.1.11 Bias (tendency towards one side because of irrelevant factor such as close relationship) predetermination (closed mind) and predisposition (provisional view, however strongly held, capable of being changed by relevant argument or factor) must be clearly distinguished. Predisposition does not vitiate a decision---R (Island Farm Development) v Bridgend CBC [2006] EWHC Admin 21889 at [25]-[32], National Assembly for Wales v Condon [2006] EWCA Civ 1573 at [43], [111] and [131]. The Tribunal has found as a fact that Councillor Woodrow had a predisposition but was not guilty of predetermination.

- 5.1.12 None of what Councillor Woodrow said, however unwise the Tribunal may think it to have been, demonstrated bias or predetermination. The ESO has been heavily influenced by the same misapprehension as Ms Lowton namely that Councillor Woodrow's conduct gave rise to a risk of successful legal challenge to the Council's decisions. That position was misguided.
- 5.1.13 Opinions may differ about how best Councillor Woodrow should have sought to deal with the problems which he was addressing in the public interest. His efforts were, however, public spirited. Reaction to those efforts from disinterested (or opposed quarters) has been such that if anything respect and confidence in his office has been increased. Insofar as weaknesses in the Council have been exposed by these proceedings that is not something that can properly be held against Councillor Woodrow.
- 5.1.14 It is the reaction of those disinterested observers that should influence the Tribunal. Senior officers resented a councillor exercising his independent judgement and cannot be regarded as disinterested. Relations in any normal sense did not exist between Councillor Woodrow and senior officers. No disinterested observer thought Councillor Woodrow was guilty of bringing the council or his office into disrepute. Even Patrick Pugh who is an enthusiast for the Kings Cross development as disclosed in his interview and has many years experience in local government, under an ethical code not in substance in relevant respects different from the present one, did not consider that Councillor Woodrow was behaving improperly. Had he felt that there was any impropriety he would have said stop. He did not.
- 5.1.15 Ms Lowton cannot be regarded as disinterested. She was clearly hostile to Councillor Woodrow. She was struggling with and determined to control Councillor Woodrow and his committee by means which might well have been seen as downright obstructiveness. She was determined to avoid the possibility of elected members questioning planning officers. She was raising the temperature and her attitude was contemptuous of Councillor Woodrow indicative of a sickness towards elected Councillors in some senior officers.
- 5.1.16 Ms Lowton's argument that Councillor Woodrow should not sit on the committee deciding the Kings Cross application was based on a misunderstanding of the law and the Management Team's determination to safeguard 'planning gain' by granting permission irrespective of other material considerations. It was this unhealthy obsession which was the motivating factor against Councillor Woodrow and it was this which he was courageously standing up to. Peter Bishop revealed an unhealthy desire to control elected members in his evidence to the Standards Board '...it is completely undermining of the advice he gets through his officers.' Naturally the developer and its agents wished to get rid of a councillor who was questioning the cosy consensus between developer and

officials. This context would influence the views of an objective observer as to the propriety of his conduct.

- 5.1.17 Councillor Woodrow's remarks to the Architect's Journal were consistent with openness and transparency in planning decision making. They advanced understanding and debate. They were made in circumstances not dissimilar to those in Croydon in that the interview with Mr Dorrell was not intended to be in relation to the Kings Cross applications. To conclude that in making the remarks Councillor Woodrow breached the Code of Conduct would be a disproportionate restriction on the his Article 10 rights having regard to the requirements of a participatory democracy. The guidance within the Codes and Protocols needs revision to comply with Article 10 and to reflect the needs of the local democratic process. For example call-over meetings are useful and should not be proscribed by the Code.
- 5.1.18 In relation to the allegation of breach based on the failure of Councillor Woodrow personally to deny the allegations, logically this was an alternative allegation. If he had made the comments he could hardly be criticised for failing to deny having done so. In any event, can it be aid to bring the Council into disrepute if he allows the Leader to issue a denial on his behalf? This is a non-point.
- 5.1.19 Councillor Woodrow's approach to English Heritage has to be understood in the context of the attitude of the Director of Environment. He suggested at that if Councillor Woodrow had serious concerns about his officers' advice he should institute disciplinary proceedings against them. His attitude was akin to that of someone who reacts to any questioning of his account of events by saying 'Are you accusing me of being a liar?' He does not seem to have been able to appreciate that it was Councillor Woodrow's duty to form his own judgement of the issues. Councillor Woodrow understandably wished to discuss the position with someone from outside the Council and to encourage the expression of a contrary view to that of the Camden officers.
- 5.1.20 Unwise, imprudent, inappropriate the Tribunal may perhaps think, but, even if that is its view, such misjudgement does not in these circumstances bring the council or the office of councillor into disrepute.
- 5.1.21 Mere error of judgement does not bring a council or the office of councillor into disrepute. So to hold would be to ignore the implications for effective local democracy, which the Court of Appeal has held to be important (*R v Flintshire CC ex p Armstrong Braun* [2001] LGR 344. It would be to fail to "face up squarely to the problems for the democratic process" which such an approach would involve (see Schiemann LJ at paragraph 44) and infringe the principle of proportionality (see Sedley LJ at paragraph 60). It is important to give careful consideration to the chilling effect which the finding of breach would give rise.

