

CONFIDENTIAL

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REPORT OF AN INVESTIGATION UNDER SECTION 59 OF THE
LOCAL GOVERNMENT ACT 2000 BY JENNIFER ROGERS,
ETHICAL STANDARDS OFFICER, INTO AN ALLEGATION
CONCERNING COUNCILLOR PAUL McCARTHY

22 August 2007

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1 Executive Summary

Allegation 1

- 1.1 Mr David Cram alleged that Councillor Paul McCarthy, a member of Watton Town Council (the Council), failed to declare a prejudicial interest and withdraw from the chamber during the consideration of his planning application on 30 January 2007. It is further alleged that Councillor McCarthy voted against Mr Cram's planning application (ref. 3PL/2007/0053/0) and then used his casting vote as Chair of the Council's planning committee to ensure that the Council objected to it.
- 1.2 I have investigated whether by his conduct Councillor Paul McCarthy failed to comply with paragraph 10(a) of the Code, which provides that a member with a prejudicial interest in any matter must withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting.
- 1.3 I have also investigated whether by his conduct Councillor Paul McCarthy failed to comply with paragraph 10(b) of the Code, which provides that a member with a prejudicial interest in any matter must not seek improperly to influence a decision about that matter.
- 1.4 It is my view that Councillor Paul McCarthy's conduct amounted to a failure to comply with paragraph 10(a) and 10 (b) of the Code.

Finding

- 1.5 My finding is that pursuant to section 59(4)(c) of the Local Government Act 2000, the matters which are the subject of the investigation should be referred to the monitoring officer of Breckland District Council.

2 Councillor Paul McCarthy's Official Details

- 2.1 Councillor Paul McCarthy was co-opted on to the Council in July 2003. She retained her position as a member of the Council in May 2007 for a term of four years.
- 2.2 Councillor Paul McCarthy is the Vice-Chair of the Council, a representative on the Youth Council and Stanta (the Army training base liaison group). Councillor Paul McCarthy was the Council's Chair of planning until April 2007.
- 2.3 Councillor Paul McCarthy gave a written undertaking to observe the Code on 22 July 2003.

- 2.4 Councillor Paul McCarthy attended a training session on the Code held by Breckland District Council in 2005. At interview Councillor Paul McCarthy said that he could not recall receiving training specifically on the Code.

3 Relevant Legislation

- 3.1 The Council adopted the Code of Conduct in which the following paragraphs are included:

7(1). 'A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 12 and 13 of the code below [registration of financial and other interests], or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend'.

8. 'A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.'

9. 'A member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.'

10. 'A member with a prejudicial interest in any matter must –

(a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from the standards committee of the responsible authority; and

(b) not seek improperly to influence a decision about that matter'.

4. The evidence gathered and the ESO's considerations on the evidence

- 4.1 I have taken account of oral evidence from Mr David Cram, Councillor Paul McCarthy and Councillor Lorraine McCarthy. I have also taken into account documentary evidence obtained from Mr David Cram, Watton Town Council and Breckland District Council.

Background

- 4.2 Councillor Paul McCarthy is the managing director of the Weco Engineering Limited (Weco). His wife, Councillor Lorraine McCarthy, is also a joint director of Weco and a member of the Council. [Taken from Councillor Paul and Councillor Lorraine McCarthy's Register of Interests –JR3]
- 4.3 Since 1958 Weco has been based on the corner of Griston Road and Wood Lane in Watton (the Weco factory). Wood Lane is a private access road and public footpath wide enough to accommodate most vehicles. It is approximately one hundred and twenty metres long and runs from Griston Road to agricultural land. The entire west side of Wood Lane borders a currently unused industrial site. The east side of Wood Lane borders the Weco factory for approximately seventy-five metres and Wayland Cottage for approximately sixty-five metres. [Taken from the Ordnance Survey map in Mr Cram's planning application file – JR6]
- 4.4 The ownership of Wood Lane is unclear. At interview Councillor Paul McCarthy said that he believed Weco probably owned the section of Wood Lane that bordered the Weco factory as it looked like it was included on their deeds. [Taken from Councillor Paul McCarthy's interview record – JR11]
- 4.5 Councillor Paul McCarthy said that he had erected the fencing on the west side of Wood Lane and had maintained the lane for the last forty years. However Councillor McCarthy said that he was not currently looking into the ownership of Wood Lane or making any claim to it. [Taken from Councillor Paul McCarthy's interview record – JR11]
- 4.6 In response to my draft report Mr Cram disputed that Councillor Paul McCarthy had maintained the fence on the west side of Wood Lane and indicated that the fence had been damaged by heavy goods vehicles belonging to Weco. [Taken from Mr Cram's comments on the draft report – JR13]
- 4.7 In 1995 Mr David Cram purchased Wayland Cottage. The only access to Wayland Cottage is along Wood Lane past the Weco factory. In 2001 Mr Cram opened a motorcycle MOT and repair shop from his garage on site. [Taken from Mr Cram's comments on the draft report – JR13]
- 4.8 At interview Mr Cram said that that he did not know who owned Wood Lane but believed that under common law he owned the section that bordered Wayland Cottage. [Taken from Mr Cram's interview – JR9]
- 4.9 At interview Mr Cram stated that after moving to Wayland Cottage he '*got on fairly well*' with Councillor Paul McCarthy and had attended a number of social functions arranged by Weco for its staff. However Mr Cram said that there had also been a number of disagreements between himself and Councillors

