

CONFIDENTIAL REPORT



PRIVATE AND CONFIDENTIAL

Case reference:

Report of an investigation under Section 59 of the Local Government Act 2000 by Hazel Salisbury, appointed by the Monitoring Officer for Brent Council, into allegations concerning Councillor Ann John of Brent Council.

27 April 2012

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1. Executive Summary

- 1.1 In an email sent to Councillor John on 23 December 2011, and copied to, among others, Councillor Lorber (the complainant), Councillor Kataria alleged that Councillor John had sought to interfere with the proper consideration of a planning application for a Hindu temple. He alleged that she had done this by directing him how to vote on the issue and threatening him with removal from the planning committee if he did not comply with her wishes; by procuring legal advice that prevented other councillors from participating in the consideration of the issue; and by bullying him. He also suggested in evidence to me that she had put pressure on officers to change their advice on the planning merits of the application.
- 1.2 I have found that there is no corroborating evidence for any of Councillor Kataria's allegations and that his evidence is not to be relied on.
- 1.3 I have found that the Councillor John did not obtain legal advice in relation to the matters complained of.
- 1.4 I have found no evidence for improper manipulation of the membership of the planning committee.
- 1.5 My finding under regulation 14 of the Standards Committee (England) Regulations 2008 is that there has not been a breach of the code of conduct of the Council by Councillor John.

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2. Councillor John's official details

- 2.1 Councillor Ann John was elected a member of Brent Council ("the Council") most recently on 7 May 2010 and gave a written undertaking to observe the Council's Code of Conduct on 11 May 2010.
- 2.2 Councillor John has been a member of the Council since 1990, has been Leader of the Labour Group since 2001 and Leader of the Council from 2001 – 2006 and from 2010 to the present.

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3. Relevant legislation and protocols

- 3.1 The Council had adopted the 2007 Model Code of Conduct for Councils as its code of conduct at the time of the complaint.
- 3.2 The relevant areas of the Code which relate to this investigation are as follows:-
- 3.3 The Council has adopted a Code of Conduct in which the following paragraphs are included:

Introduction and interpretation

- 1.—(1) *This Code applies to **you** as a member of an authority.*
- (2) *You should read this Code together with the general principles prescribed by the Secretary of State*

Scope

- 2.—(1) *Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—*
- (a) *conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or*
- (b) *act, claim to act or give the impression you are acting as a representative of your authority,*
- and references to your official capacity are construed accordingly;*
- (2) *Subject to sub-paragraphs (3) and (4), this code does not have effect in relation to your conduct other than where it is in your official capacity.*
- (3) *In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.*
- (4) *Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).*
- (5) *Where you act as a representative of your authority -*
- (a) *on another relevant authority, you must, when acting or that other authority, comply with that other authority's code of conduct; or*
- (b) *on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and*

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insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

- 3.—(1) *You must treat others with respect.*
- (2) *You must not—*
 - (a) *do anything which may cause your authority to breach any of the equality enactments (as defined in Section 33 of the Equality Act 2006[14])*
 - (b) *bully any person;*
5. *You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*
6. *You-*
 - (a) *must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;*

3.4 Article 8 of the *European Convention on Human Rights* provides:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

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4. Evidence and facts

My appointment

- 4.1 The Assessment Panel of the Council's Standards Committee referred Councillor Lorber's complaint against Councillor John to Fiona Ledden, the Council's Monitoring Officer for investigation.
- 4.2 Under section 82A of the Local Government Act 2000, Ms Ledden nominated me to perform her investigatory functions as a Monitoring Officer in respect of Councillor Lorber's complaint.
- 4.3 I am a Consultant Solicitor with Wilkin Chapman Goolden, solicitors. I am a former monitoring officer of Nottinghamshire and Lincolnshire County Councils and from 2007 to 2009 I was Director of Casework for the Standards Board for England (later Standards for England) where I was responsible for accepting and managing complaints relating to the Code of Conduct for Councillors and as part of that role was also an ethical standards officer.

The investigation

- 4.4 During the investigation, I held face to face recorded meetings with:-

- Councillor John
- Councillor Dhiraj Kataria,
- Fiona Ledden, Monitoring Officer for the Council
- Former Councillor Jayesh Mistry
- Councillor Ramesh Patel
- Stephen Weeks, Head of Area Planning for the Council.

Transcripts of these interviews were sent to each of these and all except Mr Mistry have returned signed copies to me.

I held telephone interviews and obtained signed statements from:-

- Councillor Butt
- Councillor Daly
- Councillor Harrison
- Councillor Long
- Councillor McLennan
- Councillor Mitchell Murray
- Councillor Colum Moloney
- Councillor Ketan Sheth

- 4.5 I submitted a questionnaire to Councillor Lorber, who responded to me.
- 4.6 I also sent questionnaires to all the Labour Group members and alternate members of the planning committee during the period 01.01.2010 to 31.03.2011, and received responses from:
 - Councillor Michael Adeyeye
 - Councillor Lincoln Beswick MBE
 - Councillor Muhammed Butt

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- Councillor Mary Daly
- Councillor Helga Gladbaum
- Councillor Jean Hossain
- Councillor Sandra Kabir
- Councillor Dhiraj Kataria
- Councillor Janice Long
- Councillor Margaret McLennan
- Councillor Roxanne Mashari
- Mr Jayesh Mistry
- Councillor Wilhelmina Mitchell Murray
- Councillor Jim Moher
- Councillor Colum Moloney
- Councillor Benjamin Ogunro
- Councillor Tayo Oladapo
- Councillor Ramesh Patel
- Councillor James Powney
- Councillor Ketan Sheth
- Councillor Bobby Thomas
- Councillor Zaffar Van Kalwala

- 4.7 I also received information from Richard Cotton, temporary political assistant to the Labour Group on the Council and Ciaran Weldon, a Senior Technical Services Officer of the Council.
- 4.8 Councillor Kataria has forwarded to me statements and letters relating to the events investigated by Mr Barry Gardiner MP, Mr Navin Shah, London Assembly Member and Councillor Raj Khuroya of Chorleywood Parish Council.
- 4.9 I wish to record my thanks for the co-operation and courtesy shown to me by all those I had cause to contact during the investigation or who have provided information.
- 4.10 Councillor John, Councillor Kataria, Councillor Lorber and the Monitoring Officer were given an opportunity to comment on this report in draft.

Councillor Lorber's complaint

- 4.11 Councillor Lorber is the Leader of the Liberal Democratic Party and is also the Leader of the opposition on the Council.
- 4.12 On 23 December 2011, Councillor Lorber received a copy of an email from Councillor Kataria, a Labour party councillor, to Councillor John, a copy of which is appended to this report at Appendix A ("the 23.12.2011 email").
- 4.13 The email attached an extract of the Labour Party rules and alleged that Councillor John had:
- (a) telephoned Councillor Kataria on 14 December 2010 to instruct him to vote against a planning application for the Sai Baba Temple;
 - (b) had told him on the evening after the planning committee that she wanted to meet him for disciplinary action for what happened at the planning meeting;

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- (c) forced him to agree not to attend a later committee meeting in February 2011 at which the application was scheduled to be considered again; and
 - (d) that three councillors had been removed from considering the application in planning committee and replaced with Christians, implying that this was instigated by Councillor John and was for the purpose of preventing the approval of the application.
- 4.14 Early in January 2012, Councillor Lorber passed a copy of this email to the Monitoring Officer and on 19 January 2012 he made a formal complaint to the Standards Committee.

Background

- 4.15 In May 2010, the Labour Party gained a majority on Brent Council and formed an administration. Councillor John was elected as Leader of the Labour Group and Leader of the Council.
- 4.16 There were many new councillors and some who had not been in office for some time. Among the latter was Councillor Dhiraj Kataria, who had been a Brent councillor from 1986 to 1990 and had previously been for four years a member of Redbridge Council. Councillor Kataria had not been a member of any council for twenty years prior to 2010.
- 4.17 Labour members were selected for the Council's various committees at the Group's Annual General Meeting ("the AGM") which was held the week after the election. Members were asked to express a preference beforehand for which committees they wanted to be on. Councillor Kataria did not express a preference to be on the planning committee before the meeting.
- 4.18 The chair and vice-chair of the planning committee were elected by the Group at the AGM and were Councillors Ramesh Patel and Ketan Sheth, respectively.
- 4.19 In June 2010 Councillor Kataria successfully requested to exchange his place on the Audit Committee for a place on the Planning Committee.

Sai Baba Temple

- 4.20 A lease of the former British Legion Hall on Union Road, Wembley was acquired by the trustees of the Sai Baba Temple, for use as a temple and centre of devotion to Sai Baba. The followers were mainly Hindu, but included Jain and, according to the Temple's literature, Moslem and Christian followers.
- 4.21 The British Legion Hall was directly opposite Pavitt Hall, a building owned by the Brent Labour party and used as party offices on the upper floor with the ground floor let to a Hindu temple.
- 4.22 Almost directly adjacent to Pavitt Hall is a large mosque in a former Methodist church. The area is also a focus for shopping and includes residential properties (see plan, Appendix B).
- 4.23 Before the British Legion building was sold to the Temple trustees, officers in the Planning Department of the Council had indicated to the previous owners on two occasions in 2007 and 2009 that the use of the building fell within Use

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Class D1. These occasions were in relation to proposed redevelopment for residential use, which clearly was not the existing use of the buildings. The two letters distinguished between an existing community use, described as Use Class D1 and the completely different proposed use class. They did not need to research the existing use further and did not consider, and were not asked to consider what changes could be accommodated under the existing use at that time.

- 4.24 Various additions were made to the building for use as a temple.
- 4.25 The temple attracted large numbers of worshippers and greatly exacerbated traffic and parking problems. In early 2010 these occasioned numerous complaints to the Council's planning department. The planning officers therefore considered the use then being made of the former British Legion building and examined the question of the permitted use.
- 4.26 Planning officers came to the conclusion that the former use of the British Legion Hall did not fall into any specific use class, but was rather *sui generis*. This is defined on the government's Planning Portal website as follows:
- Certain uses do not fall within any use class and are considered 'sui generis'. Such uses include: theatres, houses in multiple occupation, hostels providing no significant element of care, scrap yards. Petrol filling stations and shops selling and/or displaying motor vehicles. Retail warehouse clubs, nightclubs, launderettes, taxi businesses, amusement centres and casinos.*
- 4.27 I do not need to set out here the full arguments supporting the officers' view. I have seen the internal consideration of the question, together with reports of another case related to the permitted use of a British Legion hall, and notes of considerations by another planning authority. These arguments were later considered by Counsel, jointly instructed by the Council and the applicants.
- 4.28 I am not qualified, nor do I need for the purposes of this investigation to determine whether the planning officers were correct in their view of the permitted use. What is clear is that it is a reasonable view in the absence of any clear determination by the Court and was arrived at by a proper consideration of the arguments.
- 4.29 On 25 March 2010 the Council's planning department received a planning application for the Temple, which the officers considered to be invalid. They asked for further information by July and warned of the possibility of enforcement action.
- 4.30 On 21 September the Council issued an enforcement notice in respect of change of use of the building and unauthorised additions to it.
- 4.31 The planning application was brought to the Council's planning committee for consideration on 15 December 2010. The officers' recommendation was for refusal because the Temple trustees had not produced evidence of an adequate management plan to control the number of worshippers and the impact on traffic and because one of the extensions sought would be detrimental to neighbouring property.