5.1.22 Consideration should also be given to how people have in fact reacted to the alleged misconduct as is evidenced in the correspondence before the Tribunal and the fact that Councillor Woodrow was re-elected after the incidents with an increased majority. What he did he did in good faith and in the interests of the protection of the public interest.

5.2 The ESO's Submissions

5.2.1 The alleged breaches by Councillor Woodrow are set out at paragraph 1.1.

5.2.2 The findings of fact relating to those breaches are contained in the decision of the Tribunal dated 10 November 2006.

5.2.3 The Tribunal has to determine whether, having regard to the facts found, Councillor Woodrow failed to follow the Code of Conduct in respect of all or any of the incidents identified in the alleged breaches.

5.2.4 The submissions made on behalf of Councillor Woodrow acknowledge that the way he responded to the context was "*unusual*" and the Tribunal may feel come close to accepting that the conduct was unwise, imprudent and inappropriate. Those submissions assist more in relation to the sanction stage than they do in relation to whether the facts as found constitute a breach of the Code. They are at best mitigation and at worst arguing for an alternative Code for civil disobedience.

5.2.5 The allegations do not concern the way in which Ms Lowton or Mr Bishop behaved. If there is any case to be made against those officers that must be made in the appropriate way against them. The Tribunal is concerned with the conduct of an elected member.

5.2.6 Councillor Woodrow was aware that his opportunity to express his concerns in relation to the applications would arise at the formal meetings of the Sub-Committee and at the call-over meetings (the legality of which was not an issue in this case).

The English Heritage incident

5.2.7 This incident is the subject of the alleged breach that Councillor Woodrow telephoned a member of staff of English Heritage and improperly discussed the proposed Kings Cross Central development.

5.2.8 Councillor Woodrow has never denied that, following the submission of the applications for planning permission for the Kings Cross development, he telephoned on two occasions Mr Pugh, an officer employed by English Heritage; nor that the telephone calls related to the Kings Cross development.

5.2.9 It is not necessary for the Tribunal to determine whether the mere act of telephoning Mr Pugh in these circumstances was a breach of the Code; the critical issue is whether, having regard

to the substance of the matters discussed on the telephone, there was a breach.

5.2.10 The essence of the facts found by the Tribunal is as follows:

5.2.11 Mr Pugh's evidence relating to the substance and purpose of the two calls was "accurate in all respects".

5.2.12 At the time of the calls:

5.2.12.1 Councillor Woodrow had expressed on a number of occasions his concerns about the acceptability of planning permission being sought for the Kings Cross development pursuant to an outline application;

5.2.12.2 Councillor Woodrow had a "strong predisposition against any proposal advanced by way of an outline application for the site";

5.2.12.3 Councillor Woodrow had "personal concerns over its substance" which he expressed publicly in a local Radio interview;

5.2.12.4 Councillor Woodrow knew that Mr Pugh was "involved in English Heritage's consideration of the Argent applications";

5.2.12.5 Councillor Woodrow telephoned Mr Pugh on 23rd June and 25th August 2004 to discuss the Kings Cross proposed development;

5.2.12.6 During those calls, Councillor Woodrow expressed to Mr Pugh his concern about the use of an outline application and his concern about the size of the proposed development;

5.2.12.7 At the time of the calls, Councillor Woodrow "had a strong disposition against the Kings Cross applications but could ultimately have been persuadable to an alternative view";

5.2.12.8 The purpose of Councillor Woodrow's calls was "to quietly lobby" English Heritage in the hope that it would be able to support his views "on both process and substance".

