

Coventry City Council

Ethics Committee Complaints Protocol: Investigation into complaints made against Councillor
Abdul Salam Khan

Report to the Monitoring Officer

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INVESTIGATION INTO STANDARDS MATTERS: Cllr Abdul Salam Khan

I have been instructed by the Monitoring Officer of Coventry City Council (“the Council”) to conduct an investigation into complaints made against Councillor Abdul Salam Khan (“Cllr Khan”).

The Complainants

1. Four complaints were received by the Council: one from Person A, one from Person B and two from Person C. Person A’s complaint was supported by witness statements from Person D and Person E. Person B’s complaint raised similar issues to those raised by Person A.
2. One of Person C’s complaints alleged that Cllr Khan had not abided by Covid-19 rules in that he had not worn face coverings in a meeting with builders on 4 March 2021. Person C’s second complaint had raised another issue which dated back to August 2015, concerning the building of Foleshill Community Hall. Person C has stated that they do not wish to respond to this investigation until the latter matter is resolved. The preliminary assessment determined that Person C’s complaint about the historical issue is not to be investigated and as such that complaint has not been pursued.
3. I have referred to all the matters I have considered as, collectively, “the Complaints” and the complainants whose complaints have been investigated as “the Complainants”.

Methodology

4. In conducting the investigation, I considered information provided by the Complainants and other witnesses, including video and photographic evidence. A number of persons were interviewed. All interviews took place via Microsoft Teams save for those with Persons F and G which were by telephone. All interviews were recorded and transcripts produced. Each person interviewed was informed that the investigation was confidential but that anything they said in interview could be put to other interviewees and could be referred to in this report.
5. I made a wide ranging request for information from the Council’s Planning Enforcement department. There were regrettably significant delays in responding to that request and the follow up enquiries that were made. Those delays inevitably affected the time within which the investigation could be concluded.
6. A draft of this report was sent to Cllr Khan and the Complainants for comment.

The Complaints

7. As the Complaints allege similar breaches of the Members’ Code of Conduct (“the Code”) but relate to different incidents, I have dealt with them separately. I have distilled the principal points arising in the Complaints and set them out below.
8. The report sets out each of the allegations contained within the Complaints, the evidence that I have considered in relation to that allegation, and my conclusion as to whether or not, on the balance of probabilities, I have found that allegation to be made out. I have given reasons for my conclusions.
9. The Complaints and evidence considered in this investigation concern incidents that occurred on two properties and the boundary between those properties. It is understood that Cllr Khan’s son purchased a property called Property 1 in October 2020. That property is next to a property

owned/occupied by Persons H and E, Property 2¹. While relations between the neighbours were initially amicable, as both parties began to undertake building and other works on their properties relations soured and a dispute ensued. This dispute became increasingly acrimonious between February and April 2021 and culminated in Police involvement between late March and early April 2021. The properties are in a conservation area and contain a number of trees that are subject to tree preservation orders (“TPO”). Property 1 is a listed building.

10. Persons B and D were contractors undertaking works at Property 2.

Threshold Issues

11. Person C has declined to pursue their complaint or participate in the investigation. Their complaint relates to matters that do not engage the Code in any event (Cllr Khan’s conduct in dealing with builders on private land). Their complaint has accordingly not been upheld.

12. Neither Person B nor Person D have responded to requests for interview in connection with this investigation. The allegations made by them have been assessed with reference to evidence received from other sources.

13. Person A’s medical condition and treatment have meant that they have been unable to play an active role in the investigation. Evidence in support of their complaint has been provided by Persons H and E and, at Person A’s request, Persons H and E were sent the draft report on their behalf.

14. The matters raised by the Complainants only engage the Code in the event that they relate to conduct that pertains to Cllr Khan’s capacity as a councillor. Paragraph 4.2 of the Code states as follows:

This Code of Conduct applies to you when:

- you are acting in your capacity as a councillor and/or as a representative of your council
- you are claiming to act as a councillor and/or as a representative of your council
- you are giving the impression that you are acting as a councillor and/or as a representative of your council
- you refer publicly to your role as a councillor or use knowledge you could only obtain in your role as a councillor.

15. As noted above, the Complaints and the evidence submitted pertain to incidents and circumstances relating to Cllr Khan’s involvement with Property 1 and his dispute with the

¹ Documents provided by Cllr Khan indicate that his son is the legal owner but has authorised Cllr Khan to deal with matters relating to the property, which Cllr Khan has done. The legal owner of Property 2 is not known but Persons H and E have acted as its proprietors. For the purposes of this investigation Cllr Khan has been treated as the proprietor of Property 1 and Persons H and E as the proprietors of Property 2

owner(s)/occupier(s) of the neighbouring property. Insofar as the Complaints allege that Cllr Khan relied upon, cited and/or abused his position as a councillor, the Code is engaged. Other matters raised by the Complainants and the witnesses such as Cllr Khan's alleged aggressive and offensive behaviour are not related to his role as councillor. Those matters do not engage the Code and have not been considered in this investigation.

16. Cllr Khan is alleged to have relied upon, cited and/or abused his position in three ways:
 - a. When the Police were called to the properties, he said that he knew the Superintendent/Sergeant, would not be arrested and no action would be taken;
 - b. He sought to exert influence over officers in the Council with a view to receiving preferential treatment. Cllr Khan is alleged to have made numerous complaints to officers about Property 2. Those complaints were alleged to have been dealt with swiftly and more efficiently than those made by the owners/occupiers of the neighbouring property relating to Cllr Khan's property, which were alleged to have resulted in no action or no response. Cllr Khan was alleged to have illegally cut down protected trees yet faced no action despite Person H having brought the matter to the Council's attention;
 - c. He used his position to seek to persuade the neighbours to sell him land, on the basis that Cllr Khan could secure planning permission for them in the event that they agreed to his proposal, alternatively that he would 'make life hell' for them in relation to planning if they did not.
17. These matters engage the Code. Cllr Khan has been a Council member for approximately 13 years. He has been a member of the Council's Cabinet for around 5 years. He is currently Cabinet member with responsibility for Policing and Equalities and chairs the Coventry Police and Crime Board. He is likely to have working relationships with officers of the local Constabulary - the Commander is the Deputy Chair of the Board.
18. Cllr Khan is the Deputy Leader of the Council and as such a senior member within the Council. It is possible that he was in a position to seek to exert undue influence on officers of the Council and/or use his position to further his own interests.

The Witnesses

19. It is helpful at this stage to provide further information about the Complainants and witnesses whose evidence has been considered as part of this investigation.
20. The persons who submitted written evidence are as follows:
 - a. Person A: Person A submitted a complaint on 10 March 2021 and stated that it related to incidents that occurred on 19 and 21 February and 4 March 2021.
 - b. Person B: Person B submitted a complaint dated 11 April 2021 and a supporting letter dated 15 April 2021. They had been employed by Persons H and E to install a boundary fence on the boundary between Property 2 and Property 1. Their complaint related to incidents that were alleged to have occurred on 4 March and 2, 3 and 7² April 2021.