Paul and Lorraine McCarthy over the use of Wood Lane. [Taken from Mr Cram's interview record – JR9]

- 4.10 Mr Cram said that both he and his customers had regularly been either blocked in or out of Wood Lane by trucks visiting the Weco factory, sometimes for up to four hours at a time. Mr Cram also specifically mentioned an occasion when an overhanging piece of steel from the factory smashed one of his customer's car windows. Mr Cram said that he had once complained to a member of staff at Weco about their dumping concrete on Wood Lane in late 2006, only to be told to *'Fuck Off'*. [Taken from Mr Cram's interview record – JR9]
- 4.11 Mr Cram said that his relationship with Councillors Paul and Lorraine McCarthy had recently become less cordial. Mr Cram said that he has had a number of disputes with Mr McCarthy over access and safety concerning his Weco's operations and that these had become *'quite acute this last year.'* He commented that during this period he reported Weco to the Health and Safety Executive (HSE) for misuse of Wood Lane, which resulted in the HSE issuing guidance to Weco. [Taken from Mr Cram's interview record – JR9, and Mr Cram's comments on the draft report – JR13]
- 4.12 At interview Councillor Paul McCarthy said that there were periods when he *'got on ok'* with Mr Cram but that there had been occasions when Mr Cram has become *'abusive'* because of Weco trucks blocking Wood Lane. On one occasion there was a physical altercation between Mr Cram and Councillor Paul McCarthy over an incident involving Mr Cram ripping down tape that Weco had erected around a crane that they were using on Wood Lane. [Taken from Councillor Paul McCarthy's interview record – JR11, and Mr Cram's comments on the draft report – JR13]
- 4.13 Councillor Paul McCarthy told my investigator that his relationship with Mr Cram was sometimes strained because of his concern over the speed reached by both cars and motorbikes visiting Mr Cram's repair shop on Wood Lane. Councillor Paul McCarthy said that he had recently erected signs on Wood Lane in an effort to limit the speed of vehicles but that they had been torn down almost immediately, he believed by Mr Cram. [Taken from Councillor Paul McCarthy's interview record – JR11]
- 4.14 In his comments on the draft report Mr Cram stated that Councillor McCarthy's accusations of the speed of motorcycles visiting his repair shop are a *'fabrication'*. Mr Cram said that the real problem was Weco's *'abuse of the lane'* and Councillor Paul McCarthy's *'disregard for my [Mr Cram's] rights to access and his failure to accept that he cannot ride roughshod over people.'* [Taken from Mr Cram's comments on the draft report – JR13]

Planning application

- 4.15 On 11 January 2007 Mr Cram submitted a planning application (3PL/2007/0053/0) to Breckland District Council to erect a bungalow in the grounds of Wayland Cottage. The proposed dwelling was to be situated to the south of Mr Cram's own property. [Taken from Mr Cram's planning file – JR6]
- 4.16 On 22 January 2007 Kim Sturridge, who is Weco's administrator and Councillor McCarthy's daughter, wrote to Breckland District Council on behalf of Weco:

'Mr D Cram the current owner of Wayland Cottage, situated at the end of Wood Lane, near Weco Engineering, Griston Road, Watton, has put forward an application for a further residential dwelling to be situated at the rear of his existing premises in Wood Lane.