5.2.13 On the facts found was there a breach of the Code?

5.2.14 The charge is that, in telephoning English Heritage, Councillor Woodrow engaged in "improperly discussing" the Kings Cross development with Mr Pugh.

5.2.15 The evidence revealed that Councillor Woodrow had known Mr Pugh for many years. Clearly, therefore, a telephone conversation (or other contact) need not necessarily have been improper; it might have been purely social in nature. It is clear, however, that neither call was of that nature.

- 5.2.16 In cross-examination Councillor Woodrow agreed that he had telephoned Mr Pugh in his capacity as chairman of the Sub-Committee ("DCSC"). It follows that, in making the calls, he was "conducting the business of the office to which he [had] been elected or appointed". That expression is taken from paragraph 1(1) of the Code which states that, when so acting, the Code of Conduct must be observed.
- 5.2.17 The ESO contends that Councillor Woodrow's remarks to Mr Pugh constituted conduct which "could reasonably be regarded as bringing his office or authority into disrepute" contrary to paragraph 4 of the Code for the following reasons:
- 5.2.18 English Heritage was an independent statutory consultee on the Kings Cross applications. It is wrong in principle for a local planning authority (or an individual member or official), as the intended recipient of advice from such a consultee, to seek to influence the judgement of the consultee.
- 5.2.19 Mr Pugh stated in evidence that, apart from Councillor Woodrow, only one other member of any council, had ever telephoned him in his capacity as consultee (although not in relation to the Kings Cross proposals). This demonstrates how unusual Councillor Woodrow's conduct was.
- 5.2.20 Mr Bishop, the Director of Environmental Services with the London Borough of Camden, stated, when interviewed by the Standards Board, that he considered Councillor Woodrow's action in telephoning Mr Pugh to be "totally unreasonable" and "outside the bounds of what is acceptable". He had never encountered such conduct before. Whatever Councillor Woodrow's relationship with Mr Bishop, this cannot detract from the views of such a senior officer.
- 5.2.21 In cross-examination Councillor Woodrow agreed that it would be improper to seek to influence Mr Pugh. There was no reference to this acceptance in the submissions made on behalf of Councillor Woodrow.
- 5.2.22 It is clear from the Tribunal's findings of fact that the purpose of the calls was "to quietly lobby" English Heritage in the hope that "it would be able to support his views", that Councillor Woodrow, by his own admission, was knowingly acting improperly.
- 5.2.23 It is plain that such improper conduct has brought Councillor Woodrow's office as Councillor and as a Chairman into disrepute. Furthermore, to bring into disrepute the office of chairman of the Sub-Committee must necessarily bring the Council itself into disrepute, since that Sub-Committee is responsible for decisions which attract constant public attention and scrutiny and affect members of the public in the daily enjoyment of their daily lives.
- 5.2.24 The impropriety arises from a number of factors:
- 5.2.24.1 The statutory function of English Heritage is to advise the Council, not individual councillors;

- 5.2.24.2 In advising the Council, the advice will be most valuable if it is based on full information and accurate understanding of the proposals but it is otherwise uninfluenced by the intended recipient;
- 5.2.24.3 Any contact (for the purpose of providing information or clarification) between English Heritage and the Council should be a matter of record available to the public so that it may have confidence in the manner in which English Heritage discharges its statutory duties;
- 5.2.24.4 Such contact should be through an appropriate channel and properly authorised. It would be best undertaken between officers of the respective organisations. Any contact by a Councillor should be authorised by the Council, or an appropriate cabinet member, committee or sub-committee.
- 5.2.24.5 Councillor Woodrow's action in contacting English Heritage, although, by his own admission, undertaken purportedly in his capacity as chairman of the Sub-Committee, was not authorised by any other person or body, was not done openly and was not made the subject of any official record, let alone a record open to the public (or indeed to fellow councillors or officers). The submissions made on behalf of Councillor Woodrow speak of transparency when convenient but transparency did not characterise this conduct of his. It came into the public domain by chance.
- 5.2.24.6 Councillor Woodrow did not make such contact in order to provide information or clarification about the proposals but in order to attempt to influence Mr Pugh's judgement. Indeed there is no suggestion that Councillor Woodrow believed Mr Pugh to be in need of mere further information or clarification.
- 5.2.24.7 It is clear from the Tribunal's findings of fact that Councillor Woodrow had formed an unfavourable opinion of the Kings Cross proposals amounting to a "strong disposition", albeit not a final pre-judgement, against them. In contacting Mr Pugh and in expressing that opinion (in the hope of persuading Mr Pugh to agree with it), Councillor Woodrow ran the risk of appearing to have made up his mind about the proposals in advance of having to determine them formally. Even if giving such an appearance does not amount to bias in the legal sense, it brings the office of chairman (and thereby the Sub-Committee and the Council itself) into disrepute by not maintaining an open mind at the stage in question.