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Declaration of Interests in the consideration of the Sai Baba Temple application at the Planning Committee meeting of 15 December 2010

- 4.32 On 9 December 2010, Councillor James Powney, as the chair of governors for Pavitt Hall, emailed Stephen Weeks, the planning officer, to say that Labour party members might have a prejudicial interest in the Sai Baba Temple application (“the Application”). Pavitt Hall is immediately opposite the Sai Baba Temple and is owned by the Labour Party. He asked if a dispensation would be required. A dispensation from the need for councillors to absent themselves from the consideration of any matter in which they have a prejudicial interest may be granted in certain circumstances if so many councillors have a prejudicial interest that it would upset the political balance of the committee.
- 4.33 Mr Weeks responded the next day suggesting that the interest might be personal rather than prejudicial, which would not prevent members from considering the application, but referring the matter to the Monitoring Officer, Fiona Ledden.
- 4.34 Councillor Powney responded indicating that Pavitt Hall might be affected by traffic considerations.
- 4.35 On 15 December 2010, Fiona Ledden emailed Councillor Ramesh Patel, the chair of the planning committee, setting out her advice. I have attached her email as Appendix C. She concluded an exemplary expression of the requirements of the Code of Conduct and her reasoning in this instance, by saying that members who had an interest or involvement in the management of Pavitt Hall would have a prejudicial interest and should not be involved in the consideration of the Application. This did not affect so many members that a dispensation would be required.
- 4.36 It was clear from Councillor Kataria’s interview that he does not have a good understanding of interests as defined in the Code of Conduct, and thought an interest could only apply if there were a conflict of interest. He therefore considered that the legal advice was not given in good faith, but was a means to prevent some members of the planning committee from considering the Application. He assumed that Councillor John had instigated the advice.
- 4.37 Stephen Weeks, Councillor Powney and Councillor Patel all say that Councillor John did not ask them to seek this advice, and that she did not contact them in any way concerning the Application. Ms Ledden could not remember who had approached her, but the request for legal advice had initially been handled by her colleagues during her absence. From the evidence of Mr Weeks, I am satisfied that the initial request for advice came via Councillor Powney in discussion with Mr Weeks.
- 4.38 I am satisfied that the legal advice on the question of interests relating to the Sai Baba Temple was correct, that it was properly sought by the chair of the governors of Pavitt Hall, that Councillor John played no part in obtaining it, and that there would have been nothing improper if she had done so.

Alleged phone call from Councillor John to Councillor Kataria 14 December 2012

- 4.39 Councillor Kataria alleged in the 23.12.2011 email that Councillor John telephoned him on 14 December, the day before the planning committee meeting, and told him she wanted to him to vote against the Application.

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- 4.40 I asked all 23 Labour Group members and alternate members of the planning committee for the period 01.01.2010 to 31.03.2011 to complete a questionnaire as part of this investigation. 22 responded. The questionnaires asked:

...did any councillor ask you to support or refuse the [Sai Baba Temple] application, or not to attend the meeting?

- 4.41 The only Councillor who responded that they had been asked to vote against the Application was Councillor Kataria.
- 4.42 Councillor Kataria provided me with a 14 page response, and a 66 page long bundle of documents.
- 4.43 In his response to the questionnaire, Councillor Kataria said that Councillor John had phoned him at 12.12 pm on his mobile phone and that her tone was aggressive and forceful. He wrote:

Below is what she said as recorded in my diary the same day

'Hello Dhiraj, this is Anne. I am ringing about the Hindu Temple matter which is coming up to the Planning Committee tomorrow. I have obtained an opinion from our Legal people that Ramesh, Ketan and Janice cannot sit on this matter because they are Governors of Pavitt Hall and there is a conflict of interest.

'Dhiraj, there are already two religious institutions in the area. There is congestion especially on Fridays. There is already a temple within Pavitt Hall and the mosque next door. I do not want a third religious place in the area. It is not going to happen on my watch. I want you to vote against the Sai Temple proposal' (the bold font is Councillor Kataria's; the italics are mine.)

- 4.44 Councillor Kataria did not include a copy of his diary entry in his document bundle accompanying his questionnaire, although he did copy other manuscript notes.
- 4.45 Councillor Kataria made two notebooks, a blue covered notebook and one in the form of a 2011 diary, available to me to allow me to verify the entries he had made concerning this and other matters. I comment on this evidence below in paragraphs 4.137 – 4.142.
- 4.46 Councillor John says that she did not phone Councillor Kataria at any time in relation to the Application. She also says that she had no strong feelings about it, beyond a desire for it to be properly dealt with by the planning committee. She denies making the remarks noted by Councillor Kataria on that occasion or any other.
- 4.47 In his questionnaire response, Councillor Kataria also says that he informed the chair and vice-chair of the planning committee, Councillors Ramesh Patel and Ketan Sheth about the phone call either on 14 or 15 December. He did this on his mobile phone. He said they did not give him any advice, but they noted what he said.
- 4.48 Councillor Ramesh Patel, in his interview with me, said that he could not recall such a telephone conversation and that if it had taken place he would have remembered it.

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- 4.49 Councillor Ketan Sheth, in his interview with me, said that he was in India, from 9 December 2010 for a month. He did receive a phone call from Councillor Kataria on a Saturday afternoon after his return when Councillor Kataria wanted to meet him to discuss what had happened in the planning meeting and the Council. Councillor Sheth was occupied with family matters at the time and does not remember the entire conversation. He also had two or three other conversations on the phone when Councillor Kataria called him in the evening. He said Councillor Kataria was very excitable and he, Councillor Sheth, had told him that he should speak to someone else. Councillor Sheth does not recall any statement as direct as saying that Councillor John had phoned Councillor Kataria to ask him to vote against the Application.
- 4.50 Councillor Kataria also says that he informed the London Assembly Member, Navin Shah, of Ann John's phone call. I did not seek confirmation of that from Mr Shah. However, when Councillor Kataria responded to my invitation to comment on my draft report, he sent me a statement addressed to himself and signed by Mr Shah.
- 4.51 Writing on 24 April 2012, Mr Shah says that he can confirm that Councillor Kataria phoned him "towards the end of last year and also during February this year", concerning the Application. I would normally expect those times to refer to late 2011 and February 2012. However the application was being considered in December 2010 and February 2011, so it may be that Mr Shah is meaning to refer to those times.
- 4.52 Mr Shah says that he recalls Councillor Kataria complaining of interference by Councillor John in relation to the Application and saying that she had asked him to vote against the application.
- 4.53 Councillor Kataria said he contacted Mr Shah because he was aware that he was interested in the Application. Councillor John in her interview on 27 March 2012 said that Mr Shah had contacted her by phone about the Application when it was under consideration by the Council

I had a row with Navin on the phone because he - and I had a row with Barry [Gardiner]. But, they seemed to think that I could do something to ensure that that planning permission was granted because officers, recommended refusal until they [the applicants] complied with the whole bunch of stuff to do with the operation there. Not to do with the fundamentals about whether it should be a Temple or not.

.....
Navin said "Your planning officers have got it wrong"

- 4.54 Councillor John said that she told Mr Shah not to interfere:

"This is a Brent planning application, we've got a planning committee and they will make a decision all right? We've got competent planning officers".
- 4.55 When Councillor Kataria responded to my invitation to comment on my draft report, he also sent me a letter dated 23 April 2012 addressed to him from

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Barry Gardiner MP. Mr Gardiner said he was writing in response to Councillor Kataria's request:

to reflect upon the conversations and correspondence that took place between us around the time of the [Sai Baba Temple] application

- 4.56 Mr Gardiner says that he was concerned that the Council might not have followed the correct planning procedures and questioned the advice the Council had been given, which he thought to be misleading. He said that he had raised the question of the Application with Councillor John. Councillor John's description of this contact has been quoted at paragraph 4.53 above. Mr Gardiner says that Councillor John was adamant that the application should be refused on the grounds of nuisance to the neighbourhood of noise and traffic.
- 4.57 I have not interviewed Mr Gardiner or Mr Shah. I have regard to Mr Gardiner's statement that he contacted Councillor John with concerns about the way the Application was being handled and that Mr Shah says that he was concerned about the officers' advice to the Council. I note that Councillor John in her interview of 27 March also said that she had been contacted by both Mr Gardiner and Mr Shah, who wanted her to use her influence to support the Application and that she asked them not to interfere. I note also that the arguments against the application which Mr Gardiner says he heard from Councillor John are the grounds for refusal put forward by the planning officers.
- 4.58 I have discussed the quality of the officers' advice above at paragraphs 4.26 – 4.28 above.
- 4.59 In the bundle of documents that accompanied his response to my questionnaire, Councillor Kataria sent me a copy of a letter he said he had sent to Mr Gardiner on 16 February 2011. That letter contained the description of the alleged telephone call with Councillor John on 14 December which appeared in the blue notebook, quoted above.
- 4.60 In his letter of 23 April 2012, Mr Gardiner confirms that he received an email dated 16 February which:
- outlined your [Councillor Kataria's] recollection of and assessment of this matter since the previous December (2010).*
- 4.61 Mr Gardiner confirmed that Councillor Kataria had told him that Councillor John had asked him to vote against the Application.
- 4.62 When Councillor Kataria responded to my invitation to comment on my draft report, he also sent me a statement by Councillor Raj Khirova, a parish councillor of Chorleywood Parish Council.
- 4.63 Councillor Khirova says in his statement dated 24 April 2012, that he was with Councillor Kataria on 14 December 2010 when Councillor Kataria received a call on his mobile phone from someone to whom he responded "Hello Ann". He says that later in the phone conversation, Councillor Kataria said ""with respect, you cannot instruct me on planning matters where I sit as an independent member."

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- 4.64 Councillor Khirova says that Councillor Kataria told him afterwards that the caller was the Leader of the Brent Council, instructing him how to vote on the Application.
- 4.65 I note that in his questionnaire response to the question *Did you discuss the [Sai Baba Temple] application with any other councillors in your political group?*, Councillor Kataria said that he informed Councillors Ramesh Patel and Ketan Sheth of his alleged telephone call from Councillor John on 14 December 2010. He also volunteered that he had informed Navin Shah, a London Assembly member by telephone shortly after the conversation. He did not mention that any other person had overheard the conversation.
- 4.66 In his interview, Councillor Kataria described telephoning Councillors Ramesh Patel and Ketan Sheth as described in paragraph 4.47 above, to report his conversation with Councillor John. He was then asked “Did you inform anyone else?” In response he described his telephone conversation with Mr Shah. He did not mention that anyone else was present when he had the alleged phone conversation, nor that he had commented on it to anyone else immediately afterwards.
- 4.67 I do not know whether or not Councillor John telephoned Councillor Kataria on 14 December 2010. He says she did, she says she did not. After receiving my draft report, questioning his evidence concerning this and other matters, Councillor Kataria has produced a statement from Councillor Khirova, who they both say witnessed the telephone conversation hearing Councillor Kataria’s comments only. I do not understand why Councillor Kataria failed to mention this earlier in his questionnaire response, in his interview, or in his comments on his interview transcript.
- 4.68 If a telephone conversation did take place between Councillor Kataria and Councillor John, only those two know what was said. Even if Councillor Khirova did over hear it, and if his recollection of it, two and a quarter years later, is accurate, it does not show what Councillor John said.
- 4.69 I deal with the evidence of Councillor Kataria’s entries in the blue notebook at paragraphs 4.137 – 4.139 below. Even if the entries were made at the time Councillor Kataria claims, they still only provide his version of what was said. Similarly the communications with Mr Shah and Mr Gardiner, even if they did take place at the times alleged, still report once again, Councillor Kataria’s version of what was said.
- 4.70 In the absence of any other witness to the full telephone conversation of 14 December, if it did take place, I have to consider which is the more likely account: Councillor Kataria’s or Councillor John’s. In the light other concerns relating to Councillor Kataria’s evidence discussed below (paragraphs 4.143 – 4.146 and 4.154 – 4.157, and the consistency of Councillor John’s evidence, I am not satisfied that the alleged phone conversation with Councillor John took place.
- 4.71 If the conversation did take place, it is not clear to me why Councillor John should approach Councillor Kataria alone of all the members of the Labour Group on the planning committee. Even if she had a fixed view on what the outcome of the Application should be (which I am not convinced she had) if she had wished to influence the decision she would surely have had to approach other members. But all other Labour members of the planning committee apart from Councillor Kataria say that no-one approached them to vote in a particular way.

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- 4.72 In the light of the above and of other considerations relating to Councillor Kataria's evidence set out at paragraphs 4.143 – 4.146 and 4.154 – 4.157 below, I am satisfied that even if there was a telephone conversation between Councillor John and Councillor Kataria on 14 December 2010, Councillor John did not attempt to influence his decision on whether or not to support the Application in the planning committee.