We would strongly object to this proposal for the following reasons:

- 1. Wood Lane already has a problem with excess traffic, due to the fact that it is a private road and is also part of the Peddars Way. Since Mr Cram opened his motorcycle business there, we now have a great deal more traffic travelling up and down Wood Lane. In some instances motor cycles travelling at 50 miles per hour plus.*
- 2. Weco Engineering have been situated at this site for the past 40 years or so, and have several forklifts moving from bay to bay and vehicles moving along Wood Lane at all times of the day. This already constitutes a serious problem. The Health and Safety Executive are working with us at present on initiating an improved and reduced traffic flow along Wood Lane instigating a safer working place transport system. We ask you to consider that 90% of Wood Lane is on Weco Engineering Limited's boundary, therefore making the situation for us intolerable. We would stress that no increase of any description in vehicular movement should be tolerated in Wood Lane*
- 3. Wood Lane is also part of the Peddars Way. The Health and Safety Executive have already stressed to us that because of the number of pedestrians / ramblers using Wood Lane that traffic needs to be controlled far more rigorously. On his advice we have installed signage advising pedestrians of the forklift / lorry movements that occur outside the front of our factory site. To help with the above situation Weco Engineering have invested £100,000 to erect a storage unit on our other site so that we can clear the Griston Road site of excess plant and machinery, allowing us easier movement of our vehicles, both in Wood Lane and on our site.*
- 4. During the period of the year from March to October, when the weather is suitable for motorcycling, the amount of traffic moving is quite often so heavy that cars and trailers park on Weco*

Engineering's property to load and off load motorcycles. Also people coming in their cars to view motorcycles leave their cars on Weco Engineering's property, as there is no facility for parking in Wood Lane.

5. *Wood Lane is in fact a Private Road, and the only right of way for the existing dwelling's traffic.* [Taken from Mr Cram's planning file – JR6]

- 4.17 Councillor Paul McCarthy was not involved in the drafting of the letter but had read it and agreed for it to be sent on behalf of Weco. [Taken from Councillor Paul McCarthy's interview record – JR11]
- 4.18 On 30 January 2007 there was a meeting of the Council's Planning and Forward Development committee (the committee). Councillor Paul McCarthy attended and chaired the meeting. The other members of the committee were Councillor Lorraine McCarthy, who is married to Councillor Paul McCarthy, and Councillors Cragie, Gilbert and Harvey.
- 4.19 Councillor Paul McCarthy declared a personal interest in Mr Cram's planning application (3PL/2007/0053/0) because of the proximity of the Weco factory to the application site. At the same meeting Councillor Paul McCarthy declared a prejudicial interest in an application submitted by Premier Homes to redevelop the unused industrial land that bordered the west side of Wood Lane. [Taken from the Council minutes – JR7]
- 4.20 At interview Councillor Paul McCarthy stated that he did not declare a prejudicial interest in Mr Cram's application (3PL/2007/0053/0) because he did not consider that the proposed development would have any material effect on either him or his business. Councillor Paul McCarthy said that this differed from the application relating to the proposed development on the west side of Wood Lane because the developer, Premier Homes, had approached him prior to the committee meeting about the possibility of purchasing Weco's site. [[Taken from Councillor Paul McCarthy's interview record – JR11]
- 4.21 During the consideration of Mr Cram's application (3PL/2007/0053/0) Councillor Paul McCarthy expressed concerns over the safety of members of the public wanting to use Wood Lane as a footpath. He said that he was already working with the Health and Safety Executive in his capacity as the managing director of Weco in order to make Wood Lane safer for the community. The erection of an additional residence with vehicular access along Wood Lane would cause further problems. Councillor Paul McCarthy also told the members of the committee that as Wood Lane was a private road used primarily for industrial and business purposes, which included the often fast moving traffic visiting Mr Cram's motorcycle repair shop, he did not consider that it was fit for use by any additional residential properties. [Taken

from Councillor Paul McCarthy's interview record – JR11, and notes made by Mrs Cram during the meeting – JR8]