- 5.2.24.8 Councillor Woodrow's action in contacting Mr Pugh did not respect the advice to Sub-Committee members that they should "minimise their involvement in any planning matter prior to its consideration by the Sub-Committee" (The Camden Code of Conduct Part D Planning and Licensing Protocols Part 2). Regardless of arguments which may arise about the propriety and desirability of members informing themselves in advance and forming personal pre-dispositions, action involving attempts to persuade a statutory consultee to adopt a particular point of view, is completely contrary to the advice in the Protocols about members involvement prior to the formal decision being made.
- 5.2.24.9 It is particularly important that the Chair of a decision making committee should set a good example to committee members and provide reassurance to the other parties and the public by acting at all times in an open, transparent and impartial manner. There is no real assistance to be gained from authority as to how the Chair of a committee or sub-committee should behave. It helps contextually to consider what one knows to be the role of a chair of a meeting and then to ask, bearing in mind the authority the chair must have, how he should behave outside the meeting. If he behaves in a way which is less than proper that would undermine his authority at the meeting which is a helpful indication.

The Architects Journal incident

5.2.25 There are two alleged breaches in relation to this incident:

- 5.2.25.1 That Councillor Woodrow spoke to the Architects Journal at all about the Kings Cross proposals subsequent to the lodging of the applications but prior to their formal determination;
- 5.2.25.2 That, the Journal having allegedly misreported the interview, Councillor Woodrow did not write personally to the Journal to complain and to seek to have the correct version published.

5.2.26 The essence of the facts found by the Tribunal about what Councillor Woodrow did and did not say during the interview is as follows:

- 5.2.26.1 That Councillor Woodrow condemned the decision to submit the scheme as an outline scheme;
- 5.2.26.2 That Councillor Woodrow stated that the use of the outline procedure would cause problems;
- 5.2.26.3 That Councillor Woodrow expressed the trenchant opinion to the effect that "a lot of the bulk and style

of the buildings proposed are not the sort of things we are interested in for this kind of site”; “bulk and style” in this context being a reference to “scale”;

5.2.26.4 That Councillor Woodrow did not express concerns which “went beyond his concerns about scale”;

5.2.26.5 That Councillor Woodrow did not suggest that the Sub-Committee would be likely to refuse permission for the application in its then current form;

5.2.26.6 That Councillor Woodrow did not suggest that the Council’s officers had decided to support the Argent scheme.

5.2.27 On the facts found was there a breach of the Code?

5.2.28 There can be no doubt that the editor of the Architect’s Journal telephoned Councillor Woodrow in his capacity as chairman of the Sub-Committee and that Councillor Woodrow knew that he was being interviewed in that capacity. Accordingly, unlike the position in the Livingstone case, Councillor Woodrow, in speaking to the editor, was conducting the business of his office and representing the Council (cf. Code para 1(1)).

5.2.29 The ESO contends that in speaking to the press in the terms found, the Code was breached for the following reasons:

5.2.29.1 It is vital to the protection of the reputation of the Council, the Sub-Committee, and individual Council members that they should have and should appear to have open minds about proposals until they are finally determined.

5.2.29.2 The article in the Architect’s Journal created the impression that predispositions, if not prejudgements, were being made by Councillor Woodrow and possibly by other members (see Argent (Roger Maedlin) letter 12th November 2004 to Camden LBC Chief Executive. It was entirely reasonable that readers of the article should have formed that impression. Furthermore, in the light of the facts found by the Tribunal, in important material respects the impression formed accurately reflected the views expressed by Councillor Woodrow in the interview with the editor.