² Person B referred to an incident that occurred on Tuesday 6 April 2021 but it has been established that it in fact occurred on Wednesday 7 April 2021

- c. Person D: Person D provided a statement signed on 12 April 2021. Person D had been doing groundwork at Property 2 between December and April 2021.
 - d. Person E: Person E is the owner/occupier of Property 1. They provided a written statement signed on 11 April 2021 and gave interview and other evidence to this investigation.
21. During the course of the investigation, further witnesses were identified and interviewed. Person H gave witness and other evidence. Cllr Khan suggested a number of persons for interview - Cllr Akhtar, Persons G, I and Person J. Person J was Cllr Khan's security guard and involved in a number of the incidents to which this investigation relates. Person J did not respond to our request for an interview.
- a. Cllr Pervez Akhtar: Cllr Akhtar has been a serving Coventry City councillor since May 2015, a member of the Planning Committee, Cllr Khan's deputy on Cabinet and a longstanding friend and colleague of Cllr Khan. Cllr Akhtar had been asked by Cllr Khan to mediate the dispute that had arisen with Person H.
 - b. Persons F and G: Persons F and G had undertaken work at Property 1 for Cllr Khan and had been present on some of the occasions to which the Complaints relate.
 - c. Person H: Person H is the owner/occupier of Property 2.

Key events

22. Person H and Cllr Khan began complaining about the activities occurring on their respective properties in early 2021. Cllr Khan complained to the Council about building and tree works that were undertaken at Property 2 in February 2021. Planning enforcement officers attended and a Temporary Stop Notice was served on 24 February 2021 in respect of unauthorised activities taking place at Property 2. As works continued, including on the boundary between the properties, matters escalated and the Police attended the properties on a number of occasions. By the time the Police became involved both parties had employed security guards, Person H's guard had a guard dog and relations between the parties had completely broken down. Cllr Khan did not agree with the boundary as pegged out by Person H's workers and as such was of the view that works undertaken at Person H's instruction were encroaching on his land and/or had the potential to damage a manhole that served both properties. Cllr Khan also alleged that Person H had caused their workers to cut paving stones that were within the boundary of Property 1.
23. Person H alleged that the parties had agreed to jointly commission a surveyor to identify the boundary and that Cllr Khan did not accept the findings contained in that surveyor's report. Cllr Khan has denied that the survey was jointly commissioned. Persons H and E have alleged that Cllr Khan wanted to acquire some of Person H's land and used his status as a councillor to put pressure on Person H to agree to that transaction, suggesting that if they agreed, Cllr Khan would help Person H to obtain planning permission for works at Property 2. Cllr Khan has denied that he sought to acquire any of Person H's land and stated that he did not need to do so as the disputed land was within the curtilage of Property 1. Person H has also alleged that Cllr Khan has received preferential treatment from the Planning department - complaints made by Cllr Khan about activities at Property 2 were acted on immediately and action taken, whereas Person H's complaints about activities at Property 1, including the destruction of protected trees, were not responded to promptly or at all and no enforcement action was taken.

24. The Police attended the properties on the evenings of Tuesday 31 March and Friday 2 April 2021, in the morning and afternoon of Saturday 3 April 2021 and then and finally in the morning of Wednesday 7 April 2021. It is alleged that during those visits Cllr Khan used his influence with senior officers to secure a lenient disposal. Video and photographic evidence of the visits on 3 and 7 April 2021 have been provided.

25. A chronology of the principal events is as follows:

15 February 2021: Cllr Khan contacted Ms Anne Lynch³ to allege that tree roots had been damaged during the installation of a septic tank at Property 2.

16 February 2021: Cllr Khan again contacted Ms Lynch making further allegations that trees had been removed by Person H and that Person H was building a summer house at the bottom of their garden and provided photographs.

Mr Paul Perry⁴ was contacted by Mr Andrew Walster⁵ who said that Cllr Khan had been in touch with him.

20 February 2021: Person E alleged that Cllr Khan “sent heavies” to threaten and assault Person H.

Person H made a report to the Police of malicious communications on the part of Cllr Khan.

24 February 2021: a Temporary Stop Notice (“TSN”) was served in relation to works being undertaken at Property 2 that prohibited the carrying out of any works at the property until the TSN expired 28 days later.

Mr Perry attended Property 2 at Person H’s request to discuss the TSN and developments on the property.

Person E submitted a complaint to the Planning department alleging that unauthorised works had been carried out to a listed building - the house at Property 1, and that the persons responsible were Cllr Khan and his son Ismail.

25 February 2021: Person H emailed the Planning department about the TSN. Included in that email was an allegation that Cllr Khan had asked Person H’s permission to remove two trees on the boundary, Person H had refused and Cllr Khan and his son had proceeded to get the trees removed⁶. Person H alleged that Cllr Khan had had several trees removed on both sides of his house by unskilled foreign workers and provided video and audio evidence in support of that allegation.

Photographic evidence shows Cllr Khan ripping down sheeting that had been placed on fencing by Person H. Cllr Khan’s actions in doing so were referred to in Person H’s email to the Council, which actions were said to have been reported to the Police. Person H stated that Cllr Khan

³ Head of Development Management

⁴ Senior Planning Enforcement Officer

⁵ Director of Streetscene and Regulatory Services

⁶ Trees in conservation areas are afforded the same protection as trees that are subject to tree preservation orders: see section 211 of the Town and Country Planning Act 1990 (as amended)

had made “*threats of bodily harm and making my life hell in obtaining planning permission because he has authority in council [sic]*”.

The Council’s Tree Preservation Officer emailed Mr Perry and Mr Fothergill⁷ confirming that Cllr Khan/the new owners of Property 1 and/or their further neighbours had removed some boundary trees without permission.

The Council’s Strategic Lead - Planning, Mr Rob Back, confirmed that the complaints about Property 1 should be progressed in the usual way.

26 February 2021: Mr Perry replied to Person H and said that their email had been passed to senior officers for consideration and offered dates for a site meeting,

1 March 2021: Mr Fothergill and Mr Perry conducted a detailed site visit at Property 2.

Person H emailed the officers and repeated the allegations against Cllr Khan made in their email of 25 February 2021.

According to Mr Perry’s note, in response to Person H’s allegations of unauthorised tree works at Property 1 Mr Fothergill had requested authority to proceed and arrange a site inspection with Cllr Khan, Mr Penlington and Mr Perry⁸.

2 March 2021: Mr Perry replied to Person H confirming permission for various works to be undertaken during the TSN period.

4 March 2021: Cllr Khan’s PA emailed Mr Fothergill and stated that Cllr Khan had just telephoned and asked her to let Planning Enforcement know that works had started at Property 2 - the fence had been dug out and moved onto Property 1’ property.