Planning committee meeting 15 December 2010

- 4.73 At the planning committee meeting, Councillor Ramesh Patel declared a prejudicial interest in the Application, because he was a governor of Pavitt Hall. He therefore left the room during consideration of this item. The vice-chair, Councillor Ketan Sheth was absent in India. Councillor Thomas chaired this item. Councillor Kataria alleged by an email to me of 21 March 2012 that Councillor Thomas was not elected by the committee then present, which is the appropriate procedure. I have checked with the legal officer present, who confirms that Councillor Thomas was elected by the committee and that there were no objections to his taking the chair, although this is not recorded in the minutes of the committee meeting.
- 4.74 Councillor Kataria questioned the change of view of planning officers that the site was not D1 Use Class but *sui generis* as described above. He did not accept the officers' explanation and in his questionnaire response he says:-

"I can only surmise that not only did the councillors come under pressure from the Leader Councillor Anne John but that she must have applied pressure upon the Planning Officers as well."

- 4.75 Stephen Weeks denied that he had received any pressure from any councillors concerning the Application. Asked specifically whether he was approached by Councillor John he said:-

"I've thought about this. I can't remember whether I might have contacted her initially or possibly she, me. It's not unusual for me to make contact with Councillor John about special issues. Planning related issues. I don't have a record of how it started. It's quite possible that I could have made contact with her."

.....

But I don't know."

Asked if any councillor or member of the leading group put pressure on him to shape his advice on the Application in any particular way, he responded:

"I can be emphatic, that did not happen. There was a degree of contact which was measured because those on the planning committee are aware of how they have to act, I had some conversations, emails I think which I've highlighted to you, with Councillor Ramesh Patel who's the Chair just about how I was planning to respond to this and what the programme was but I was not approached by people one way or another trying to influence that."

- 4.76 Mr Weeks added that Councillor John asked him to provide a briefing note to Barry Gardiner MP, and provided a copy to me.

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4.77 At the planning meeting a motion was carried to defer consideration of the Application to allow for further negotiations with the applicants. Councillor Kataria voted in favour of this motion.

The Mayor's Christmas Dinner 16 December 2010

4.78 The Mayor of Brent Council, Councillor Harbhajan Singh, hosted a Christmas dinner at the Blue Rooms Restaurant in Wembley Park on 16 December 2010. Among the guests were Councillors John, Kataria and Ramesh Patel. Councillor Kataria, in his questionnaire response, says that he and Councillor John were seated at the same table. At interview he explained that the tables were large and that they were not seated close to each other, but that at some point in the evening, everybody else was away from the table, and Councillor John said to him:-

"Dhiraj, you have to see Colum [Councillor Moloney] and myself next week"

4.79 When asked what about, Councillor Kataria says that she said:-

"Disciplinary matter, over what happened at the Planning Meeting"

4.80 Councillor John says that she did attend the function, but did not sit down very much and cannot recall whether Councillor Kataria was seated on the same table. She has no recollection of speaking to him on that occasion. She also says that she had no thought of seeking a disciplinary meeting with Councillor Kataria, or any meeting relating to his conduct at that time, and that if she had, she would not have used a function of this kind to mention it.

4.81 There are no other witnesses to this alleged conversation.

4.82 In his questionnaire response, Councillor Kataria says that at the same function, he was standing at one point with Councillor Ramesh Patel and Councillor Moher, when Councillor Patel said:-

"I am sick and tired of her [Councillor Ann John's] interference in planning matters. I had asked the officers not to bring the temple issue yesterday. But she went behind my back and instructed the officers to bring it yesterday. I wanted the officers to have more discussion with the officers."

4.83 When this was put to Councillor Ramesh Patel in interview, he responded:-

"Not at all.

.....

Not a single word right what was said. No way."

4.84 At interview, Councillor Kataria produced a manuscript note of this conversation in the blue notebook. I discuss the evidence of this note book below (paragraphs 4.137 – 4.139 and 4.142).

4.85 In the light of the lack of corroboration for the first conversation and councillor Patel's denial of the second, and of more general considerations on Councillor Kataria's evidence below (paragraphs 4.143 – 4.146 and 4.154 – 4.157), I am not satisfied that the alleged conversation with

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Councillor John took place and I am satisfied that Councillor Patel did not make the remarks ascribed to him by Councillor Kataria.

Conduct of Planning Committee meetings

- 4.86 A number of Labour Group members became concerned about the interaction with the public in planning committee meetings. Councillor Ketan Sheth explained this concern to me:-

"I saw it as the public face of the Council. For members of the public who were concerned about a planning application, this might be their only experience of the Council and I think it is important that they are treated with dignity and courtesy."

He went on to explain that there were two occasions in 2010-2011 when he thought Councillor Kataria was asking questions of the public in an inappropriate manner and tone. He had not intervened because he did not want to undermine the chair, but thought that the chair should have played a fuller role in managing this aspect of the meeting, He drew his concerns to the attention of Stephen Weeks.

- 4.87 Councillor McLennan made similar observations about the consideration of an application for a block of flats, early in 2011, in the ward of Councillor Shaw. She said:-

"Councillor Kataria attacked her [Councillor Shaw] and was downright rude to her. He did not call her abusive names, but he implied that what she said was rubbish. He also verbally attacked one of the resident objectors, saying that his objections were spurious."

- 4.88 Councillor McLennan complained to the Group Whip, Councillor Moloney. Councillor Moloney said that prior to February 2011:-

"There had been a series of complaints about Councillor Kataria being rude, aggressive and conducting long arguments in planning meetings, but a recent meeting had resulted in complaints from four Labour members: Councillors McLennan, Sheth, Long and Daly."

- 4.89 Councillor Long said of the incident concerning Councillor Shaw:-

"He was quite rude to her and a member of the public, which was quite unnecessary. He implied that the person was not intelligent enough to form a judgment. He was not criticising the merits of the case, but criticising the person. He effectively called him stupid. He did not swear or use abusive language. He raised his voice a bit, but he gets excitable. He was not shouting."

- 4.90 Councillor Daly said:-

"I did have some concerns about Councillor Kataria in planning meetings. I felt he strayed from his brief by offering advice to applicants during the committee session and expressing his opinions to them instead of asking questions to clarify their case and the planning guidance. I know him well. He could be abrupt at times, but I think that is more his manner and style than an intentional rudeness."

She did not think she had mentioned her concerns to Councillor Moloney.

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- 4.91 I am satisfied that there was genuine concern about the conduct of Councillor Kataria and the chairmanship of planning meetings and that this concern was reported to Councillor Moloney, the Group Whip.

Meeting 18 February 2011

- 4.92 Councillor Kataria supplied me with copies of two emails from Councillor John concerning a meeting held on 18 February. I have not seen Councillor John's first email in this exchange, which may have explained the purpose of the meeting, nor Councillor Kataria's response. The first email I have seen is dated 9 February and timed at 17.10. The heading of her earlier email is visible and was timed at 11.59. The email is headed ***Urgent Meeting*** and was sent with high importance. It was sent to Councillors Kataria, Ramesh Patel and Moloney and offers a number of times between 11 and 22 February for a meeting.
- 4.93 The second email dated 15 February 2011 was sent to the same recipients and was headed ***CONFIRMATION** Urgent Meeting with Cllr Ann John*. It confirmed the time and place of the meeting as 18 February 2011 at 6.00 pm.
- 4.94 Councillor Kataria, in his questionnaire response, calls this a *disciplinary* meeting. He says that Councillor John told him that the meeting was *primarily about Member Conduct at Planning Committee*.
- 4.95 Councillor Kataria says that his concern was such that he spoke to the Member of Parliament Barry Gardiner on 15 February and on the following day sent him a long letter dealing with events concerning the application and complaints about Councillor John's conduct relating to planning matters. Councillor Kataria gave me a copy of this letter, interleaved with what appear to be fax record sheets dated 4 December 2002. I have not seen any acknowledgment from Mr Gardiner and I did not ask Mr Gardiner for confirmation. However as noted at paragraphs 4.60 – 4.61 above, Mr Gardiner has acknowledged that he received an email from Councillor Kataria at this time which set out Councillor Kataria's account of these events.
- 4.96 Councillor Moloney said that the 18 February meeting was called in response to the complaints about the treatment of the public in planning committee meetings, which I described above. He said it was not a disciplinary meeting but:-
"was meant to explain to both Councillor Kataria and to Councillor Patel that officers and the public cannot defend themselves in a meeting and that it was inappropriate for them to feel under attack. The chairing needed to be firmer."
- 4.97 Councillor John said the meeting was to discuss both the way that Councillor Kataria behaved in planning meetings and the way the meetings were chaired.
- 4.98 Councillor Ramesh Patel said that he had had occasion to speak to Councillor Kataria about the way he asked questions of the public in planning meetings but that he did not consider that Councillor Kataria had been rude in the incident being discussed in this meeting.
- 4.99 Taking into account the various descriptions of Councillor Kataria's behaviour in committee meetings, and the value set on giving the public a positive and courteous experience in planning committee meetings, I consider that the 18 February meeting was not a disciplinary meeting, that it was quite proper to

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discuss conduct in committee meetings with Councillors Kataria and Patel, and that the discussion was carried on in a proper manner.

- 4.100 The Application was scheduled to be considered by the next planning committee meeting on 23 February 2011. Councillor Kataria said in his questionnaire response that at the end of the 18 February meeting, Councillor John said to him:-

"Dhiraj, I want to know from you clearly, here and now, how you are going to vote on the temple issue on Wednesday?"

.....

"If you do not give me a straight answer I will go to the Labour Group meeting on Monday and have you removed as a member of the Planning Committee."

He also said:-

"I was ordered not to attend the [23 February planning committee] meeting by Cllr Ann John in presence (sic) of Cllr Moloney and Cllr Ramesh Patel."

- 4.101 Councillor Moloney says that the Application was not discussed at the meeting. When the words quoted above were put to him he said:-

"She wouldn't say that; she didn't say that and if she had, I would have told her that she shouldn't say it. Neither did Councillor John threaten to go to the Labour Group and have Councillor Kataria removed from the Planning Committee. Councillor John could not have done this without a disciplinary hearing, and without such a process, it would be illegal."

- 4.102 Councillor Ramesh Patel said that the Application was not mentioned at the meeting and that he would definitely remember if it had been.

- 4.103 Councillor John said that the meeting had discussed how to deal with community pressure in relation to planning applications but not any specific application.

- 4.104 Councillor Kataria recounts how he offered initially to declare an interest and absent himself from consideration of this item, then changed his mind and decided not to attend the committee meeting, and then changed his mind again and wished to attend. He produced entries in a printed diary for 2011, recording this in detail, which I discuss at paragraphs 4.140 – 4.142. He also produced an email dated 23 February to Councillor Tayo Oladapo who was to have attended the planning committee on that day in Councillor Kataria's absence. The email mentions that Councillor Kataria believed that Councillor John would have asked Councillor Oladapo to attend the planning meeting in Councillor Kataria's absence, but that with the withdrawal of the Application, Councillor Kataria would attend after all. It is acknowledged by Councillor Oladapo simply *thank you for notifying me*.

- 4.105 Councillor John recalled none of these events.

- 4.106 In the event, the Trustees of the Sai Baba Temple withdrew their application before it could be considered by the planning committee on 23 February.

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- 4.107 I do not think the arrangements made by Councillor Kataria for attendance or non-attendance at the planning committee meeting assist me in deciding the nature of the meeting on 18 February, or whether the Application was discussed at it.
- 4.108 In the light of the emphatic denial of all those present at the 18 February meeting except Councillor Kataria, and my consideration of the entries in the 2011 printed diary at paragraphs 4.140 – 4.142 below, I am satisfied that the Application was not mentioned at this meeting.

Make-up of the planning committee

- 4.109 In the 23.12.2011 email, Councillor Kataria alleged that in addition to himself,

"Councillors Ramesh Patel, Ketan Sheth and Jayesh Patel (sic) were removed from hearing the [Sai Baba Temple] application. All of us were replaced with Christians. "

I understand that Jayesh Patel is an error and should have read Jayesh Mistry.