5.2.29.3 Camden’s Media Relations Procedures and Protocols (see extract produced by Leading Counsel for Councillor Woodrow) does not authorise whoever may chair the Sub-Committee to speak at large with the media. On the contrary, in providing that “[t]he [chair] of the [Sub-Committee]... should approve any quote on any issues pertaining to their committees” (see paragraph 3.55), the Council is clearly imposing a specific responsibility on the chair to ensure that any statement to the press is

accurate, balanced and in accordance with the Code of Conduct and any other obligations.

- 5.2.29.4 As to Article 10 of the ECHR, it is not clear from the submissions made on behalf of Councillor Woodrow whether it is contended that the Code should be construed so as not to prevent members expressing the kind of opinion expressed in this case or whether, if such conduct is in breach of the Code, the Code is in breach of Article 10. The ESO is aware of concern in some quarters over guidance expressed in terms such as that set out in the Council's Codes and Protocols. Such advice is not uncommon. There is plainly a tension between a member of a Sub-Committee needing to understand issues so as to be able to take informed decisions and restraining them as to the way that they inform themselves. But this case is concerned not with the general issue but rather with the particular circumstances. Councillor Woodrow expressed a clear pre-disposition in the most public way to the editor of a journal which he knew would report it, if not misreport it. That is an extraordinary course of conduct for a chair to take. The question is what is it proper for a chair to reveal as to their predisposition.
- 5.2.29.5 That must be asked in the context of quasi judicial decisions. A member who chooses to be a member of a quasi judicial body accepts the restraints of that office. It is proper and appropriate discipline that they should not reveal their predispositions. It does not follow that because one does not offend the legal precept of bias that there is no breach of the Code. The Tribunal should conclude that to reveal a predisposition in advance of Sub-Committee consideration breaches the Code because otherwise, the public being what it is, there will be all kinds of confusion and misunderstanding. That is clear from the facts of this case. Councillor Woodrow was seen as the champion of those who were concerned about the scale of the development and it is shocking that the chair of the Sub-Committee should allow himself to be characterised in this way in advance of receipt of the officer's report and meeting.
- 5.2.29.6 At the very least, if a predisposition is revealed it is essential that the member should make it clear that the matter is yet to be decided and that he or she is keeping an open mind at the time. If this is a freedom of expression case, that is the best way to deal with it. The ESO acknowledges that in relation to the propriety of the statements made to the Architect's Journal by Councillor Woodrow, the absence of any authority leads to everyone feeling their way.

5.2.29.7 The responsibility imposed on the Chair by the Media Relations protocol imposed a specific responsibility on Councillor Woodrow personally to take the initiative in correcting the inaccuracies which the Tribunal has found to be contained in the article. The approach taken by Councillor Woodrow in relation to the alleged inaccuracies in the article was not compatible with his responsibilities.

Conclusion

5.2.30 The ESO submits that all of the alleged breaches have been proved.

5.3 Case Tribunal Decision

5.3.1 Paragraph 4 of the Code provides that:

“A member must not in his or her official capacity, or any other circumstance, conduct himself or herself in a manner which could reasonably be regarded as bringing his or her office or the authority into disrepute”.

5.3.2 The test under paragraph 4 is an objective one and the judgment as to whether it has been breached must be made having regard to all of the circumstances of the case.

5.3.3 In the light of this, on the issue of the propriety of Councillor Woodrow's conduct, the Tribunal attaches little weight to the views of persons closely connected with those facts of the case which are claimed to support a finding of breach or the more recent views on the allegations of those who have written in support of Councillor Woodrow, given that these letters were written in advance of the Tribunal's findings of fact and their authors cannot have had the benefit of all of the evidence which the Tribunal has heard and read. The Tribunal have reached their own independent judgement on whether, having regard to all of the circumstances and applying the objective test, the Code has been breached.

5.3.4 The Tribunal accepts the ESO's definition of disrepute namely a lack of good reputation, respectability or discredit and that anything which diminishes public confidence in either a member's office or authority will bring that office or authority into disrepute.

5.3.5 In relation to the alleged breaches of the Code the Tribunal finds that Councillor Woodrow was conducting the business of the office to which he had been elected at the material times and he was therefore acting in his official capacity for the purposes of paragraph 1 of the Code. The Tribunal is satisfied that his contact with Mr Pugh was made in his capacity as a member of the Council and more particularly as Chair of the Development Control Sub-Committee. It was made in the light of his concerns over the form and substance of Kings Cross applications which had themselves been influenced by public reaction to him as a Councillor about those applications. The discussion with Mr Dorrell of the Architect's Journal about the

Kings Cross applications came at the end of a telephone call made to him as Chair of the Development Control Sub-Committee with knowledge of applications made to the Council and thus able to express an informal member view on them. In the Tribunal's view he was clearly not "off duty" at the time of any of the relevant calls.