Mr Fothergill replied to Cllr Khan’s PA (copying in Ms Lynch and Mr Back) to explain the position including the outcome of the site visit that had been undertaken a few days earlier. He stated that at the site meeting:

“Officers were shown a copy of a survey plan allegedly showing the legal boundary position between the two properties and [Person H] indicated [their] intention to reposition the fence to follow this line; however officers indicated that as landownership [sic] is not a material planning consideration and as the local planning authority does not keep land ownership records; officers could make no comment with regard to the accuracy of the plans or the ownership of the land in question. Officers indicated that such matters fell outside of the control of the local planning authority and constituted a private civil matter between the parties involved.

On the basis that the works being undertaken accord with the advice given above, they would be considered as permitted development and planning permission is not required. If Councillor Khan believes the works exceed the limitations [in the permitted development regulations] please let me know and I will arrange for an officer to visit the site as soon as possible.

⁷ Planning Team Leader - Enforcement

⁸ It is not known whether any such inspection has taken place. Mr Perry’s note says that as of 10 May 2021 he had not yet had any instructions to continue with that enquiry

Unfortunately I am unable to provide any assistance with regard to the alleged trespass which is a civil matter for resolution between the parties involved.”

Planning officers attended Property 2 later that day in response to Cllr Khan’s complaint. Photographic evidence shows Mr Fothergill measuring a fence.

Cllr Khan has stated that he and Person H called the Police (separately) about the fence works.

7 March 2021: Person H submitted a complaint to the Planning department that protected trees were being cut down at the front of Property 1 and this had spoiled the character of the listed building. Person H repeated the allegations they had first made on 25 February 2021 that Cllr Khan and his son had had other trees removed. Photographs were provided. Person H noted that the site visit in response to Cllr Khan’s complaint had taken place on a date that had not been one that had been offered for a meeting with Person H, which according to Person H *“clearly shows the influence Abdul Khan, the Deputy leader of the Council has on the officers...”* Person H stated that Mr Fothergill had measured a fence at Property 1 and had found that it exceeded the permitted height. Person H stated that no action had been taken against Cllr Khan in relation to any of the breaches they had reported to the Council. They continued:

“I really hope the council officers are partial [sic] and not working on the instructions of Mr Khan or under any influence or pressure placed by Mr Khan, Cllr Praviz Akhtar or Cllr Tariq Khan.”

8 March 2021: Person H emailed Mr Perry requesting permission to use a JCB to remove some tree stumps and roots from the boundary with Property 1 in order to erect a fence.

Mr Perry replied confirming permission to use the JCB.

Person H emailed back asking whether the Council would still have enough evidence to prosecute Cllr Khan for felling the trees if the stumps were removed given that Mr Penlington had confirmed that the felled trees were on Cllr Khan’s land.

10 March 2021: Mr Perry replied saying that as a separate investigation could be affected he was seeking a legal view.

11 March 2021: Mr Perry visited Property 2 at Person H’s request.

16 March 2021: Mr Perry visited Property 2. After the meeting Person H emailed Mr Perry requesting permission to use the JCB to remove the stumps and install a fence.

17 March 2021: Mr Perry replied confirming advice given at the meeting that the stumps may be useful evidence in any civil case Person H may bring against their neighbour and confirming permission for the fence to be erected and any consequent removal of stumps to be undertaken. Advice was given about the precautions needed to protect the trees in the vicinity.

19 March 2021: Cllr Khan sent a video to Mr Back of works being undertaken at Property 2. Mr Back referred it to Mr Fothergill who stated that it did not appear that excavations were being undertaken.

26 March 2021: Cllr Khan sent a further complaint to Mr Martin Reeves⁹ alleging trespass and damage to property while removing stumps.

Mr Perry met Person H on site and checked the works. Mr Perry's note of the meeting stated as follows:

"The security guard for Mr K had told [Person H] that the council were coming to stop the works and his face was a picture of confusion when I introduced myself - he shouted for 'Abdul' to come down but he never showed!"¹⁰

30 March 2021: Cllr Khan sent an email at 06:45 titled "Works at Property 2/Property 1 Boundary" from his Council email address to Mr Back, Mr Walster, Ms Lynch, Mr Fothergill, Mr Perry, Mr Reeves and Cllr George Duggins (Leader of the Council). Addressed "Dear Colleagues", it contained a report of matters said to have come to the light the previous day when Cllr Khan had returned to Property 1, including an allegation that Person H had been excavating along the boundary right up to a manhole that served both properties and had ripped up significant chunks of paving belonging to Property 1. Cllr Khan stated that he had confronted a security guard present at Property 2 about the works and the guard had produced a piece of paper that he said was an email from Mr Perry permitting the works. Cllr Khan continued:

"I am extremely disappointed with the involvement of my own Council. Whatever was written in the email of Paul Perry the neighbour has used any ambiguity to persuade the Police and a Security firm that he has the permission of the Council to undertake the works.

I understand the Council has no desire to become involved in this matter, however, I would ask as a minimum that I receive a letter as soon as possible this morning confirming that the Council has not granted permission for any works on the boundary and it most definitely has not granted permission for the destruction of the manhole at Property 1. The neighbour should also receive such a letter."

Mr Reeves replied at 08:12 as follows:

"Cllr Khan

Sorry to hear that there are still ongoing issues at your property. I know that Rob and planning colleagues will get back promptly to you on the specific clarification you are seeking from the Council."

Mr Back replied at 08:41 as follows:

"Morning Cllr Khan

Thanks for the email - we'll look into this as a priority and come back to you as soon as possible."

⁹ Chief Executive of the Council

¹⁰ Mr Perry's note suggests that this relates to his attendance on site before 30 March 2021 but his account corresponds with a photograph dated 1 April 2021

31 March 2021: the Police attended and were, according to Person E, with Cllr Khan in his property for two hours. They took no action on the basis that the matter was a civil dispute.

Person H sent Mr Perry photographs of the retaining wall and works to a tree at Property 1.

1 April 2021: Mr Perry attended the properties in response to Cllr Khan's email. Video footage has been provided that shows a security guard on Cllr Khan's side of the boundary interacting with Mr Perry. The security guard is heard to make reference to Cllr Khan and the Council and say that Cllr Khan was coming to intervene. Mr Perry replied warning the security guard not to use him or the Council as a threat.

Video evidence has been provided that shows Cllr Khan and his security guard attempting to stop Person D in their digger.

2 April 2021: Photographic evidence timed at 15:30 shows a meeting under a tree on Property 2 said by Cllr Khan to have been attended by him, Person H, Cllr Akhtar and Cllr Khan's relative, Person K. Cllr Khan has stated that this was held in an attempt to find an amicable solution to the boundary issue. It was unsuccessful.

Police appear to have attended at 18:51 in response to a 999 call made by or on behalf of Person H. No video or other footage of this visit has been provided. Cllr Khan's recollection was two male Police officers attended and went into Person H's house for around 30 minutes. They then came out and walked around to the side boundaries and spoke to Cllr Khan before leaving.

Mr Fothergill emailed Mr Back and Ms Lynch to report on the outcome of the site visit on 1 April 2021. Ms Lynch communicated that to Cllr Khan in a telephone conversation.