- 4.110 The actual position at the committee meeting in December 2010 was that Councillor Ramesh Patel had a prejudicial interest in the Application because of his role in the management of Pavitt Hall, and was precluded from considering it; Councillor Ketan Sheth was in India on a family visit and Councillor Jayesh Mistry did attend the committee as an alternate for Councillor Sheth who was absent.
- 4.111 At the time of the scheduled second consideration of the Application in February, Councillor Ramesh Patel would still have had a prejudicial interest. Councillor Sheth, who had visited the Sai Baba Temple with his family on a number of occasions for the purpose of devotion, told the planning officer that he was not happy to consider the Application, because even though it was not his regular place of worship, others might think that it would influence his consideration, so for reasons of probity and transparency he intended to declare a prejudicial interest in that item. Councillor Mistry, who was not a member of the planning committee, had been replaced as an alternate for Councillor Sheth. No alternate would have been permissible for Councillor Sheth if he absented himself for a single item.
- 4.112 All changes to the Labour Group representation on the planning committee in 2011 related to alternates, and, apart from former Councillor Mistry, were to prevent the same councillor being both a member and an alternate on the same committee or an alternate for two committee members. Mr Mistry told me in interview that he could not recall Councillor John approaching him about how he might vote on the Application and that he would remember if she had.
- 4.113 I consider that the only changes made to the Labour Group representation on the planning committee were administrative in nature and affected only the alternates.

The 23.12.2011 email

- 4.114 In the late afternoon of the day before Christmas Eve 2011, Councillor Kataria sent the 23.12.2011 email to Councillor John from his personal hotmail

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account. The face of the email showed copies sent to Councillors Moloney, Mitchell Murray, Ramesh Patel and Ketan Sheth. The email was not marked "confidential".

4.115 A copy of the 23.12.2011 email was sent the same day to Councillor Lorber, Leader of the Liberal Democratic Group on the Council, who passed it to the Monitoring Officer as described above.

4.116 Councillor Kataria also forwarded copies of the email on 1 January to certain other office holders in the Labour Group including Councillor Harrison and Councillor Butt.

4.117 Councillor Kataria was assiduous in his denial that he leaked his 23.12.2011 email to Councillor Lorber.

(a) On 9 January, he sent an email to five people, one of whom was a councillor (Councillor Harbahajan Singh) saying that his "confidential" email to Councillor John had been leaked without his permission and denying that he had leaked it;

(b) On 4 February Councillor Kataria sent an email to all Labour councillors on the Council, saying that he had sent a "confidential" email to Councillor John and that on 7 January he had heard that the email had been leaked and denying that he had leaked it. He suggested that one of the recipients must have leaked it "for their own purposes";

(c) On 7 February he wrote to Councillor Gladbaum, again denying that he had leaked the 23.12.2011 email;

(d) In his interview I asked Councillor Kataria if he had sent a copy of the 23.12.2011 email to Councillor Lorber. He replied, "No."

4.118 In answer to my question how he obtained a copy of the 23.12.2011 email, Councillor Lorber wrote:-

"The email arrived in my inbox on Friday 23.12.2011 as a blind copy."

4.119 On 2 March I wrote to Councillor Lorber, asking him to clarify what he meant by blind copy.

"I am familiar with that term, meaning an email is copied to someone else without the named recipient having notice of it, but there is usually a sender email address of some kind. What appeared in the sender box of the email when you received it? If it is still on your computer, would it be possible to print out the whole email addressed to you and send me a copy?"

4.120 On 12 March my colleague, Mrs Thompson emailed Councillor Lorber, acknowledging receipt of documents and asking again:-

"Please could you let us know what appeared in the sender box of the email when you received it?"

4.121 I have received no response from Councillor Lorber to this question.

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Meeting of Labour Group 20 February 2012

- 4.122 Councillor Kataria complains that Councillor John slandered him at the meeting of the Labour Group on 20 February 2012 by indicating that he had copied his 23.12.2011 email to Councillor Lorber and that this was done to intimidate him as a witness in this investigation.
- 4.123 At the meeting Councillor John gave the usual Leader's report in which, among several other items, she reported that Councillor Lorber had made a complaint about her to the Standards Committee of the Council which was being investigated, and that the investigation was expected to take 12 weeks.
- 4.124 I have received a copy of the minutes of the meeting taken by Richard Cotton. I have also interviewed 10 members who attended the meeting in addition to Councillor John. I am satisfied that Councillor John did not name who she thought had leaked the 23.12.2011 email to Councillor Lorber. I am also satisfied that she said nothing which was not already in the public domain, or that was required to be kept confidential. I am also satisfied that she said words to the effect of "I am sure this will be reported to Paul Lorber by tomorrow if not tonight".
- 4.125 Councillor Kataria, who was seated on the opposite side of the table from Councillor John, alleges that Councillor John looked at him when she said these words, in such a way as to indicate that she believed he had sent the 23.12.2011 email to Councillor Lorber.
- 4.126 Later in the same meeting, in relation to an item concerning libraries, I am satisfied that Councillor John said words to the effect of "write this down as well".
- 4.127 Councillor John denies that either of these statements was directed at Councillor Kataria or that she looked at him in particular.
- 4.128 Of the ten other councillors interviewed Councillor Kataria's views have been given; one Councillor said that Councillor John:-

"did lean in that [ie Councillor Kataria's] direction, but that might be to read more into her body language than there was. I don't recall her making or implying any threat to anyone;"

and one other thought that her words might have indicated that Councillor Kataria had leaked the 23.12.2011 email:-

"I am not sure if Councillor John indicated that Councillor Kataria sent his email to Councillor Lorber, but on balance I think she did indicate him. I cannot be one hundred percent sure about this. She may have said something like "I hope you're taking this down properly, Dhiraj", but that may have been in another meeting."

- 4.129 Most of the members interviewed said that various people took notes in the Group Meeting, most obviously Richard Cotton and Councillor Kataria, but others made notes and aides memoires of various kinds. Several of the interviewees pointed out to me that there had been a number of leaks of the Group minutes in recent months; that this had been raised in earlier Group meetings and was a matter of concern to the Group.

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4.130 Councillor Kataria told me at his interview that two people attending the committee meeting commented to him that Councillor John had singled him out in her remarks and sympathised with his treatment. These were Mr Len Snow, who declined to be interviewed by me saying that he had not been present at the whole of the meeting and Councillor Harbhajan Singh.

4.131 I wrote to Councillor Singh on 20 March 2012, saying:

As a result of initial interviews, I believe that you may have some information which would assist me. I would like to conduct a brief telephone interview with you. I think this would probably take less than half an hour. My colleague, Gill Thompson will be in touch with you to arrange a time and date that is convenient for you.

My letter did not mention the Labour Group meeting on 20 February 2012. My colleague Mrs Thompson later phoned Councillor Singh and asked him to call her to arrange a time for an interview and referred him to my letter. Mrs Thompson did not know the reason for my wish to interview Councillor Singh.

4.132 I received a letter from Councillor Singh dated April 12 2012, saying that he had just returned from India. He also said:

The only comment that I wish to make is in respect of the Labour Group meeting of February 2012. At the meeting the Leader Cllr Ann John, whilst (sic) submitting her report under the libraries said, whilst looking at Councillor Kataria:

"I am sure that this will be reported to Paul Lorber by tomorrow morning, if not tonight."

Everyone in the room knew who she was referring to. She was looking in the direction of Cllr Kataria and the enquiry against her was as a result of email that Cllr Kataria had written.

I sad to Cllr Kataria afterwards that Cllr Ann John had been unfair to him in hinting that Cllr Kataria is routinely leaking Labour Group information

4.133 I do not understand why Councillor Singh should think that I might want to speak to him concerning the events of the Group meeting, unless he had been contacted by Councillor Kataria. As far as I am aware, only Councillor Kataria and his representative at interview were aware that he had told me at interview of Councillor Singh's comment, and both were warned that they should not discuss the content of the interview with anyone else.

4.134 I also note Councillor Singh's recognition that the remark was made about a different item on the agenda to the 23.12.2011 email.

4.135 I note that even if Councillor John had insinuated that Councillor Kataria had sent the 23.12.2011 email to Councillor Lorber, which I am satisfied she did not, it would only have been slanderous if untrue.

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Councillor Kataria's Evidence

- 4.136 Of the matters complained of, apart from the question of whether Councillor John manipulated the planning committee to achieve a particular result, all rest entirely on Councillor Kataria's evidence.

The Blue Notebook and the 2011 printed diary

- 4.137 Councillor Kataria, in his questionnaire response, said that he recorded the alleged phone call from Councillor John in his diary the same day. He did not produce a copy of his manuscript notes in the bundle of documents he sent with the questionnaire response, but he did produce to me at his interview on 14 March 2012, a notebook which contained a note of the alleged conversation. He explained at interview that the note was in a book that he kept in the car to make notes, and he kindly allowed me to examine the book for two weeks.
- 4.138 The notebook was a blue hard-covered A4 notebook ruled in feint. An analysis of the entries in the book is shown in Appendix D.
- 4.139 Despite Councillor Kataria's statement in his questionnaire response that he recorded these events in his diary the same day as they occurred, this book is clearly not a diary. It is not printed in the form of a diary, nor is it kept as a regular diary either recording events or appointments. It mainly contains brief notes of names with telephone numbers or email addresses or both, which I describe as "contact notes." They are written in a variety of inks, light and dark black, blue and red ballpoint and pencil, of which a dark black ballpoint is the most common. The matters related to his allegations against Councillor John are the only ones to appear as a record of conversations or phone calls. They are all written in a similar dark black ballpoint. There are two dates recorded in the earlier part of the notebook, prior to the entries related to this complaint, 2\9\08 and 11\11\08. Two pages after the entry relating to the alleged incidents on 16 December 2010 at the Mayor's Christmas dinner is the heading 9 Nov 08 or 09 RAMA, where the last two numbers in the date have been overwritten in dark black ballpoint 11. An analysis of the entries in the book is shown in Appendix D.
- 4.140 At his interview, Councillor Kataria also produced a printed diary for 2011, one page to a day, published by Staples. He confirmed that it was his diary for that year and kindly agreed to let me borrow it for a fortnight. Like the blue notebook it consisted mainly of short notes of contact details, occasional lists of numbers, written in light and dark black, blue and red ballpoint, with occasionally pencil or black liquid ink. An analysis of the entries in the book is shown in Appendix E.
- 4.141 I note that this book, although printed as a diary does not appear to have been regularly used as such by Councillor Kataria. I note also that it was not mentioned in his questionnaire response, but was produced at interview, and that when I asked to borrow it, Councillor Kataria said he only wrote in it things of extreme importance. I note that apart from what seems to be a draft email on 14 October the only narrative entries record matters relating to this complaint. I note that they are all recorded in similar black ballpoint to the entries relating to this complaint in the blue notebook. I note that several entries record letters, emails and texts in some detail when their contents were presumably available in original copies. I also note that some entries, as in the blue notebook, appear to accommodate earlier notes made on the same page.

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4.142 I do not know when the entries relating to this complaint were made in the two books. They could have been made, as Councillor Kataria claims on the same days, but they could equally well have been made at a later date, and I do not find that the written notes add any weight to his verbal evidence.

Councillor Kataria's Credibility

4.143 Where Councillor Kataria claims to have made a contemporary or near contemporary note of events, I have found that the evidence for contemporaneity is in doubt. Even if the notes were made at the time stated, they simply record Councillor Kataria's own account. When he claims Councillor Ramesh Patel criticised Councillor John, Councillor Patel denies it. When he says Councillors Moloney and Ramesh Patel, witnessed threats to him, they deny it. When he says he told others of these incidents, Councillors Ramesh Patel and Ketan Sheth deny it. The majority of those attending the Group meeting on 20 February 2012, have a different perception of events, but I take into account that this dealt with matters of considerable concern to all parties and that emotions are likely to have played a part in recollections. I also take into account Councillor Kataria's representations that other members of the Labour Group for reasons of fear or loyalty might not wish to give evidence that reflected badly on Councillor John.

