

ADRIAN STANFIELD'S EMAIL

Dear Mike

I am conscious that the Area 2 Committee is next week to consider 2 items of business in respect of the above, one relating to your request that the Council consider making an Article 4 Direction to restrict 'permitted development rights' and the other to consider 2 applications made by Sainsbury's for ground floor extensions and related and consequential matters in connection with their intended use of the building as a supermarket (references TM/14/03560/FL and TM/14/03570/AT).

In advance of that Committee, I feel it necessary to write to you to set out my thoughts on your position as a Member of the Area 2 Committee, in light of comments you have made, and the actions you have taken, in relation to the proposed change of the use of the premises by Sainsbury's. It appears to me that your conduct could leave you open to accusations of apparent bias or predetermination in respect of the items to be considered next week. I have set out some examples below -

(1) In a letter emailed by you to Lucy Harvey dated 26 November 2014 (the contents of which were subsequently ratified by Borough Green Parish Council), you stated 'Just to clarify matters, the consultation was carried out by residents and not the Parish Council, **although I did advise on the drafting to ensure it did become a petition with the inherent bias**' (my emphasis). It is not entirely clear to me what you meant by this statement, although the inference is that you were in some way responsible for ensuring that a petition sent to the Borough Council was biased. Furthermore, I understand that you have co-ordinated the submission of the petition to the Council.

(2) It is clear from reading the various emails from you on this issue that you consider an Article 4 Direction should be made by the Borough Council.

(3) On 9 October 2014 you were quoted in an article in the Sevenoaks Chronicle; your comments included 'We have a history of fighting, and win or lose I am sure the Parish will step up to the fight as we always have. The cosy image Sainsbury's seek to protect conceals the same rapacious lack of ethics shown by all the major retailers, and if people do not oppose the Sainsbury's we will live to regret the demise of our thriving village centre'.

(4) I also note that you appeared in a photograph in the Sevenoaks Chronicle on 23 October 2014, in which you were one of a number of people stood behind a banner reading 'Shame on Sainsbury's'.

As you will recall from our meeting earlier this year, there is a clear division between predisposition (which is legitimate) and predetermination. Section 25 of the Localism Act provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind simply because they had previously done anything that directly or indirectly indicated what view they took, or would take, in relation to a matter, and that matter was relevant to the decision. It is therefore perfectly legitimate for a Councillor to hold views on a proposal, but ultimately whether or not a decision maker has an open mind will be judged in light of all the circumstances and available evidence. In light of the matters set out above, I am concerned that your actions may fall outside of the provisions of Section 25.

I should say that where the Courts have found even a single member of a Committee to have been predetermined or biased, the decision taken by the whole Committee can be quashed. Therefore, should the Committee resolve to make an Article 4 Direction and/ or refuse consent for the extension/ advertisements, Sainsbury's could seek to challenge the decision of the Committee on the grounds that a Member of that Committee had predetermined their position.

Ultimately, it is a matter for you whether you decide to participate in the consideration of the 2 items relating to the Henry Simmonds pub/ Sainsbury's on 10 December. The purpose of this email is simply to advise you of my concerns, and invite you to consider whether it would be appropriate for you to participate in the consideration of these items.

Whilst writing, I feel obliged to record my concerns with the contents of an email you yesterday sent to Julian Moat in the Planning Services team. Your email, which was timed at 15.32 was sent to Julian in relation to 13 Harrison Road, Borough Green. The email infers that the refusal of planning permission in respect of TM/14/01564 was influenced by the identity of the neighbour objecting to the proposal (i.e. Barry Hughes), and also claims that applications have in the past been 'rubber-stamped by planners whatever the PC and public might say'. Needless to say both Steve Humphrey and I consider such groundless comments to be wholly unacceptable. You are well aware of our views on the spurious allegations you continue to make in your emails, so I see no purpose in repeating those here. However, I cannot allow such emails to pass without comment, particularly where they are sent to more junior members of staff.

Yours sincerely

Adrian Stanfield Solicitor

Director of Central Services

Tonbridge & Malling Borough Council