3 April 2021: Police attended at 08:43. Matters escalated over the course of the day as workers instructed by Persons H/E tried to undertake works on the boundary between the properties and persons on the Property 1' side attempted to stop them doing so. Video and photographic footage show Cllr Khan moving the camera on his property towards the altercation (15:52), walking away from the altercation to stay some distance away (16:11) then returning and handling a fence post that Person B, who was inside the trench that has been dug between the properties, was attempting to install (16:54). The Police attended again around 16:00.

7 April 2021: Police attended early in the morning when Cllr Khan was on a train to Birmingham to sit as a Magistrate. Cllr Khan terminated his journey and returned to the property. There is photographic evidence of him arriving in his suit and speaking to three Police officers. Cllr Khan does not appear to have been present when Cllr Khan's son is alleged to have asked the officers to wait as his dad was on his way and knows the Superintendent. According to Person E, officer PC [name redacted] told Cllr Khan that if any further breaches of the peace occurred, he would be arrested. Cllr Khan said that he was not present for much of that visit by the Police and that all the officer had said to him was that he needed to get an injunction.

22 April 2021: Person H sent Mr Perry a video said to show Cllr Khan's worker cutting a tree that Person H believed to be the subject of a TPO, and asked Mr Penlington to attend the site of the breach. Person H also sent photographs of the retaining wall at Property 2.

6 May 2021: Person H sent Mr Penlington photographs said to show unauthorised tree works taking place at Property 1.

7 May 2021: Mr Penlington forwarded the email to Mr Fothergill, Mr Perry and the Planning Enforcement department.

25 May 2021: Mr Fothergill forwarded the email to Mr Back and Ms Lynch, copied to Mr Perry, stating:

“...as previously we shall await instruction before doing anything.”

The Complaints and written statements

26. Person A alleged that Cllr Khan had used his powers as a councillor for his own advantage and profit but provided no further particularisation. Their medical condition and treatment have limited their ability to participate in the investigation.
27. Person B alleged that on 4 March 2021, the first time they met Cllr Khan, Cllr Khan and his associates had been disrupting the works being undertaken and had been intimidating those present. Person B alleged that Cllr Khan *“would explain that as a councillor he knew what were [sic] allowed to do and not to do and that if we didn’t stop the work there would be serious consequences”*. Person B stated that they were assaulted on 3 April 2021 as a result of Cllr Khan, his son and security guard acting recklessly, causing Person B to suffer a puncture wound to their arm. Person B stated that the Police at first appeared very concerned but after speaking with Cllr Khan and his associates left with no action being taken. Person B’s account continued as follows:
- “This was very upsetting and reminded me of something that I overheard Mr Khan say when my colleague frustrated at the aforementioned incident, suggested that someone was going to get arrested. Mr Khan replied “no one is going to be arrested” this was then repeated 4-5 times by Mr Khans [sic] security guard/advisor, “he is a councillor he will not be arrested, no one will be arrested”.*
28. Person B alleged that the Police returned on 6 April 2021, when the balance of the evidence indicates that that visit occurred on 7 April 2021. Person B’s allegation in relation to that incident was as follows:
- “...the Police officer on this occasion was able to talk to Cllr Khan and his accomplices and warned them that if they interfered with the work they would face prosecution. Mr Khan was furious with this and then proceeded to make threats towards the police office [sic] and his colleagues, explaining that he needs to be speak [sic] to the Superintendent and implied that he would advise him not to get involved.”*
29. Person D stated that they were aware of the conversations regarding the boundary with Person H, the proprietor of Property 2. On the occasions when Cllr Khan had approached Person D, he had not worn a facemask. When this occurred, Person D explained that Cllr Khan and his accomplices needed to speak to the owners. Person D alleged that Cllr Khan and his accomplices became very aggressive and violent.
30. Person D said that on many occasions they had witnessed Cllr Khan using his councillor status to bribe the owner, Person H, in proposing that he can help with planning applications in return for two metres of land. However, when Person H dismissed Cllr Khan’s proposal, Cllr Khan became aggressive and violent towards Persons H and D and the contractors at Property 2. An incident occurred where Person D was assaulted while operating a fast moving ground cutter, and nearly

caused serious bodily harm; this was all witnessed and recorded. Police had been called many times but Cllr Khan had relied on his councillor status and bragged about being friends with a Sergeant of West Midlands police.

31. Person D has been contacted pursuant to this investigation via email and mobile phone. They have not responded to either.

32. In their signed statement, Person D stated:

“I have on many occasions witnessed Cllr Abdul Khan using Councillor title [sic] to bribe the owner of Property 2 to help them with planning application [sic] in return of [sic] couple of meters of land from the owner Property 2 [sic]...When Police has been called by the Owner of Property 2 on many occasions when Abdul Khan has threatened using his Councillor title to stop the works and bragged about being friends with the Sergeant of West Midlands Police...This man uses and abuses his title every day for his personal benefit...”

33. Person E’s statement said that since November 2020 there had been a feud about the boundary between Property 2 and Property 1. Person E had hired three surveyors and Cllr Khan did not agree with their resulting assessment. While physically present, Person E had witnessed discussions with Cllr Khan stating he was able to help with any planning applications due to his role and status as a councillor, and that similar statements had been made by Cllr Akthar. When Person H declined Cllr Khan’s proposal, he had become violent and aggressive, also causing damage to the property; this had been recorded and sent to the Police.

34. In their signed statement, Person E stated:

“On many occasions Cllr Abdul Khan has used his Councillor title openly and his authority as an influence to the Police and other individuals who act as his mediators.”

35. Person E stated at the time of the Police visit on 3 April 2021, Cllr Khan “very comfortably asked us to call 999 and said “you wait and see, Police will come and nothing will happen. I know the Sergeant.”” Person E further alleged that at the time of the final Police visit on 7 April 2021, Cllr Khan tried to use his Councillor title to persuade the officer but the officer responded by saying “I don’t care who you know or you take me out for dinner...if you try to obstruct, threaten or touch anyone working at Property 2, I will have no choice but to arrest you...”.

36. Person E continued:

“The events have repeatedly taken place where Cllr Abdul Khan uses his Councillor title again and again to threaten us and openly says, “I will make your life hell”.”

The video and photographic evidence

37. Person H has provided video footage of the incidents when the Police attended on 3 and 7 April 2021. No records of the attendances on 31 March and 2 April 2021 exist. The footage of 3 April 2021 shows Cllr Khan staying some distance from the discussions between the officers and the workers and other personnel involved in the altercation. None of the footage provided contains evidence of Cllr Khan making any reference to his status as a councillor nor his relationship with any officer. Person J is shouting and may make reference to Cllr Khan’s role as a councillor (Person J is difficult to hear and/or understand at times). Cllr Khan has denied instructing Person J to

make any statement to that effect and Person J did not respond to our request for an interview. In another video provided, of a discussion between Mr Perry and a security guard on 1 April 2021, the security guard makes reference to Cllr Khan's role at the Council. Mr Perry responds by telling the security guard not to use him or the Council as a threat.