4.144 I wrote to Councillor Kataria before his interview and said:-

"You are entitled to be accompanied by a friend, relative or other representative during the meeting. Anyone accompanying you must not be connected with the complaint. If you wish to be accompanied please let me have the name and status (eg friend; legal advisor) of the person concerned before the interview."

4.145 Councillor Kataria brought a companion to interview without notifying me, and when I reminded him he initially denied that I had written this to him, and then said he had checked with Fiona Ledden the Monitoring Officer who had said that he only needed to notify me if he was accompanied by a lawyer. I asked Mrs Ledden what she had advised and she said that in her letter of 21 March 2012 that she had told him he should inform me if he was bringing someone, and in particular if he was to bring a lawyer out of courtesy. She added that maybe she was less clear than she thought.

4.146 It may well be that Councillor Kataria was mistaken about this. He may have been mistaken about the nature of his meeting with Councillors John, Moloney and Ramesh Patel on 18 February 2011, which he thought was disciplinary, but they did not. He may have been mistaken about the nature of the 23.12.2011 email which he said was confidential but which was not expressed to be so. Many of these disparities might be due to careless use of language or misunderstandings, but cumulatively they made me feel that Councillor Kataria's evidence had to be treated with caution.

Examination of the 23.12.2011 email

4.147 At this point in the investigation, I consulted the Monitoring Officer about the possibility of tracing who had sent the 23.12.2011 email to Councillor Lorber. I had questioned all those to whom Councillor Kataria said he had sent the email on 23 December and Councillor Lorber had told me he received it that day. If it was not sent by Councillor Kataria, whoever sent it must have done

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so within a few hours of receiving it, late on the day before Christmas Eve, a Friday, on what would be for most people the last working day before the Christmas break.

- 4.148 Article 8 of the Convention on Human Rights, incorporated into English law by the Human Rights Act 2000, gives everyone a right to respect for their private life and correspondence, so that it is only permitted to examine correspondence, including email correspondence in certain restricted circumstances. The Monitoring Officer and I agreed that those circumstances existed in the investigation. The reasoning is set out in section 7 of this report.
- 4.149 On 28 March 2012, I asked Ciaran Welden, a Senior Technical Services Officer specialising in emails if he could trace who had sent the 23.12.2011 email to Councillor Lorber or if that could not be done, if he could pinpoint the time when it was delivered to his and to Councillor John's email. I quote his response below:-

"I have traced the email message from the tracking logs on our servers. Due to the way the system tracks email, it does not differentiate between BCC or CC, it just sees the mail been sent to recipients.

The email was received at 23/12/2011 16:16 and delivered to these email addresses;

*cllr.paul.lorber@brent.gov.uk
cllr.muhammed.butt@brent.gov.uk
cllr.michael.adeyeye@brent.gov.uk
cllr.jim.moher@brent.gov.uk
cllr.harbhajan.singh@brent.gov.uk
cllr.emad.al-ebadi@brent.gov.uk
cllr.dhiraj.kataria@brent.gov.uk
cllr.claudia.hector@brent.gov.uk
cllr.benjamin.ogunro@brent.gov.uk
cllr.ketan.sheth@brent.gov.uk
cllr.ramesh.patel@brent.gov.uk
cllr.wilhemina.mitchelmurray@brent.gov.uk
cllr.colum.moloney@brent.gov.uk
cllr.ann.john@brent.gov.uk*

Due to forwarding setup on the councillors' mailboxes the email was also delivered to these email addresses

*cldhector@yahoo.co.uk
colummoloney@hotmail.co.uk
dhirajkataria@hotmail.co.uk
cllremad@gmail.com*

*The email sent to this address
Cllr.wilhemina.mitchelmurray@brent.gov.uk was bounced."*

- 4.150 The copy of the 23.12.2011 email which was sent to Councillor Lorber was therefore sent with the email to Councillor John and must have been sent by Councillor Kataria.

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- 4.151 On 5 April 2012, Councillor Kataria phoned me to say that he had sent the 23.12.2011 email to Councillor Lorber himself, that he had done so as it seemed to him the only way he could draw attention to the actions of Councillor John over planning issues and that he would email me a statement to that effect that afternoon. On 12 April 2012, I received a letter from Councillor Kataria dated 6 April 2012. The letter confirmed that he had copied his email to Councillor Lorber, when he sent it to Councillor John. It did not mention the others who were sent blind copies. I do not know why Councillor Kataria decided to admit this at that time. I have no reason to believe that he was aware the source of the email sent to Councillor Lorber had been identified.
- 4.152 In his letter Councillor Kataria repeated his allegations that Councillor John had sought improperly to interfere with the planning process. He repeated some of the evidence I have already discussed. He did not put forward any new evidence.
- 4.153 Given the glaring inconsistencies in Councillor Kataria's evidence, I cannot place any credence on any part of it. I do not know what his motive for writing and transmitting the 23.12.2011 email was and it is not the purpose of this investigation to determine that. He says that it was because he thought it the only way he could draw attention to Councillor John's alleged manipulation of planning matters.
- 4.154 I note that he did not use the obvious and proper ways to make such a complaint. I have seen no evidence that he ever made a formal complaint to the Group Whip as prescribed in the same rules as the extract which accompanied his 23.12.2011 email. Mr Gardiner in his letter to Councillor Kataria of 23 April makes the same observation and says that when he was first made aware of these matters he had urged Councillor Kataria to take them to the Labour Group. Mr Gardiner says that he repeated this advice when he received a second email from Councillor Kataria on 18 February. Councillor Kataria says he did not do this because Councillor Moloney was already aware that Councillor John had threatened him with removal from the planning committee, which I have found above not to be the case.
- 4.155 Councillor Kataria made no complaint under the Council's whistle-blowing policy.
- 4.156 In his letter to me of 6 April, Councillor Kataria says that he sent a copy of his 23.12.2011 email to Councillor Lorber

In order for the exercise of democracy to be restored and the balance of scrutiny of council decisions regained for the better benefit of, and service to, Brent residents.

He goes on to say that he did not know that Councillor Lorber could lodge a complaint against Councillor John with the Borough solicitor and did not intend that to happen. Councillor Kataria has undertaken to uphold the Council's Code of Conduct and received training on that Code as part of his induction to the Council after the elections in 2010. I do not understand how he could not have been aware of the likelihood of Councillor Lorber making such a complaint, nor is it clear to me what other action he expected Councillor Lorber to take to bring about the aims Councillor Kataria says he was pursuing.

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4.157 It is difficult to see how Councillor Kataria could believe that copying his email to 14 individuals could be the proper way to make a serious complaint. I also note that in denying, untruthfully, that he had copied the 23.12.2011 email to Councillor Lorber, Councillor Kataria sought to place the blame on those councillors to whom he admitted sending a copy, apparently seeking to create dissension in the Group.

Conclusions of fact

4.158 I consider that Councillor John did not attempt to influence Councillor Kataria, or any other member of the planning committee or any planning officer in relation to the Application or at all.

4.159 I have already found that Councillor John did not threaten Councillor Kataria with disciplinary action in December 2010 or at all.

4.160 I have already found that Councillor John was not involved in obtaining legal advice relating to interests in the Application and that the planning committee membership by members of the Labour Group was not improperly altered for the purpose of influencing the consideration of that Application.

4.161 I also consider that Councillor John did not threaten to remove Councillor Kataria from the planning committee or bully him in any way.

4.162 I consider that Councillor John did not indicate in any way that she believed Councillor Kataria had leaked the 23.12.2011 email to Councillor Lorber at the Labour Group meeting on 20 February 2012.

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5. Summary of the material facts

- 5.1 Councillor Ann John is the leader of the Labour Group and of the Council; Councillor Lorber is the leader of the Liberal Democratic Party and of the opposition on the Council; Councillor Kataria is a Labour member of the Council.

Councillor Lorber's Complaint

- 5.2 On 23 December 2011, Councillor Lorber received a copy of an email from Councillor Kataria, a Labour party councillor, to Councillor John, which alleged that Councillor John had:-
- (a) telephoned him on 14 December 2010 to instruct him to vote against a planning application for the Sai Baba Temple;
 - (b) told him on the evening after the planning committee that she wanted to meet him for disciplinary action for what happened at the planning meeting;
 - (c) forced him to agree not to attend a later committee meeting in February 2011 at which the Application was scheduled to be considered again; and
 - (d) that three councillors had been removed from considering the Application in planning committee and replaced with Christians, implying that this was instigated by Councillor John and was for the purpose of preventing the approval of the Application.

Background

- 5.3 In May 2010, the Labour Party gained a majority on Brent Council and formed an administration.
- 5.4 Labour members were selected for Group offices and for the Council's various committees at the Group's AGM. Councillors Ramesh Patel and Ketan Sheth were elected as the chair and vice-chair of the planning committee, respectively. Later in the year Councillor Kataria successfully requested to exchange his place on the audit committee for a place on the planning committee.

Sai Baba Temple

- 5.5 A former British Legion Hall on Union Road, Wembley was leased to the trustees of the Sai Baba Temple, for use as a temple. The devotees were mainly Hindu, but included Jain and other religions.
- 5.6 The British Legion Hall was directly opposite Pavitt Hall, which was owned by the Brent Labour party with party offices above and a Hindu temple below.
- 5.7 Officers in the Planning Department of the Council had indicated to the previous owners of the British Legion Hall on two occasions that the use of the building fell within Use Class D1.
- 5.8 Additions were made to the Hall for use as a temple.

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- 5.9 In early 2010 the Council's planning department received complaints of traffic and parking problems caused by worshippers at the Sai Baba Temple. The planning officers re-examined the question of the permitted use of the building and formed the view that it was not Use Class D, but *sui generis*, and that planning consent was required for use as a temple.
- 5.10 I am satisfied that the officers reached a valid view by a proper consideration of the arguments.
- 5.11 On 25 March 2010 the Council received a planning application for the Sai Baba Temple, which was considered invalid. Further information was sought with warnings of enforcement action.
- 5.12 On 21 September the Council issued an enforcement notice in respect of change of use of the building and unauthorised additions to it.
- 5.13 The Application was considered by the Council's planning committee on 15 December 2010. The officers recommended refusal because of the lack of an adequate management plan and because a proposed extension was detrimental to neighbouring property.

Declaration of Interests in the consideration of the Application at the Planning Committee meeting of 15 December 2010

- 5.14 On 9 December 2010, Councillor James Powney, the chair of governors for Pavitt Hall, sought advice on whether Labour members of the planning committee should declare prejudicial interests in the consideration of the Application, because of the party's ownership of Pavitt Hall. The Monitoring Officer advised that those involved in the management of Pavitt Hall were likely to have a prejudicial interest and should declare that and absent themselves from the committee's consideration of the Application.
- 5.15 I am satisfied that the advice was good and that Councillor John played no part in obtaining that advice.

Alleged phone call from Councillor John to Councillor Kataria 14 December 2012

- 5.16 Councillor Kataria alleged that Councillor John telephoned him on 14 December, and told him she wanted him to vote against the Application. Councillor John denies this.
- 5.17 Councillor Kataria said that he reported the conversation to Councillors Ketan Sheth and Ramesh Patel one or two days later. Councillor Patel could not recall such a conversation and Councillor Sheth was in India at that time.
- 5.18 Councillor Kataria said that he also informed Navin Shah, London Assembly Member and Mr Barry Gardiner MP of the contents of this phone call. Both recalled in statements obtained by Councillor Kataria in response to my draft report that he had complained to them that Councillor John had asked him to vote against the Application.
- 5.19 Also in response to my draft report, Councillor Kataria said that the alleged phone call on 14 December had been overheard by Councillor Raj Khiroya, of Chorleywood Parish Council, who also provided a statement to Councillor Kataria. Councillor Kataria had not previously mentioned this matter.

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- 5.20 I am not convinced that the alleged phone conversation took place, but if it did only Councillor Kataria and Councillor John know what she said to him. I am satisfied that Councillor John did not attempt to influence Councillor Kataria in relation to his voting on the Application.