- 5.3.6 As to the submissions made on behalf of Councillor Woodrow as to the conduct of Ms Lowton and Mr Bishop, senior officers of the Council, the Tribunal has regard to all of the circumstances. This includes the difficult relationship between Councillor Woodrow and the Council's senior officers at the relevant times. In the Tribunal's view, what is of most importance, given the specific allegations against Councillor Woodrow, is the fact that there was no working relationship between the senior officers and Councillor Woodrow at the relevant time rather than the reasons for the absence of such a relationship. Although it was submitted on behalf of Councillor Woodrow that he was at the material times seeking to right a "wrong" and that "wrong" was an obsession to secure planning gain at the expense of the proper and lawful consideration of the planning application that does not reflect the evidence before the Tribunal.
- 5.3.7 There is no evidence that at the relevant dates in 2004 Councillor Woodrow considered that officers of the Council were obsessed with planning gain and committed to approving the applications. His concerns were the outline nature of the applications and the scale of the development. In none of his telephone conversations did he express concern that officers were determined improperly to approve the applications or that they were driven by a motive to deliver planning gain.
- 5.3.8 Furthermore, the Tribunal does not accept the analysis of the evidence before it as demonstrating any such obsession. The concern of senior officers was that Councillor Woodrow's conduct could lead to the Council's handling of the application being impugned. The consequences could have been an appeal or the calling-in of the applications by the Secretary of State. In those circumstances, the adequacy of any planning obligations would be for the Secretary of State or appointed inspector to determine. That is a matter of planning judgment. The weight to be given to the elements of any planning package is for the decision maker. There is scope for different but nonetheless reasonable views to be reached by a local planning authority and the Secretary of State respectively as to what is a fair and reasonable obligation. It is not unreasonable for a local planning authority or its officers to seek to ensure that improper conduct, as it sees it, does not lead to the unnecessary loss of the power to make the decision on an application and the ability to secure what it considers to be the optimum planning obligation.
- 5.3.9 In the Tribunal's view, the officer conduct which is relevant to its considerations is that which led to Councillor Woodrow to feel that his concerns over the nature of the applications were not being adequately addressed. In that respect it does seem

to the Tribunal that there is some merit in the criticism that Ms Lowton was, at times, less than helpful in her responses to Councillor Woodrow.

The Telephone Calls to Mr Pugh

- 5.3.10 The ESO places some reliance on the guidance contained in the Protocols, in particular the advice that members of the Development Control Sub-Committee should:

“minimise their involvement in any planning matter prior to its consideration by the Sub-Committee”.

- 5.3.11 The aim of that is, however, also set out in the Protocols namely *“so that they take all decisions at the meeting with an open mind”*. The Tribunal reads *“open mind”* as meaning without having a predetermined view on an application as opposed to having no predisposition.

- 5.3.12 The main purpose of the Council's procedures is identified within the Protocols as:

“to ensure that the Sub-Committee acts reasonably and openly in dealing with planning matters and to protect the Council and individual members from allegations of unfairness, findings of maladministration and legal challenge”.

- 5.3.13 Inevitably there is within the Protocols an emphasis on conduct which minimises risk. It is setting out the most desirable way for Development Control Sub-Committee members to conduct themselves, but the content remains guidance. The Protocols do not purport to lay down what is the only acceptable conduct nor do they state that conduct which conflicts with guidance would breach paragraph 4 of the Code. That is not the purpose of the guidance.

- 5.3.14 The Tribunal does not doubt the wisdom of having such advice in place. It counsels the safest conduct. However, in considering whether there has been a breach of paragraph 4 of the Code, what is relevant is the extent to which the conduct could reasonably be regarded as harming the reputation of a planning authority or a member of it for the fair, reasonable and open handling of planning applications rather than the extent of any deviation from the guidance. Otherwise the guidance is elevated to a mandatory requirement which it was patently never the intention.