38. Person E provided a photograph of officers coming down the steps of Cllr Khan's house, timed at 09:43 on 7 April 2021. Cllr Khan can be seen to be wearing his suit and has demonstrated that he had been due to sit as a Magistrate in Birmingham that day and had had to return to Property 1 to deal with the incident that had occurred. Person E provided a photograph of officers alleged to be having refreshments in Cllr Khan's living room on 31 March 2021. Both photographs are alleged to demonstrate an over familiar relationship between Cllr Khan and the officers and Cllr Khan abusing his position.

The interview evidence

39. Person A said that they had stayed at Property 2 while having their treatment. Person A said that they had found the situation with Cllr Khan to be stressful, but that their main concern had been Cllr Khan's use of his title as a councillor to intimidate Person E, tell them and their family what they could and could not do with their land and the consequences if the family did not do what Cllr Khan wanted or accept his position. Person A alleged that when they told Cllr Khan that they intended to make a complaint to the Council about him, Cllr Khan replied "*good luck, because it won't go anywhere*", but after that time did not refer to his status or authority. Person A alleged that prior to that they had heard Cllr Khan say, with reference to a planning application that Person E had submitted, that he would make it really difficult and would make sure permission was not granted.

40. Person E stated that they had lived at Property 2 since 2008 and that it was owned by their spouse Person H. Person E said that Cllr Khan had approached them and Person H saying that he wanted to build a wall on the boundary and was confident that due to his position as a councillor he could secure planning permission for the wall. Person E said that three surveys were conducted to ascertain the location of the boundary and Cllr Khan did not accept the outcome of them. Person E alleged that Cllr Akhtar had tried to persuade Person H to give Cllr Khan approximately two metres of land and said that if they agreed Cllr Khan would help them with planning matters. Person E said that Cllr Khan had complained when a fence was erected along the boundary and Mr Fothergill had attended the same day to measure the fence. Mr Fothergill had also measured a fence erected at Property 1 and found it to exceed the permitted height.

41. In relation to the trees, Person E alleged that Cllr Khan had arranged for trees to be felled that were subsequently found to have been within the boundary of Property 2, and that Cllr Khan had then blamed Persons H and E for felling the trees. Person E alleged that no action had been taken in response to any of the complaints made to the Planning department about Cllr Khan and/or activities at Property 1.

42. Person H's account was consistent with that of Person E. Person H said that Cllr Khan had approached them about building a wall on the boundary and removing some trees at the front of the properties and said that there would be no issues with the Council if he did so. Cllr Khan had had some trees removed that were subsequently found to be within the curtilage of Property

- 2, and then accused Persons H/E of felling them. Person H said that Council officers had said that because of Cllr Khan's role and status in the Council some process would have to be followed before they could attend Cllr Khan's property in connection with Person H's complaints. Person H believed nothing had been done in relation to the tree works as Cllr Khan is a councillor and Deputy Leader.
43. Person H alleged that they had been threatened with acts of violence by Cllr Khan and that Cllr Khan had got other members of the Council to try and persuade Person H to give Cllr Khan some of their land, in return for which Cllrs Khan and/or Akhtar would help with any future planning applications which Person H wished to make. Person H also stated that Cllr Khan slandered them in front of their contractors and when the Police were called no further action was taken as Cllr Khan is on the Police Board as representative of the Council. In support of this allegation Person H said that Cllr Khan would not speak to the officers in front of Person H but would talk to them in his house, following which the officers would say they could not do anything and leave. Person H said that when the Police visited on 7 April 2021, Cllr Khan's son had asked them to wait for Cllr Khan as he was on the way and knew the Superintendent. Person H said that the officer replied to say that he did not care who Cllr Khan knew or would take to dinner, if there was a further breach of the peace Cllr Khan would be arrested.
44. Person H stated that the dispute between them and Cllr Khan related to the boundary between the properties. Person H stated that Ismail Khan had instructed Survey Hub to report on the boundary but Cllr Khan had not agreed with their conclusions. Person H then instructed O'Brien Contractors to peg the boundary and Cllr Khan objected to that.
45. Cllr Khan denied all the allegations against him or that he had 'started a war' with his neighbours as alleged by Person E. He denied having asked any person to make any reference to his status as a councillor or knowledge of or connections with the Police in any dealings relating to the properties. In terms of the Police, he denied having any operational or other relationship with any Police officer or having told any person to refer to his status as a councillor when speaking to the Police, and stated that he does not have any influence with the Police in any event. He denied having given the officers any refreshments and said he invited them upstairs so that he could show them his paperwork and photographs and speak to them in private.
46. Cllr Khan pointed out that he is a solicitor and a Magistrate as well as a serving councillor and the improbability of him seeking to abuse his position or gain some advantage to obtain two metres of land from Person H. Cllr Khan rejected Person H's assertion that there had been three independent surveys carried out of the boundary. Cllr Khan said that Person H had brought a security guard with a dog onto the site with Person B and two other builders who proceeded to erect a fence within the curtilage of Property 1 and on 4 March 2021 Cllr Khan had called the Police to get the works stopped. Person H had also called the Police, alleging that Cllr Khan had tried to knock Person H's electrician over, which Cllr Khan denied. Cllr Khan said that the Police identified the matter as a civil dispute that would have to be dealt with in the courts.
47. Cllr Khan's position is that Person H has removed established fencing and bushes on the boundary between the properties, excavated a trench, undertaken works that could damage/destroy a manhole serving both properties and cut away paving within the boundary of Property 1 without permission. Cllr Khan stated in interview that he had instructed solicitors in relation to the

boundary dispute. He denied ever having sought to purchase or obtain any land from Person H or to have jointly commissioned a surveyor's report. He denied ever having complained to the Planning Enforcement department about the activities taking place at Property 1 or being involved with any action being taken in that regard and denied having made the complaint that led to the service of the TSN. Cllr Khan believed that Persons H and E thought he had made that complaint and that was 'when the trouble started'.