Planning committee meeting 15 December 2010

- 5.21 The chair of the planning committee declared a prejudicial interest in the Application and left the committee room during its consideration. The vice-chair was absent and the item was chaired by Councillor Thomas. Councillor Kataria alleged that he was not properly elected to this position by the committee. I am satisfied that he was properly elected and that no member of the committee raised any objection at the time.
- 5.22 The committee approved a resolution to defer consideration of the Application to allow time for further negotiations between the applicants and planning officers. Councillor Kataria voted for this motion.

The Mayor's Christmas Dinner 16 December 2010

- 5.23 Councillor John and Councillor Kataria were among the guests at the Mayor's Christmas dinner at the Blue Rooms Restaurant on 16 December 2010. Councillor Kataria alleges that during the event Councillor John told him that he would have to attend a meeting with her and Councillor Moloney, the Group Whip, over a disciplinary matter concerning what happened at the planning meeting. Councillor Kataria said that he made a note in his diary of this the same day. I have seen the note and am not satisfied that it was made at that time. No such meeting with the Group Whip took place at this time. I am not satisfied that Councillor John made this remark.
- 5.24 At the same event Councillor Kataria alleged that he heard Councillor Ramesh Patel complaining about interference in planning matters by Councillor John. Councillor Patel emphatically denies that Councillor John interfered in planning matters and that he said she did on this occasion or any other. Councillor Kataria said that he made a note of Councillor Patel's remarks in his diary the same or the next day. I have seen the note and am not satisfied that it was made at that time.
- 5.25 I am satisfied that Councillor Ramesh Patel never made the remarks alleged by Councillor Kataria.
- 5.26 I have examined a notebook and a printed diary for 2011, which Councillor Kataria produced to me as evidence of contemporaneous or near contemporaneous notes of events relating to this complaint. I do not know when these notes were made, but I am not convinced that they were made at the times Councillor Kataria says and have consequently placed no weight on them as evidence.

Conduct of Planning Committee meetings

- 5.27 There was concern among some members of the Labour Group over the behaviour of some councillors in planning committee meetings. The manner of chairing the committee and Councillor Kataria's interaction with members of the public speaking at the committee were the predominant worries.

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Meeting 18 February 2011

- 5.28 Councillors Kataria, Moloney and Ramesh Patel were asked to attend a meeting with Councillor John on 18 February 2011. The email invitation described the meeting as “Urgent”; it did not use the word disciplinary.
- 5.29 I am satisfied that the meeting was to discuss the chairing and appropriate behaviour by members at planning committee meetings and that it was not a disciplinary meeting.
- 5.30 Councillor Kataria alleged that during the course of this meeting Councillor John, in the presence of the other two councillors, asked him how he would vote on the Application at the February planning committee, and threatened to have him removed from the planning committee if he did not tell her. Councillors Moloney and Patel both emphatically deny that any such conversation took place or that the Application was mentioned at all.
- 5.31 I am satisfied that Councillor John did not make the demands alleged at the 18 February meeting.

Make-up of the planning committee

- 5.32 Councillor Kataria alleged that he, Councillors Ramesh Patel, Ketan Sheth and Jayesh Mistry were removed from hearing the Application and replaced with Christians.
- 5.33 At the first consideration of the Application in December 2010 Councillor Ramesh Patel had a prejudicial interest in the Application and was precluded from considering it; Councillor Ketan Sheth was in India on a family visit and Councillor Jayesh Mistry did attend the committee as an alternate for Councillor Sheth. Councillor Kataria also attended the committee meeting.
- 5.34 The Application was scheduled to be considered again on 23 February 2011 when Councillor Ramesh Patel would still have had a prejudicial interest. Councillor Sheth intended to declare a prejudicial interest because of his attendance at the temple and Councillor Mistry had never been a member of the planning committee, but had attended as an alternate for Councillor Sheth when he was in India. None of these three councillors were therefore removed from the planning committee.
- 5.35 Other revisions to the Labour Group representation on the planning committee in 2011 all related to alternates, to prevent the same councillor being both a member and an alternate on the same committee except for Councillor Mistry who ceased to be an alternate for that committee.
- 5.36 I consider that the changes made to the Labour Group representation on the planning committee were entirely administrative in nature.

The 23.12.2011 email

- 5.37 On 23 December 2011, at 16.16 hours Councillor Kataria sent the 23.12.2011 email to Councillor John from his personal hotmail account. The face of the email showed copies sent to Councillors Moloney, Mitchell Murray, Ramesh Patel and Ketan Sheth. Examination of the passage of the email through the Council’s email system shows that Councillor Kataria sent blind copies to seven other Labour councillors and to Councillor Lorber. The email was not marked “confidential”.

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5.38 Councillor Kataria assiduously denied that he leaked his 23.12.2011 email to Councillor Lorber in emails sent on 9 January, 4 and 7 February to numerous people including all members of the Labour Group, and at interview on 14 March. He admitted that he had sent it to Councillor Lorber in a telephone conversation with me on 7 April 2012. He also suggested that it had been leaked by another member of the Labour Group

Meeting of Labour Group 20 February 2012

5.39 Councillor Kataria alleged that Councillor John slandered him at the meeting of the Labour Group of the Council on 20 February 2012, by insinuating that he had leaked the 23.12.2011 email to Councillor Lorber and that this was done to intimidate him as a witness in this investigation.

5.40 Councillor John gave a Leader's report to that meeting in which she reported the complaint and said that the investigation was expected to take 12 weeks. Councillor John did not name who she thought had leaked the 23.12.2011 email to Councillor Lorber and said nothing which was not already in the public domain, or that was required to be kept confidential.

5.41 I am satisfied that Councillor John did not by any action indicate that she suspected Councillor Kataria of copying the 23.12.2011 email to Councillor Lorber.

5.42 I have found in many cases where Councillor Kataria put forward the evidence of other witnesses they have denied his account and that it is doubtful that the notes he claims to have been made contemporaneously, were made at those times. I have found inconsistencies in his evidence. I have also found that he initially denied and now admits that he sent a copy of his 23.12.2011 email to Councillor Lorber, and have concluded that I can place no belief in his evidence against Councillor John or at all.

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6. Additional submissions of Councillor Lorber, Councillor Kataria, Councillor John and the Monitoring Officer

- 6.1 I sent my draft report to Councillors John, Kataria and Lorber and the Monitoring Officer on 13 April 2012 and sought comments from them by 25 April.
- 6.2 I have received no comments from Councillor Lorber.
- 6.3 Councillor John made a technical factual correction which I have incorporated in the report.
- 6.4 Councillor Kataria sent me statements and letters he had obtained from Mr Barry Gardiner MP, Mr Navin Shah, London Assembly Member and Councillor Raj Khirova, a parish councillor, and I have amended the body of the report to take account of those.
- 6.5 Councillor Kataria expresses concern that I have not sought information from every one he has mentioned as having been given information by him or having heard disputed conversations. My investigation is into the conduct of Councillor John. It is not into the Council's planning procedures, nor into the conduct or rules of the Labour Group.
- 6.6 Councillor Kataria disagrees with my doubt about the nature of the blue notebook and the 2011 diary and re-asserts the authenticity of the entries he made in them. He says that they are in the same style as other notebooks and diaries which he can produce. I do not believe this would assist me. If these books were kept with regular entries in date order then they would add weight to Councillor Kataria's claims to have made contemporary notes in them, because it would be difficult to add such notes later. But they are not. So they do not add anything to Councillor Kataria's assertions.
- 6.7 Councillor Kataria believes I should have requested his and Councillor John's phone records in relation to the alleged phone calls between them. Even if such phone records were obtainable they could only show that calls were made. They could not show the content of those communications, and I do not believe that they would therefore have materially assisted me, and they would have lengthened and added to the cost of the investigation.
- 6.8 The numerous different persons alleged to have been involved in some of the allegations, or to have received information about them from Councillor Kataria have made the investigation unusually expensive, simply because of the number of witnesses involved. In these circumstances, I have sought sufficient information on which to form a judgment on the matters alleged against Councillor John.
- 6.9 Councillor Kataria questions why I have preferred the evidence of others to his. I am required to form a judgement on the balance of probabilities. This means where several witnesses give similar testimony and one or fewer provides conflicting testimony, I am bound to believe the larger number in the absence of reasons to doubt them. When I consider conflicting evidence, I also take into account the consistency of the evidence provided by the witness.
- 6.10 Further when I have to choose between the evidence of witnesses who have not, to my knowledge, departed from the truth and the evidence of one who

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admits that he has lied to his fellow-councillors and to me, I am bound to believe the former, unless there are cogent reasons not to do so.

- 6.11 Councillor Kataria has made a number of comments on the detail of the report. Where these have been factual corrections, or have identified something that was not clear, I have amended the report accordingly. Many reassert Councillor Kataria's original views and disagree with my conclusions. Where they add nothing that is not already included in the report I have not mentioned them.
- 6.12 The Monitoring Officer has asked me to clarify the reasoning concerning official capacity. I have expanded my comments on this in the reasoning, and hope that it is now clearer.

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7. Reasoning as to whether there have been failures

Official Capacity

- 7.1 The Council's Code of Conduct does not apply to members of local authorities at all times, but only when acting in an official capacity, as set out in paragraph 2 of the Code.
- 7.2 I must first consider, under paragraph 2(1)(a) of the Code, whether in her alleged actions involving Councillor Kataria, Councillor John was conducting the business of the Council or her office.
- 7.3 The starting point is whether a Councillor is acting in pursuit of their role as councillor, or some office to which they are appointed as a councillor e.g. executive member or mayor or representative of the Council on some outside body; or dealing with constituency matters such as problems of a resident, or a local business.
- 7.4 Apart from the allegation of manipulating the Labour group representation on the planning committee, all the allegations relate to Councillor John in relation to Labour Group matters and at Labour Group events. I have been unable to find any decision by the Court or by the former Adjudication Panel for England, now the First Tier Tribunal, which relates to actions taken within a Group meeting or in relation to the management of Group business.
- 7.5 Activities of politicians in campaigning for election are generally not within official capacity, because they are carried out with a view to obtaining the office of councillor, rather than in the role of councillor.
- 7.6 Similarly, activities within their own parties are in general not official capacity, and it would be unlikely that something said or done at, say, a party conference would be official capacity.
- 7.7 Neither of these is absolute, however. One could imagine a councillor dealing with a constituency issue while partially engaged in campaigning or at a conference. The decision must always depend on the facts of the individual case.
- 7.8 Political groups are recognized in legislation, e.g. as playing a role in the selection of members of council committees (section 15 of the Local Government and Housing Act 1989). At the same time some proper activities of political groups are clearly not Council business, e.g. in relation to political publicity or election campaigns. In relation to publications, the decision by the First Tier Tribunal on an appeal brought by Councillor Barnbrook of the London Borough of Barking and Dagenham (CASE NO: LGS/2009/0470), usefully sets out the matters to be considered when deciding whether publications are made within a councillor's official capacity. In that case, the video which was the subject of the complaint was produced by the British National Party and covered many aspects not specifically related to Councillor Barnbrook's council. Only in part did it cover matters of local concern, in which that authority was interested. Councillor Barnbrook was held not to be acting in his official capacity.
- 7.9 I am not convinced that activities within a political group or relating to the group should automatically be considered as being undertaken in a councillor's official capacity.

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- 7.10 In this case, I take into account that the alleged events were said to be designed to influence or manipulate a decision made by the Council, and that the selection of members for committees by a political group is a legislative requirement.
- 7.11 As the Leader of the Group Councillor John has a responsibility towards the Council to respect the boundaries relating to planning and licensing decisions.
- 7.12 The allegations are that Councillor John was using her position as Leader of the Group and of the Council to bring about an improper result to a planning application.
- 7.13 In these circumstances, while it is not possible to be definitive, I consider on balance that the allegations do refer to actions which, if taken, would have been in Councillor John's official capacity.

The use of email evidence

- 7.14 Under Article 8 of the European Convention on Human Rights everyone has the right to respect for his private life and correspondence. This relates to private correspondence, not correspondence carried out on behalf of another, such as an employer, where the right to privacy would be the employer's. A business email account may also contain communications of an entirely private nature, for which a right of privacy might be expected.
- 7.15 Even if there is a reasonable expectation of privacy for some emails, the right to this privacy, may be overridden by a public authority if the interference is:-
- (a) in accordance with the law; and
 - (b) necessary in a democratic society for one or more specified purposes.