- 4.22 Councillor Lorraine McCarthy re-iterated that Wood Lane was a private road and that only one residence had permission to use it as a means of access. [Taken from notes made by Mrs Cram – JR8]
- 4.23 Councillor Paul McCarthy and Councillor Lorraine McCarthy both voted against Mr Cram's planning application (3PL/2007/0053/0). Councillor Cragie and Gilbert both voted to support the application. Councillor Harvey, who had already declared a personal interest in the application, decided to abstain from the vote. Councillor Paul McCarthy used his casting vote as Chair to ensure that the Council objected to the proposal. [Taken from the Council minutes – JR7]
- 4.24 At interview Councillor Paul McCarthy said that his decision to object to Mr Cram's planning application (3PL/2007/0053/0) was based solely on the safety of the users of Wood Lane, who included the local community, ramblers and members of his staff. He also said that he has a long-standing commitment to ensuring that the town's industrial land is not forced out by residential developments. Councillor McCarthy commented that a number of members on the Council live near to Wood Lane and have made it clear to him that they want Weco to leave their current site so that it can be redeveloped with residential properties. [Taken from Councillor Paul McCarthy's interview record – JR11]

5. Summary of facts

- 5.1 Councillor Paul McCarthy is the managing director of Weco, an industrial company based on Wood Lane in Watton.
- 5.2 Wood Lane is a public footpath wide enough to accommodate most vehicles. It is approximately one hundred and twenty metres long and runs from Griston Road to agricultural land. The entire west side of Wood Lane borders a currently unused industrial site. The east side of Wood Lane borders the Weco factory for approximately sixty metres and Wayland Cottage for approximately forty metres.
- 5.3 Since 1999 Mr David Cram has lived and run a motorcycle repair business from Wayland Cottage. In the period since then there have been a number of disputes between Mr Cram and Councillor Paul McCarthy over the use of Wood Lane, one of which involved a physical confrontation.
- 5.4 Mr Cram has reported Weco to the Health and Safety Executive on three occasions over the last year.
- 5.5 On 11 January 2007 Mr Cram submitted a planning application to Breckland District Council to erect a bungalow in the grounds of Wayland Cottage. The proposed dwelling was to be situated to the south of Mr Cram's own property.

- 5.6 On 22 January 2007 Kim Sturridge, who is Weco's administrator and Councillor McCarthy's daughter, wrote to Breckland District Council on behalf of Weco to object to Mr Cram's planning application.
- 5.7 At the committee meeting on 30 January 2007 Councillor Paul McCarthy declared a personal interest in Mr Cram's planning application.
- 5.8 Councillor Paul McCarthy was already working with the HSE to make Wood Lane safer for the community. Councillor Paul McCarthy told the members of the committee that Wood Lane was a private road used primarily for industrial and business purposes and was not fit for use by any additional residential properties.
- 5.9 Councillor Paul McCarthy and Councillor Lorraine McCarthy both voted against Mr Cram's planning application (3PL/2007/0053/0). Councillor Cragie and Gilbert both voted to support the application. Councillor Harvey, who had already declared a personal interest in the application, decided to abstain. Councillor Paul McCarthy used his casting vote to ensure that the Council objected to the proposal.

6. Councillor Paul McCarthy's addition submissions

- 6.1 At interview Councillor Paul McCarthy reiterated that his objection to Mr Cram's application was solely based on the merits of the application and not because of any personally held interest. Councillor Paul McCarthy explained that including Weco, four businesses use Wood Lane on a regular basis and as such it was wholly unsuitable as the only access to a new residential property.
- 6.2 Councillor Paul McCarthy said that he was '*uncomfortable*' chairing the meeting during the consideration of Mr Cram's application given his declared personal interest but considered that the other members of the Committee held interests in the application at least as strong as his own. He commented that without any of them participating there would not have been a quorum. He said that Councillor Gilbert and Councillor Cragie were clearly prejudiced in favour of the application.
- 6.3 Councillor Paul McCarthy said that as managing director of Weco he intended to ensure that his objections to Mr Cram's application were properly heard in the future should Mr Cram either resubmit his application or appeal to the District Council's decision to refuse it. He said that because of this he would ensure that he would not involve himself in the matter in an official capacity as a councillor in the future.