48. Cllr Khan denied having had any involvement with the Planning Enforcement department and, when asked if the Planning Enforcement officers had spoken to him or if he had been involved in their investigations, Cllr Khan said *"no, they haven't at all. No I haven't. I haven't been involved with them at all, no. They haven't spoken to me about it. Well I haven't asked them for anything; updates or what's happening or anything like that at all. It's entirely up to them..."* When asked if he had any information about what the current position was in relation to the TPOs, Cllr Khan stated *"...Well, nothing, because, again, I know my role, I know what the limits are, I've got no right to ask about his tree or any investigation that's against him, because I am not privy to that. I should not use that role to get that information. It's nothing to do with me..."*
49. Cllr Khan denied having cut down the trees that were within the curtilage of Property 2 and accused Person H of having done so, in order to take big machinery to the rear of the property to carry out the building work being done there. Cllr Khan insisted in interview and in subsequent correspondence that he had acted lawfully throughout and provided copies of communications with Person H about the works and the rectification required.
50. Cllr Khan stated that Persons H and E were liars and provided information about Person H's involvement in a High Court case, their imprisonment for a driving offence and planning issues involving Person H at other properties that Cllr Khan said demonstrated Person H's disregard for planning laws. Cllr Khan alleged that the Complaints were an attempt to use his status as a councillor as a means of attacking him and that Persons H and E and their witnesses were colluding and were making false and malicious allegations against him. Cllr Khan said that on one occasion when the Police had attended, Person A had been filming and had shouted *"Councillor Khan are you happy with what you're doing"* and Cllr Khan had replied *"Look, I'm Abdul Khan."*¹¹ Cllr Khan pointed out that despite numerous visits by the Police no one had been arrested or charged with any offence.
51. Cllr Khan was adamant that he had no influence in the Council and could not get planning permission for himself much less his neighbour. He cited as an example the fact that he had applied over a year previously for an additional wheelie bin and still had not received one but had not used his position in the Council to progress the matter.
52. Cllr Khan said that he had asked Cllr Akhtar to act as a mediator and try to resolve the dispute as Cllr Akhtar knew Person H. Cllr Khan had asked two other persons to mediate who knew Person H. Cllr Khan said that he had not instructed Cllr Akhtar to make any kind of promise on his behalf, and that he did not have any demands in any event save to persuade Person H that the boundary was where Cllr Khan alleged it to be and to have been for many years.

¹¹ This may be the dialogue referred to by Cllr Akhtar (see paragraph 59)

53. Cllr Khan pointed out that he had been on his way to sit as a Magistrate on 7 April 2021 when the Police attended. He said that by the time he arrived the Police had said what they needed to say and he did not hear PC [name redacted] make the statement alleged by Person E (paragraph 35). Cllr Khan stated that he could not be responsible for statements made about him without his knowledge, authority or consent.
54. Cllr Khan admitted having removed the black sheeting from Person H's temporary fence and said that he did that to prevent Person H from concealing the works being undertaken at Property 2.
55. Person F described himself as a friend of Cllr Khan who they had known for 20 years and who Person F visited regularly. Person F was aware of the dispute between Cllr Khan and his neighbours and was of the view that Person H was trying to incorporate additional land into their property from Property 1 and that Cllr Khan had resisted that. Person H had built a large extension to their property and, according to Person F, had not left enough room for their car or any vehicles delivering building materials to get to the rear of the property and as such needed additional land (approximately 1.5 metres) from the Property 1' side.
56. Person F had been present on one occasion when the Police attended having been called by Person H. Person F said that Cllr Khan had not referred to his status as a councillor at any time during that visit by the Police or any other time when Person F had been present. It appears that Person F was present when the Police visited on 3 April 2021 as they described the officer telling Cllr Khan that he could not stop Person H's builders doing their work and that if he did he would be arrested. Person F said that Person H's allegations were false and that Person D had been paid extra to give evidence in support of those allegations.
57. Cllr Pervez Akhtar said that he had known Cllr Khan for many years and they had a close friendship. Cllr Akhtar had been a member of the Labour Party for approximately 27 years and had supported Cllr Khan in his election campaign. Cllr Akhtar had known Person H for an even longer time and had worked with them previously as a taxi driver¹². It was for this reason that, when Cllr Khan told him that he was having problems with Person H, that Cllr Akhtar offered to speak to Person H on Cllr Khan's behalf. His first conversation with Person H took place in February 2021 when Cllr Akhtar had first visited Cllr Khan at Property 1. Person F said that two boundary lines were pegged out and he had suggested a line between the two, that Person H appeared to agree with.
58. Cllr Akhtar was present on 3 April 2021 helping with building work at Property 1. He thought that the Police may have been called because cars had been parked at the front of the properties and Cllr Khan had refused to move them. Cllr Akhtar said that he had been with Cllr Khan throughout the Police visit and neither he nor Cllr Khan had made any reference to their role as councillors or in relation to the Police Board. Cllr Akhtar had parked his car up against the boundary close to where Person H's builders were working to try and obstruct that work and stop those builders from, as Cllr Akhtar saw it, taking Cllr Khan's land.
59. Cllr Akhtar said that he had spoken to Person H a few times after the February meeting and after the 3 April incident he had gone to Property 2 to meet with Persons H and E. Cllr Akhtar said that after a long conversation he advised Person H to have a dialogue with Cllr Khan but over time it

¹² Person H denies having a friendship with Cllr Akhtar

became apparent that the parties would not reach an amicable solution. Cllr Akhtar described his role in his dealings with Person H as being an advocate for Cllr Khan but someone who Person H had also reached out to. Cllr Akhtar recalled a person saying to Cllr Khan “*you’re councillor Khan*” and Cllr Khan had replied that he was not councillor Khan, he was Abdul Khan.

60. Person G had been working at Property 1 six days per week at the time of the events to which this investigation relates. Person J was present at the property on 3 April 2021 and reported that Cllr Khan had parked his car up to the boundary where the fencing works were taking place, which had led to the Police being called. Person J appears to have also been present on 7 April 2021. They had not at any time heard Cllr Khan refer to his role or status as a councillor or involvement with or knowledge of the Police.

Assessment of the evidence

61. In assessing competing accounts, the inherent improbability that regulated professionals and those subject to binding Codes of Conduct will behave in a way that is contrary to their obligations must be taken into account. As case law has established:

“Although there is no ‘heightened standard’ of proof in proceedings of this nature¹³, the inherent probability or improbability of an event is itself a matter to be taken into account in weighing the probabilities and deciding whether on balance the event occurred: see the speech of Lord Nicholls in Re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563 at 586-7, cited with approval in Re B (A Child) [2008] UKHL 35. The more improbable it is that the registrant would have behaved in the manner alleged, the more cogent and credible the evidence needed to satisfy the burden of proving on the balance of probabilities that he did”: Virdee v The General Pharmaceutical Council [2015] EWHC 169 (Admin) at [36].

62. Cllr Khan is bound by the Code. The Code requires members of the Council, when acting in their capacity as such, to be committed to behaving in a manner that is consistent with the Nolan Principles governing standards in public life. Those principles include integrity, accountability and honesty. The Code goes on to require Council members not to conduct themselves in a manner that is likely to bring the authority into disrepute and to treat people properly, with respect, and not bully people.
63. It is inherently improbable that a leading councillor, who has been a solicitor for 22 years and a Magistrate for 15 years, would knowingly threaten residents, more so neighbouring residents whilst being recorded and in front of many individuals. It is inherently improbable that a councillor will threaten, bribe and get other individuals, including fellow councillors, to bribe residents of the Council for their own profit and advantage. Equally, it is inherently improbable that an elected member would shout and continually express “*I am a councillor, nothing will happen*”, that they have connections with the Police, act in an aggressive manner and assault individuals.
64. The Complainants and their witnesses and Cllr Khan and his witnesses have given different and frequently opposing accounts of the same events. That I have accepted some elements of a witness’ account and rejected others is not a reflection on their general credibility or reliability but a result of the balancing and evaluation of all the available evidence.