These purposes include the prevention of disorder or crime and the protection of the rights and freedoms of others.

- 7.16 Employee's email and text messages may be intercepted in accordance with the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000. Examination of emails is permitted for a number of purposes, including regulatory and self regulatory purposes and the detection of unauthorised uses. The purpose was the detection of allegedly unauthorised copying of an email through the Council's telecommunication system and the protection of the rights and freedom of the councillors who were its author and its named recipient.
- 7.17 Any application of the exceptions to the Convention must be proportionate: that is the harm of the interference to the right must be weighed against the benefit of not exercising the exception. In this instance the benefit to the public was, among other things, to provide accurate evidence in a statutory investigation into the conduct of a councillor. In a democratic society it is necessary that publicly elected Councillors are governed by standards of conduct and that these standards are applied fairly. The finding of a breach of the Code of Conduct by a councillor can lead to serious consequences including suspension and disqualification from office. Even in lesser matters such a finding can cause significant harm to the reputation of a councillor who depends on public perception in seeking election by the public. If a councillor's reputation is injured unjustly, that in turn reduces the freedom of the electorate in selecting their representative.

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- 7.18 I consider that all other avenues to secure the information had been exhausted. All those known to have received the 23.12.2011 email lawfully had been questioned and Councillor Lorber had failed to answer questions which might have indicated the source.
- 7.19 The Council publishes on its intranet its policy on Access to Information setting out the rules for email and other communications. It states that *any email or message sent may be considered as a public record – it may be disclosed under the Freedom of Information Act.*
- 7.20 Brent Council attaches to all emails leaving its system the following wording:-

"The use of Brent council's e-mail system may be monitored and communications read in order to secure effective operation of the system and other lawful purposes."
- 7.21 I note that in an investigation into a complaint referred to them by a Standards Committee, the Monitoring Officer has powers under regulation 14(3)(f) of the Standards Committee (England) Regulations 2008 to require an authority concerned to give them reasonable access to such documents as appear to them to be necessary for the purpose of this investigation. I consider this to be a lawful purpose in respect of both legislation and the Council's Access to Information policy.
- 7.22 Councillors receive the benefit of the use of their Council email accounts. In return they accept as a condition of their use of these systems, the terms and conditions contained in the Council's Access to Information policy. By accepting those conditions I consider that Councillors agree to the examination of their emails in appropriate circumstances.
- 7.23 Having given that consent, I do not consider that Councillor Kataria or Councillor Lorber had a reasonable expectation that the 23.12.2011 email was private correspondence.
- 7.24 Taking all these matters into account I consider that it was lawful to access the Council's email system to ascertain the sender and the time of sending the 23.12.2011 email to Councillor Lorber's and other email accounts and make that information available for the purposes of this investigation.
- 7.25 Having considered the facts as set out in section 4 of this report and the considerations set out in the section 6 I have concluded that none of the alleged offending actions took place, and they cannot therefore have caused a breach of any kind in Councillor John's compliance with the Council's Code of Conduct. I do not therefore need to consider the various potential breaches alleged.
- 7.26 I consider that Councillor John has not failed to comply with the Council's code of conduct in respect of the complaint.

Councillor Kataria

- 7.27 I have considered whether to recommend to the Standards Committee to refer the actions of Councillor Kataria to the monitoring officer for investigation in relation to the Code of Conduct's requirement to treat others with respect, not to bully any person and not to bring his office or the Council into disrepute.

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- 7.28 I take into account my earlier remarks on official capacity.
- 7.29 In the case of Councillor Kataria, he heads his 23.12.2011 email as a Labour party matter, dealing with party rules, so ostensibly he is writing as a party member rather than a councillor.
- 7.30 He does not have responsibility for appointing members to committees and he is not acting for a constituent.
- 7.31 He makes a number of criticisms of his leader (not the Council) in such a way as they are likely to become public.
- 7.32 Councillor Kataria says that he is acting in the public interest, in the interests of democracy, and of proper scrutiny. He is not a member of a relevant scrutiny committee, and not engaged in committee activity. Scrutiny in local government legislation has a specific meaning. It does not mean that any criticism of Council or other public activity automatically becomes part of a councillor's duty, or would automatically mean that they were acting in an official capacity. Actions in the interests of democracy would be the same whether carried out by a councillor or an individual.
- 7.33 Councillor Kataria does not raise the matter in a council meeting, nor does he use the council email system to make his complaint.
- 7.34 I now consider whether Councillor Kataria's actions, in sending the 23.12.2011 email to Councillor John, Councillor Lorber and others; in seeking to blame other members of his group for its disclosure; in lying in this investigation and elsewhere about that disclosure and in complaining of slander by Councillor John in the Group meeting fall within the definition of official capacity. As with Councillor John, there is not a clear precedent. On balance, I am not convinced that Councillor Kataria's actions were carried out in his official capacity as a councillor.

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8. Finding

- 8.1 Under regulation 14(8)(a) of the Standards Committee (England) Regulations 2008, my finding is that there has not been a failure to comply with the code of conduct of the authority concerned.
- 8.2 Under regulation 14(8)(c) and (d), I am sending a copy of this report to Councillor John and referring my report to the Standards Committee of Brent Council.

A handwritten signature in black ink, appearing to read 'Hazel Salisbury', with a large, sweeping flourish underneath.

Hazel Salisbury
Solicitor
Nominated person

27 April 2012

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Appendix A

Email sent by Councillor Kataria to Councillor John and others 23 December 2011

Lorber, Cllr.paul

From: Dhiraj Kataria <dhirajkataria@hotmail.co.uk>
Sent: 23 December 2011 16:16
To: John, Cllr.Ann
Cc: Moloney, Cllr.Columbus; Wilhelmina Mitchell-Murray; Patel, Cllr Ramesh; Sheth, Cllr Ketan
Subject: Labour Party rules relating to quasi judicial committees
Attachments: Labour Party Rules.pdf

Hello Ann,

Attached please find Clause XI of Labour Party rules. Paagraph 4 is relevant and it states:

*"In matters where the council or its committees or sub-committees are acting in a quasi-judicial capacity (e.g. licencing of pubs, theatres and cinemas or **the consideration of planning applications**) or in the scrutiny process **each member shall form his or her own judgement according to the evidence, and not be bound by a group whip.**"*

In the matter of application of Sai Temple, which came before the Planning Committee on 15 December 2010, you phoned me the day before on 14 December 2010, with the instructions "I want you to want against this application." At the meeting I voted according to the facts.

On the day after the meeting, at the Mayor's X-Mas Party, you said I should meet with you and Colum for disciplinary action for "what happened at the Planning Meeting." This was an intimidation.

The matter came again to the Planning Committee in February. Before that, you called me into your office and, in the presence of Colum Moloney and Ramesh Patel, forced me to agree that I would not attend the subsequent Planning committee, which would hear the application of the Sai Temple.

During the course of this application, Cllrs Ramesh Patel, Ketan Sheth and Jayesh Patel were removed from hearing the application and I was forced to miss this particular meeting in February. I only attended after they agreed to withdraw their application. All of us were replaced with Christians.

Your actions disregarded the guidelines of the National Labour Party rules. And Colum, in not correcting you, also as Chief Whip disregarded the National rules and guidelines. He let down his role as Chief Whip, which requires that members should not intimidate one another and he should act when they do so.

I wish you a Merry Christmas and Happy new year.

Dhiraj Kataria

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Appendix B

Plan showing location of Sai Baba Temple



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Appendix C

Email of advice from Fiona Ledden to Councillor Ramesh Patel dated 15 December 2010

Patel, Vanita

From: Patel, Vanita
Sent: 15 December 2010 11:08
To: Patel, Cllr Ramesh
Cc: Chance, Horatio; Vincent, Anthony
Subject: Planning Committee 15th December 2010

Dear Councillor Ramesh Patel

I have been asked to advise on the Labour Group's position in relation to a matter coming before the Planning Committee this evening.

I am writing to you personally as Chair of the Planning Committee, I do understand that you have a particular difficult position in relation to this matter.

Pavitt Hall is a property owned by the Brent Labour Party (Brent Central and Brent North). I understand it is used by Councillors and MPs for administrative and meeting purposes. It is unclear to me how often councillors use the property but it seems they do not have their own offices there. Pavitt Hall is opposite the British Legion site which is used by a religious group (Religious Group A). I am told that religious group A started to build a temple on the site without planning permission- the permission sought is retrospective. The ground floor of Pavitt Hall is leased by the Labour Party to another religious group (Religious Group B) who may have connections to the group in the British Legion building which are building the temple.

Do Members of the Planning Committee have a personal/prejudicial interest and what can be done?

1. Do the labour party members have a personal interest ?

Does the business of the council (ie planning permission issue) relate to or affect a body whose principal purposes include influencing public opinion (including a political party) of which the councillors are a member ? paragraph 8 (1)(a)(ii) of the Code of Conduct

I conclude that members of the Labour Party sitting on the Planning Committee have a personal interest which they must declare. My advice is on the basis that the council decision relates to or will affect the Labour Party (of which those councillors are members) as a consequence of the building, more than matters relating to the lease.

A. The second question is whether those members have a prejudicial interest such that they cannot vote and must leave the committee room for that item. There is no prejudicial interest if the business of the council does not affect the financial position of the Labour Party, and there is no prejudicial interest where the decisions does not relate to the determining of a 'permission' (in this case planning permission) in relation to the Labour Party.

- i) Financial position of the Labour Party - Does the proposal affect the value of the Labour Party building or the leasing options? From the information provided it would seem unlikely this is the case.
- ii) Does the decision relate to a determination relating to Labour Party? The permission relates to the body if it affects it. The development could affect The Labour Party if for example parking or other issues arise.

If one i) or ii) applies then there may be a prejudicial interest. I consider ii) applies

2.B A prejudicial interest arises where the interest is one where a member of the public would reasonably regard it as so significant that it would prejudice the member's judgement of the public interest (paragraph 10(1)).

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is being a member of the Labour Party which owns a building opposite the proposed site, and which members of the Labour group use from time to time enough for a person to consider that it would affect the member's ability to put public interest first? Or is leasing part of the labour party building to a group linked to those seeking permission enough for a member of the public to consider those councillors to have such interest as to affect their judgement of the public interest?

It is my view that the members of the Planning Committee who also have an interest or involvement in the management of Pavitt Hall would be regarded as having sufficient interest in the planning permission for the temple – due to location, amenities and parking and congestion issues and therefore a perceived potential 'conflict of interest' between their role as 'managers' of Pavitt Hall and as councillors of the authority that it could amount to a prejudicial interest in the definition above.

Having considered the membership of the Planning Committee for Wednesday it seems that you and Cllr Long have a prejudicial interest since you are both Governor and Vice Chair of Pavitt Hall therefore it is my advice to you that you do not vote on the matter and you should withdraw from the room. I understand that the Vice Chair of the Planning Committee has already arranged an alternate therefore has not been included in this advice. A new Chair would need to be appointed at the meeting for that one item. Where you will be missing as Chair and so too is the Vice Chair Standing Order 58 provides that the Chair be elected from those present for that item then a member of the committee could be elected, by those remaining, there is no difficulty with that being a member of the Executive and although the remaining Committee members have to choose the chair there is nothing wrong with a nomination coming from yourself when vacating the Chair.

Where the councillors' use of the building is occasional and they are merely a user, and not on the management board I conclude it does not amount to a prejudicial interest because the involvement and interest in the property is too remote.

On the basis of the above, dispensation from the Standards Committee does not arise because less than 50% of the Planning Committee are affected, and the political balance is not sufficiently upset such that the outcome of the meeting will be prejudiced.

Bias may also be a consideration particularly in relation to those councillors who are involved in the management of the Pavitt Hall. Although not part of the Code of Conduct, it can give rise to a challenge against the decision by way of Judicial Review.