7. Reasoning as to whether there has been a failure to comply with the code of conduct.

- 7.1 Paragraph 8 of the Code states that a member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraph 12 of the Code.
- 7.2 Councillor Paul McCarthy's position as a remunerated director of Weco Engineering Limited is included in his Register of Members Interests under paragraph 12 of the Code.
- 7.3 Although the position of Mr Cram's cottage meant that the proposed development would not have affected the view from the Weco factory, Wood Lane provided the only access to the application site. Councillor Paul McCarthy said at interview that Weco had paid to erect the fencing on both sides of Wood Lane and had maintained it for the last forty years.
- 7.4 The letter sent by Weco to the District Council on 22 January 2007 stated that Wood Lane is used throughout the day by Weco's forklifts and that Weco had already invested £100,000.00 to allow easier movement of their vehicles. In strongly objecting to Mr Cram's application they clearly indicated that any increase in vehicular activity on Wood Lane would have an adverse effect on their business, stating that they would find it 'intolerable'.
- 7.5 Paragraph 8 of the Code also states that a member must regard himself as having a personal interest in any matter if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend.
- 7.6 Councillor Paul McCarthy has known Mr Cram for approximately eight years and during that period there appear to have been periods where they have got on well, with Mr Cram attending a number of social functions arranged by Weco for its staff. However there have also been a number of disagreements between them, particularly with regard to the use of Wood Lane.
- 7.7 Circumstances will arise where there is a clear personal hostility or resentment between two people. The Standards Board for England's view is that in these circumstances a member's 'wellbeing' will be affected. For the purposes of the Code 'wellbeing' is described as a condition of contentedness, healthiness and happiness. Anything that could be said to affect a person's quality of life, either positively or negatively, is likely to affect their wellbeing.
- 7.8 Recently the relationship between Mr Cram and Councillor McCarthy has deteriorated. Councillor Paul McCarthy said that on one occasion a disagreement between them resulted in their 'coming to blows'. In addition Councillor Paul McCarthy knew that Mr Cram had reported Weco to the Health and Safety Executive and suspected him of removing signs that Councillor Paul McCarthy had erected in an effort to limit the speed of vehicles visiting Mr Cram's premises on Wood Lane. As such I consider a

reasonable person would consider that a personal hostility existed between them.

- 7.9 I consider that given the potential impact of the application on use of the lane, the proximity of the application site to the Weco site and the history of difficulties between the applicant / users of his garage and Weco, Mr Cram's application related to Councillor Paul McCarthy's registered interest. As such I consider that he was correct to declare a personal interest at the meeting on 30 January 2007.
- 7.10 A member with a personal interest also has a prejudicial interest in that matter if the interest is 'likely to prejudice' the member's judgment. In other words the interest must be likely to harm or impair the member's ability to judge the public interest.
- 7.11 I consider that a member of the public, with knowledge of the relevant facts, would regard the interests expressed by Weco in their objection letter and the fact that they had actively objected to the application prior to the meeting on 30 January 2007 to be so significant that it was likely to prejudice Councillor Paul McCarthy's judgment of the public interest. As a director of Weco Councillor Paul McCarthy had a duty to act in the best interests of that company, even if it conflicted with the public interest.
- 7.12 By failing to withdraw from the room while Mr Cram's application was discussed on 30 January 2007, I consider that Councillor Paul McCarthy failed to comply with paragraph 10(a) of the Code.
- 7.13 By speaking against Mr Cram's planning application, voting against it and then using his casting vote to ensure that the Council objected to it, I consider that Councillor Paul McCarthy improperly influenced a decision on the matter and so failed to comply with paragraph 10(b) of the Code.

8 Finding

- 8.1 In coming to my finding I have recognised that following the work Weco had undertaken with the HSE, Councillor Paul McCarthy held genuine safety concerns about pedestrians using Wood Lane. I have recognised that he will not involve himself in the matter in an official capacity as a councillor in the future. I have also taken into account the fact that the Council only had an advisory role in the planning process.
- 8.2 By failing to declare his prejudicial interest in Mr Cram's planning application and then by using his casting vote to ensure that the Council objected to it, Councillor Paul McCarthy showed a serious error of judgment that could have resulted in the integrity of the planning process being called into question.
- 8.3 My finding is that pursuant to section 59(4)(c) of the Local Government Act 2000, the matters which are the subject of the investigation should be referred to the monitoring officer of Breckland District Council.

8.3 My finding is that pursuant to section 59(4)(c) of the Local Government Act 2000, the matters which are the subject of the investigation should be referred to the monitoring officer of Breckland District Council.



Jennifer Rogers

Ethical Standards Officer