¹³ The case related to disciplinary proceedings but the principles apply in the present context

65. Similarly the fact that I have rejected a person's account does not mean that I have found them to be dishonest or seeking to intentionally mislead. As the High Court has recently reaffirmed, the evidence of witnesses can be affected by a number of factors. A person's 'truth' may be the subject of various cognitive influences including what the person thinks they would have said or done or what at the date of their account they think they should have said or done.
66. In *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin), Warby J explained the position as follows (at para 39):
- "We believe memories to be more faithful than they are. Two common errors are to suppose (1) that the stronger and more vivid the recollection, the more likely it is to be accurate; (2) the more confident another person is in their recollection, the more likely it is to be accurate.*
- Memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is even true of "flash bulb" memories (a misleading term), i.e. memories of experiencing or learning of a particularly shocking or traumatic event.*
- Events can come to be recalled as memories which did not happen at all or which happened to somebody else.*
- The process of civil litigation itself subjects the memories of witnesses to powerful biases."*
67. All of these principles apply to the evidence that has been given to this investigation. I have given more weight to the written evidence and the video and photographic footage than the evidence given in interview some weeks after the events in question.
68. Applying the principles set out above, reliable and cogent evidence is required for me to be satisfied on the balance of probabilities that Cllr Khan has acted in manner alleged in the Complaints. In terms of corroboration, the following have been taken into account:
- a. The mobile recordings, which show the location and movements of the various individuals and the body language and demeanour of all those involved. The extent to which the footage supports or contradicts the accounts given is dealt with below.
 - b. The written accounts which were submitted to the Council were sent close in time to when the incidents were alleged to have occurred.
 - c. The consistency of those accounts.
69. Cllr Khan has maintained that the allegations against him are false and that the witnesses who were the contractors for Persons H and E have colluded, distorting their account of events in order to discredit and falsely accuse Cllr Khan.
70. There was some confusion amongst the witnesses as to the precise dates and times of particular events, which could be resolved to an extent by the date and time-marked video and photographic evidence. This had been provided by Persons H and E, and none was provided by Cllr Khan as footage from his camera was not available. The events attended by the Police were close in time and took place in heated circumstances when there were a number of persons present and in close proximity to each other and emotions were running high. Those factors inevitably affected the reliability of the witness' accounts.

71. Person D's evidence was provided by way of a written statement and is presented in a very similar manner to that of Person E. Person D has not responded to requests for interview and as such it has not been possible to verify their account. It has been afforded little weight.
72. Person B's statement relates primarily to alleged assault and intimidation. Person B was busy working on site and not party to all the altercations or the dialogue with the Police and Council officers. Person B has also not responded to requests for interview and as such it has not been possible to verify their account, so far as relevant to the matters considered in this investigation. It has been afforded little weight.
73. I now deal with each of the matters raised in the Complaints.

Summary of factual findings

Allegation one - when the Police were called to the properties, Cllr Khan said that he knew the Superintendent/Sergeant, would not be arrested and no action would be taken

74. I do not find that Cllr Khan relied upon, cited or abused his position as a councillor in his dealings with the Police. During the course of this investigation I have seen evidence of behaviour that both parties may now regret, occurring as it did in the context of an increasingly heated and acrimonious neighbour dispute.
75. However I do not accept that Cllr Khan abused his position in the manner alleged. Some comments about his status as a councillor can be heard in the video and audio evidence of the visits by the Police; however, these appear to have been made by Person J and/or others present. When the Police attended on 3 April 2021, Cllr Khan stayed out of the vicinity of the discussion between the officers and the others present, and he was not at the property when the Police first arrived on 7 April 2021. Person H's evidence was that the comment about Cllr Khan knowing the Superintendent had been made by Cllr Khan's son on 7 April 2021 before Cllr Khan had arrived at the property.
76. Cllr Khan said that he spoke to officers inside Property 1 for reasons of privacy rather than to conceal conversations with the officers or seek to influence them, as had been alleged. I accept that explanation.
77. I do not doubt that Persons B, H and E believe that they heard Cllr Khan make the statements complained of. However, there is no corroborating evidence and the evidence that has been supplied by Persons H, E and B does not have that effect. The balance of the evidence available indicates that some comments were made about Cllr Khan's status and involvement with the Police but that such comments were made by others. Cllr Khan's evidence is that he did not ask or authorise anyone to make such statements, and we have been unable to interview Person J or Cllr Khan's son¹⁴ to ascertain whether they made the statements and if so whether Cllr Khan told them to do so. I agree with Cllr Khan that he is not responsible for statements made about him without his knowledge, authority or consent.
78. It is inherently unlikely that Cllr Khan, as a solicitor and Magistrate, would act towards the Police in the manner alleged and as noted above, cogent evidence would be required to satisfy me on the balance of probabilities that he had so acted. Cllr Khan's evidence is that he has not sought to

¹⁴ Cllr Khan said that he was out of the country and unavailable

exert any influence and does not have any influence over the Police in any event. He had invited the officers inside the property in order to explain the position and show them some documentation. Persons F and G were present on a number of occasions when the Police attended and gave evidence that they had not heard Cllr Khan refer to his status as a councillor at any time.

79. Person H has referred to the fact that no action has been taken by the Police in respect of any of the matters that were the reason for their visits to the properties as evidence that Cllr Khan is able to exert undue influence on the Police. Only the Police can explain their own operational decisions, but it is evident that any such decisions can be informed by a variety of factors and are not necessarily indicators of bias or undue influence.

80. Allegation one is not made out and the aspects of the Complaints that relate to it are not upheld.

Allegation two - Cllr Khan sought to exert influence over officers in the Council with a view to receiving preferential treatment.

81. Persons H and E have alleged that complaints made by Cllr Khan relating to Property 1 were dealt with swiftly and more efficiently than those made by them in relation to Property 1, which were alleged to have resulted in no action or no response. Cllr Khan was alleged to have illegally cut down protected trees and built a fence in excess of the permitted height without planning permission yet has faced no investigation or action despite Person H having brought these matters to the Council's attention. Cllr Khan has stated that the complaints made against him by Persons H and E have not resulted in any response because they are malicious and false and that he stopped works on the boundary fence immediately on receipt of officers' advice that planning permission was required, obviating the need for any further action or response.

82. I made a request for full disclosure of the Planning Enforcement records for the two properties between February and April 2021. Having reviewed the records provided and the responses to the further enquiries made, I have made a series of factual findings. These are contained in paragraphs 83 to 97 below.

83. Cllr Khan contacted various senior officers of the Council in February and March 2021 to complain about matters occurring at Property 2, including one complaint made via his PA, the sending of video evidence and complaints made to both a Director and the Chief Executive. The contact comprised the following:

15 February 2021: Cllr Khan contacted Ms Lynch to allege that tree roots had been damaged during the installation of a septic tank at Property 2.

16 February 2021: Cllr Khan again contacted Ms Lynch making further allegations that trees had been removed by Person H and that Person H was building a summer house at the bottom of their garden and provided photographs.

Mr Perry was contacted by Mr Walster who said that Cllr Khan had been in touch with him.