If I can help further please let me know

Fiona
Director of Legal and Democratic Department
RENT COUNCIL
Ext: 020 89371292

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London Borough of Brent, Legal Services, Town Hall, Forty Lane, Wembley, Middlesex, HA9 8HD, Tel: 020 8937 1292, Fax: 020 8937 1313

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Appendix D
Analysis of entries in Councillor Kataria's blue notebook

Page	Content	Ink/pencil
Inside cover	Blank	
1	Minutes of meeting held 2\9\08 half page	dark black ballpoint ink
2	Contact notes	blue & dark black ballpoint
3	Contact notes	blue & dark black ballpoint
4	Notes of a meeting begun 16 June half page	blue ballpoint
5	Contact notes	blue ballpoint
6	Blank	
7	Contact notes	blue ballpoint
8	Contact note	blue ballpoint
9	Contact notes	blue ballpoint
10	Contact notes	blue ballpoint
11	date at top of page 11\11\08 followed by contact notes	blue ballpoint
12	Contact notes	blue & dark black ballpoint
13	Contact notes	blue ballpoint
14	Contact notes	blue & dark black ballpoint
15	Contact notes	blue & dark black ballpoint
16	Contact note	dark black ballpoint
17	Contact notes	blue & dark black ballpoint
18	Contact notes	blue & dark black ballpoint
19	Contact notes	blue & dark black ballpoint
20	Headed <i>Planning Matters</i> 14\12\10 12.12 pm	dark black ballpoint
21	contact notes top half of page, crossed out with continuation of note from previous page below	dark black ballpoint
22	Headed 16 December 2010 description of alleged events at Mayor's Christmas party	dark black ballpoint

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23	Headed <i>Annual Uprating Excel</i> with notes below	light black ballpoint
24	Headed 9 Nov 08 or 09 RAMA: last two numbers of date over written 11; notes of meeting below	dark black ballpoint
25	Contact notes	light & dark black ballpoint
26	notes of a meeting	dark black ballpoint
27	Contact notes	pencil
28	Contact notes	pencil
29	List of decisions contact note below	blue ballpoint red ballpoint
30	Note of details, possibly of constituent with problem	dark black ballpoint
31	List of planning- related headings contact note below	blue ballpoint dark black ballpoint
Remaining pages	Blank	

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Appendix E

Analysis of entries in Councillor Kataria's Staples black printed diary for 2011

January						
1 contact notes Light black; dark black ballpoint	2 contact notes Light black; dark black ballpoint	3 contact notes Light black; dark black ballpoint	4contact notes Light black; dark black ballpoint	5 contact notes dark black; blue ballpoint	6 contact notes dark black ballpoint	7 contact notes Light black ballpoint
8 Headed <i>Site Visit</i> contact notes dark black ballpoint	9 contact notes dark black ballpoint	10 contact notes dark black; red ballpoint	11 contact notes dark black; red ballpoint	12 <i>Planning</i> (single word) dark black ballpoint	13 Notes headed <i>Home Emergency</i> dark black ballpoint	14 blank
15 contact notes Light black ballpoint	16 blank	17 blank	18 contact notes dark black ballpoint	19 contact notes dark black ballpoint	20 contact and financial notes Light black ballpoint	21 contact and financial notes Light black ballpoint
22 blank	23 blank	24 blank	25 blank	26 blank	27 blank	28 blank
29 blank	30 blank	31 blank				

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February						
1 blank	2 blank	3 blank	4 contact note blue ballpoint top of page	5 blank	6 blank	7 blank
8 blank	9 <i>Email from Ann John asking to attend mtg</i> dark black ballpoint	10 blank	11 <i>Spoke with Ramesh and Ketan re Sai matter</i> dark black ballpoint	12 blank	13 blank	14 blank
15 Headed <i>Rang Barry</i> describes invitation to <i>disciplinary</i> meeting with Cllr John expresses fears of being removed from planning committee; dark black ballpoint	16 <i>long letter to Barry</i> records email from Ann John explaining purpose of meeting as “member conduct at planning meetings”; dark black ballpoint	17 continuation of entry for 18 th dark black ballpoint	18 record of dialogue at the meeting on 18 February dark black ballpoint	19 contact note blue ballpoint at top Line below which note of conversation, as dialogue, at the Blue Ginger restaurant re whether Cllr Kataria’s attendance at planning committee in February dark black ballpoint	20 note about pricing blue ballpoint at top line below which entry recording sending a text to Ann John at 1.50 & phone call from her at 1.57 , threatening removing from planning committee if attends planning meeting dark black ballpoint	21 records a phone call to Barry Gardiner, who is in South Africa and sending a letter to him. dark black ballpoint
22 records email from S Weeks: Sai Baba Temple application withdrawn, a text to Barry Gardiner saying Cllr Kataria had been bullied & reply from BG “That is outrageous.” dark black ballpoint	23 records Councillor Kataria standing down Tayo (his alternate) & demonstrations relating to Sai Baba Temple at planning meeting dark black ballpoint	24 continuation of 23 dark black ballpoint	25 blank	26 blank	27 blank	28 blank

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March						
1 contact notes blue ballpoint	2 contact notes blue ballpoint	3 blank	4 blank	5 blank	6 blank	7 blank
8 blank	9 blank	10 blank	11 blank	12 blank	13 blank	14 blank
15 blank	16 blank	17 blank	18 blank	19 blank	20 blank	21 blank
22 blank	23 blank	24 blank	25 blank	26 blank	27 blank	28 blank
29 contact notes blue & red ballpoint	30 contact notes blue & red ballpoint	31 contact notes blue & red				
April						
1 contact notes blue, black ballpoint and pencil	2 blank	3 blank	4 blank	5 blank	6 blank	7 blank
8 blank	9 blank	10 blank	11 blank	12 blank	13 blank	14 blank
15 contact note blue ballpoint letters in pencil	16 contact notes blue ballpoint	17 blank	18 plan in dark black ballpoint	19 contact notes dark black ballpoint	20 blank	21 blank
22 blank	23 blank	24 <i>ATOL ref</i> dark black ballpoint	25 contact notes dark black ballpoint & pencil	26 contact note pencil	27 blank	28 blank
29 blank	30 price comparisons light black ballpoint					

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May						
1 contact note Light black ballpoint	2 blank	3 blank	4 blank	5 blank	6 blank	7 blank
8 blank	9 blank	10 contact note dark black ballpoint	11 contact note dark black ballpoint	12 blank	13 contact note dark black ballpoint	14 blank
15 blank	16 contact notes red & black ballpoint	17 contact notes dark black ballpoint	18 contact notes dark black ballpoint	19 blank	20 blank	21 blank
22 blank	23 contact note pencil	24 blank	25 blank	26 blank	27 blank	28 blank
29 blank	30 blank	31 blank				
June						
1 numbers dark black ballpoint	2 blank	3 blank	4 blank	5 blank	6 blank	7 numbers dark black
8 contact notes dark black ballpoint	9 contact note dark black ballpoint	10 blank	11 blank	12 contact notes dark black ballpoint	13 blank	14 blank
15 blank	16 blank	17 blank	18 blank	19 blank	20 blank	21 blank
22 blank	23 blank	24 blank	25 blank	26 blank	27 blank	28 blank
29 blank	30 blank					
July						
1 blank	2 blank	3 blank	4 blank	5 blank	6 blank	7 blank
8 blank	9 blank	10 blank	11 blank	12 blank	13 blank	14 blank
15 blank	16 blank	17 blank	18 blank	19 blank	20 blank	21 blank
22 blank	23 blank	24 blank	25 blank	26 blank	27 blank	28 blank
29 blank	30 blank	31 blank				
August						
1 blank	2 blank	3 blank	4 blank	5 blank	6 blank	7 blank
8 blank	9 blank	10 blank	11 blank	12 blank	13 blank	14 blank
15 blank	16 blank	17 blank	18 blank	19 blank	20 blank	21 blank
22 blank	23 blank	24 blank	25 blank	26 blank	27 blank	28 blank
29 blank	30 blank	31 blank				

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September						
1 contact note blue ballpoint	2 contact note blue ballpoint	3 blank	4 blank	5 blank	6 List dark black ballpoint	7 blank
8 List dark black ballpoint	9 blank	10 blank	11 blank	12 blank	13 blank	14 blank
15 blank	16 blank	17 blank	18 blank	19 blank	20 blank	21 blank
22 blank	23 blank	24 blank	25 blank	26 blank	27 blank	28 blank
29 blank	30 blank					
October						
1 blank	2 blank	3 blank	4 blank	5 blank	6 blank	7 blank
8 blank	9 blank	20 blank	11 blank	12 blank	13 blank	14 headed <i>send an email to June</i> re an invoice with draft email black liquid ink
15 blank	16 blank	17 list of numbers blue ballpoint	18 list of numbers blue	19 contact notes blue ballpoint & black liquid ink	20 blank	21 blank
22 blank	23 blank	24 blank	25 blank	26 blank	27 blank	28 blank
29 blank	30 blank	31 blank				
November						
1 blank	2 blank	3 blank	4 blank	5 blank	6 blank	7 blank
8 blank	9 blank	10 blank	11 blank	12 blank	13 blank	14 blank
15 blank	16 blank	17 blank	18 blank	19 blank	20 blank	21 blank
22 blank	23 blank	24 blank	25 blank	26 blank	27 blank	28 blank
29 blank	30 blank					
December						
1 blank	2 blank	3 blank	4 blank	5 blank	6 blank	7 blank
8 blank	9 blank	10 blank	11 blank	12 blank	13 blank	14 blank
15 blank	16 blank	17 blank	18 blank	19 blank	20 blank	21 blank
22 blank	23 blank	24 blank	25 blank	26 blank	27 blank	28 blank
29 blank	30 blank	31 blank				

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Notes						
Financial Notes blue	List of names blue ballpoint	contact notes dark black ballpoint and black liquid ink				

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Appendix F

Chronology of events

January 2010	Sai Baba Temple opened in British Legion Hall at Union Road, Wembley
20 August 2010	Sai Baba Temple submits the Application to Brent Council for <i>retrospective change of use to a place of worship (Use Class D1), and erection of extensions</i>
21 September 2010	Following complaints the Council issued an enforcement notice requiring the cessation of the use of the premises <i>as a temple/place of worship, and demolition of unauthorised structures</i> . Sometime in late 2010
14 December 2010	Alleged phone call from Councillor John to Councillor Kataria directing him to vote against the Application
15 December 2010	The Monitoring Officer sends advice on prejudicial interests to Councillor Ramesh Patel the chair of the Council's planning committee. The Council's planning committee considers the Application and resolves to defer the decision to allow further time for negotiations
16 December 2010	The Mayor's Christmas dinner and alleged conversation between Councillor John and Councillor Kataria concerning <i>disciplinary</i> action over events in planning committee and alleged comments by Councillor Ramesh Patel concerning Councillor John's
18 February 2011	Meeting of Councillors John, Kataria, Moloney and Ramesh Patel in Councillor John's office to discuss conduct in and chairing of planning committee and alleged threat by councillor John to have Councillor Kataria removed from the planning committee
20 February 2011	The Application is withdrawn by the Applicants
23 February 2011	Planning committee meeting at which the Application was scheduled to be considered.
23 December 2011	Councillor Kataria emails Cllr Ann John with copies to other senior Labour councillors and to Councillor Lorber, setting out his allegations
9 January 2012	Councillor Kataria emails his denial that he copied the 23.12.2011 email to Councillor Lorber to five people
19 January 2012	Councillor Lorber makes a formal complaint to the Standards Committee based on the 23.12.2011 email
4 February 2012	Councillor Kataria emails his denial that he copied the 23.12.2011 email to Councillor Lorber to all Labour councillors on the Council

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- 7 February 2012 Councillor Kataria emails a second denial that he copied the 23.12.2011 email to Councillor Lorber to Councillor Gladbaum.
- 28 March 2012 It was identified that the 23.12.2011 email was delivered simultaneously to Councillor John, eleven other Labour councillors and to Councillor Lorber on that date at 16.16 hours.
- 5 April 2012 Councillor Kataria admitted that he had sent the 23.12.2011 email to Councillor Lorber.