- 5.3.15 Within this context, with some provisos, the Tribunal sees nothing intrinsically wrong in a member of the Development Control Sub-Committee contacting a third party, for example a statutory consultee, in order to seek advice on an application which will come up for determination by the Sub-Committee. The provisos are that the fact that advice has been sought is declared and that the motive for seeking it is to enable proper understanding of the planning application or some aspect of it. Equally, the Tribunal can see nothing inappropriate in member involvement in call-over meetings which are designed to ensure the smooth running of Sub-Committee meetings. An

objective observer would not consider that conduct of this kind in any sense damages the reputation of the local planning authority.

- 5.3.16 However, it is in the Tribunal's judgment improper for the Chair of a Development Control Sub-Committee to contact a statutory consultee and, in particular, one which has the power to withhold authority to grant planning permission for elements of the relevant scheme and whose view is thus crucial, with a view to lobbying that statutory consultee or any of its officers to share a disposition against the form and substance of the planning application.
- 5.3.17 In the case of the telephone calls to Mr Pugh, English Heritage had yet to reach a decision on their consultation response at the date of the calls and Councillor Woodrow had himself received no reports on the applications (procedural matters only had been reported to the meeting of 17 June 2004). By seeking to influence English Heritage's view in this way and at a stage when he himself was not fully apprised of the detail or merits of the applications, Councillor Woodrow effectively sought to subvert the process, and covertly, relying on a long standing relationship with Mr Pugh.
- 5.3.18 Does that impropriety amount to a breach of paragraph 4 of the Code? In the Tribunal's judgment it does. An objective observer would expect a local planning authority to seek and receive impartial advice from statutory consultees. An objective observer would regard an attempt to influence the content of what should be impartial advice from, a statutory consultee by a member of the Sub-Committee which is to determine the application, let alone the Chair of that Sub-Committee, as wholly inappropriate and conduct which could reasonably be regarded as bringing the office of that member into disrepute. It is discreditable conduct which diminishes public confidence in his office as Councillor.
- 5.3.19 The Tribunal are not satisfied on the evidence that Councillor Woodrow's conduct was sufficient, looked at objectively, that it could reasonably be regarded as bringing the Council into disrepute. An objective observer would view the conduct as Councillor Woodrow acting solo rather than leading to any diminution in the reputation of the Council particularly as such an observer would be aware of the safeguards in place to ensure that, where necessary, a member of a committee who behaved inappropriately could be prevented from playing any part in the relevant decision.
- 5.3.20 The Tribunal accepts that Councillor Woodrow's motive for his conduct was to further his view of where the public interest lay and that, had he received a more constructive response from the Council's officers, that the contact with Mr Pugh may never have occurred. However, whilst the absence of any meaningful relationship with officers may have justified Councillor Woodrow in seeking the advice of English Heritage on his concerns as to the outline nature of the applications, it

could not and did not justify the quiet lobbying of their officer to share his predisposition.

- 5.3.21 In the Tribunal's judgment, Councillor Woodrow overstepped the mark and in doing so breached paragraph 4 of the Code of Conduct. However, having regard to all of the circumstances the Tribunal regard the breach at the lower end of seriousness.

The Architect's Journal

- 5.3.22 The Tribunal has set out its view on the correct approach to the Council's Protocols above.

- 5.3.23 The issue for it to determine is the extent to which the comments of Councillor Woodrow on the outstanding applications could reasonable be regarded as bringing his office or authority into disrepute. In the Tribunal's view, the objective observer would not expect the Chair or Development Control Sub-Committee members to be unaware of views expressed by residents and businesses of their area on a proposed development of the scale of the Kings Cross scheme. The objective observer would accept that they would be likely to form views on the proposals from what they heard, read or saw about them. Those views could reasonably be expected to include predispositions.

- 5.3.24 Equally, an objective observer would find no necessary impropriety in reading the provisional views of a member of the Development Control Sub-Committee in newspapers. Whilst out of caution it is clearly wise and sensible that members of that Sub-Committee should limit comment on applications yet to be determined, provided any comment is expressed in terms which clearly indicate that there is no predetermination or that anything said is subsequently and truthfully caveated prior to determination of the application by the Sub-Committee, the Tribunal do not consider that such press comment can offend paragraph 4 of the Code. The Tribunal do not consider that the Chair of the Sub-Committee has any greater restriction in this respect. There is no obligation on Chairs to be impartial. They should lead by example and an objective observer expects high standards of them but that does not require them to be the subject of more exacting conduct requirements than those of other members of the Sub-Committee. What it does require is greater care to ensure compliance.

- 5.3.25 In the Tribunal's view, no question of disrepute can reasonably be said to arise where there is no risk of challenge to the ultimate decision on the ground of predetermination. The Tribunal can see no reason why the reputation of the office of councillor or the authority is harmed by the revelation of a predisposition in advance of a decision of the Development Control Sub-Committee but not by its revelation for the first time at the meeting. Whilst it is clearly desirable that the debate on an application is should be carried on within the controlled environment of a committee meeting, it does not

follow that debate involving Development Control Sub-Committee members outside that meeting necessarily offends the Code. What is important is what is said not when and where it is said.

5.3.26 The Tribunal's view is that Councillor Woodrow's comments to the Architect's Journal indicated that there was no predetermination and, in any event, were followed in February 2005 by a clear statement by him to the Development Control Sub-Committee and the Evening Standard that he had not predetermined the applications. This is consistent with the Tribunal's assessment of his mindset and was, in the Tribunal's view a truthful statement. It was made many months before the applications were reported to committee. In the circumstances it was sufficient to ensure that no breach of paragraph 4 of the Code occurred.

5.3.27 It is not therefore necessary for the Tribunal to consider the limited argument advanced in relation to Article 10 of the ECHR but the Tribunal would say this. The Tribunal would not have been satisfied that Article 10 was engaged on the facts of this case. Applying the Code as the ESO argued for would not have prevented Councillor Woodrow expressing his views on the applications; it would only have affected his ability to be a decision maker on the applications. That does not seem to the Tribunal to be sufficient to engage Article 10. However, if as the Tribunal conclude, the Code is only capable of biting when statements made give rise to a substantial risk of challenge on the grounds of bias or predetermination then the restriction is necessary in a democratic society.

5.3.28 The Case Tribunal turns finally to the issue of Councillor Woodrow's claimed failure to write his own letter of correction to the Architect's Journal. The Tribunal can deal with this briefly. In its view, Councillor Woodrow did all that was necessary to demonstrate that he had no predetermined view on the applications. He had explained his position to the Leader of the Council which she in turn communicated in her letter to the Architect's Journal of 20 September 2004. This was published. He made further statements to the Development Control Sub-Committee on 10 February 2005 and to the Evening Standard on 11 February 2005. The Tribunal is not persuaded that there was any obligation upon him to do more or that his failure to do more offended paragraph 4 of the Code. The Tribunal finds no breach in relation to the Architect's Journal allegations.

6 Submissions as to the action to be taken

6.1 No submissions were made on behalf of the ESO.

6.2 On behalf of Councillor Woodrow it was submitted that one of the key points in mitigation was what he had said in interview namely that he would not act in the same way again. He was no longer Chair of the Development Control Sub-Committee and had suffered the humiliation of being removed from that post by the Labour Group. He was not even on that Sub-Committee because he was not supported by the

Labour Group. He had suffered a very serious punishment as a result of the leaking of the ESO's report. There were no base motives underlying his conduct and he had given years of service to Camden. His concerns were entirely consistent with the advice contained in PPG15 and it is not without significance that there was a breakdown in relations between senior officers and himself. In all these circumstances the appropriate course would be to take no action.

6.3 Case Tribunal Decision

6.3.1 The Tribunal has taken account of the Guidance on Decisions issued by the President of the Adjudication Panel.

6.3.2 It considers that the breach it has found is at the low end of seriousness having regard to the particular facts of the case.

6.3.3 The Tribunal takes account of:

6.3.3.1 Councillor Woodrow's many years distinguished public service within the Council particularly as Chair of the Development Control Sub-Committee;

6.3.3.2 His unblemished record;

6.3.3.3 The fact that he concedes with the benefit of hindsight that he would not again behave in the way that he did;

6.3.3.4 The fact that he is no longer a member of the Development Control Sub-Committee;

6.3.3.5 All of the circumstances in which the breach occurred;

6.3.3.6 The fact that he acted at all times in the sincere belief that his actions were accorded with the public interest.

6.3.4 Having regard to all of these matters the Tribunal's decision is that it should impose no sanction in this case.

6.3.5 The decision of the Case Tribunal was unanimous.

Simon Bird
Chairman of the Case Tribunal

20 December 2006