4 March 2021: Cllr Khan's PA emailed Mr Fothergill and stated that Cllr Khan had just telephoned and asked her to let Planning Enforcement know that works had started at Property 2 - the fence had been dug out and moved onto Property 1' property.

19 March 2021: Cllr Khan sent a video to Mr Back of works being undertaken at Property 2.

26 March 2021: Cllr Khan sent a further complaint to Mr Reeves alleging trespass and damage to property while removing stumps.

30 March 2021: Cllr Khan emailed a series of senior officers and members (detailed further below).

84. In interview for this investigation, Cllr Khan denied having had any involvement with the Planning Enforcement department or having had any communication with them in relation to Property 2/Property 1, save raising a query about the status of paving stones within the curtilage of a listed building. It is clear however that Cllr Khan was in fact in contact with a range of senior officers on a number of occasions between February and March 2021.
85. In his response to the draft of this report, Cllr Khan has stressed that he did not contact either Mr Fothergill or Mr Perry direct and that as such his statement was accurate. That is correct, however Cllr Khan contacted senior officers with management/executive responsibility for planning enforcement, raising planning enforcement issues and with the objective of some action being taken in relation to those issues. The communications admit of no other interpretation. That Cllr Khan did not contact the Planning Enforcement Officers directly does not mean that he did not attempt to influence the actions of those officers, which he did by contacting their superior officers.
86. Cllr Khan's contact with officers culminated in his email of 30 March 2021. The audience and content of that email (which included senior planning officers and the Leader of the Council) and the fact that Cllr Khan sent it from his Council email address and addressed it "*Dear Colleagues*" indicate that it was intended as an instruction to the officers to whom it was sent to act in the way Cllr Khan directed, and was considered by Cllr Khan to be a matter of which the Leader and Chief Executive of the Council should be aware. By sending that email, Cllr Khan was using his position in the Council to seek to advance his own interests.
87. Cllr Khan's use of the phrase "*I am extremely disappointed with the involvement of my own Council*" indicates an intention to influence the recipients of the email by using proprietary and authoritarian language. In expressing disappointment, Cllr Khan is signalling disapproval of the actions taken by the Planning Enforcement department to a wide audience and without having first established whether the position was as had been described by Person H's security guard.
88. In his response to the draft of this report, Cllr Khan has claimed that he was simply urgently seeking an explanation of the situation and clarification of the information that been sent to Person H, which Cllr Khan suspected Person H was misrepresenting. That is not consistent with the wording of the email nor the nature and scope of the persons Cllr Khan sent it to.
89. Cllr Khan has further stated that he did not at any time during any communications with officers of Coventry City Council seek to influence them in any way in breach of the Nolan principles and that there was nothing improper in him sending the email on 30 March 2021. Cllr Khan has asserted that "*any reference/complaint [he] made to Officers was open and transparent and was for a legitimate and proper purpose*" and that he was not acting to advance his own interests and that, had a listed building and a TSN not been involved he would not have contacted the Council at all. In terms of the audience of the email, Cllr Khan has stated that he was simply contacting the same people who had been contacted by Person H about this matter. This 'tit-for-tat' justification

serves only to highlight the existence and nature of the dispute between the parties. That Person H may have contacted certain persons about the matter does not make it right for Cllr Khan to do the same. As a senior member of the Council bound by the Code, Cllr Khan was in a wholly different position to Person H as a local resident.

90. The statements made by Cllr Khan indicate a recognition that he was raising issues and making complaint(s) about matters in which he had a direct interest. Calling rather than emailing senior officers and asking his PA to raise matters with the Planning Enforcement Officers do not indicate openness or transparency. Cllr Khan's reference to acting for a proper purpose fails to recognise the nature of his direct personal interest in the matters to which the complaint(s)/reference(s) related. Cllr Khan has referred to the fact that officers were aware of his interest in the properties as evidence of transparency. Awareness of Cllr Khan's direct personal interest does not excuse Cllr Khan continuing to act in pursuit of those interests and using his status and access as a senior councillor to do so. Further, the acrimonious relationship between the parties and their mutual hostility and animosity have been evident throughout this investigation. These factors militate against Cllr Khan's claims to have been acting solely in the public interest and because of the status of the listed building and the TSN. Further, some of Cllr Khan's communications with officers pre-dated the TSN.
91. Cllr Khan has also stated that what officers did in response to his communications was a matter for them and any referral to Planning Enforcement was a matter for their discretion. However, his objective in sending his communications to officers was clear, as noted above, and in the email of 30 March 2021 Cllr Khan issued a request that "as a minimum" he and Person H be sent letters with content directed by Cllr Khan, to be done as soon as possible that morning. The use of the words "as a minimum" indicate that he expected further actions to also be taken.
92. Cllr Khan has also stated that he did not send any follow up to his email of 30 March 2021 and that indicates that he was not seeking to exert any influence. The lack of any follow up communication does not change the wording or audience or effect of the email that was sent.
93. The chronology set out at paragraph 25 above demonstrates that Cllr Khan's complaints about Property 2 were consistently dealt with swiftly. Person H's complaints were not dealt with in the same way. Their allegations of unauthorised tree removal at Property 1, confirmed by Mr Penlington in February 2021 to be correct in one respect¹⁵, have not resulted in any action being taken. The responses received from Mr Fothergill to my enquiries in this regard were as follows:
- a. To the allegations contained in Person H's emails of 25 and 26 February, 7 March and 22 April and the evidence provided in relation to unauthorised tree works:
- No inspections or investigations undertaken to date as enforcement officers are aware that Cllr Khan is undertaking pre-application discussions with Anne Lynch and a planning application / listed building consent application is expected shortly to resolve issues - given the ongoing informal discussions it is not considered expedient at this time to pursue the matter further.*

¹⁵ Cllr Khan has stated that this indicates a site visit was undertaken in response to Person H's complaints

- b. To the further allegations and evidence of unauthorised tree works provided by Person H on 7 May 2021:

As above, no formal investigation to date - informal discussions seeking to resolve issues ongoing between Cllr Khan and Anne Lynch and planning application / listed building consent application expected shortly. Whilst discussions are positive / progress is being made it is not considered expedient to pursue formal enforcement action. If this changes at any time and negotiations falter [sic] and / or matters remain unresolved the investigation can be reactivated and formal enforcement action considered. This is in line with the normal practice of the Council.

94. It is not clear how allegations relating to the unauthorised removal of protected trees could be resolved by way of a new planning application. It is for the Council to take such action as it considers necessary in response to Person H's allegations, however given that the person complained of is a serving councillor it was incumbent on the Council to ensure that the complaints were dealt with in a fair and even handed manner. Following consideration of this report the Council may wish to consider writing to Person H to provide a comprehensive response to those aspects of their complaints which remain outstanding.
95. The request for information made to the Planning Enforcement department covered the period February to April 2021 as that was the period in which the events described in the Complaints occurred. Following consideration of this report the Council may wish to review Cllr Khan's dealings with the Planning Enforcement department and/or in relation to Property 2 (if any) since that time.
96. In the correspondence I have seen, Cllr Khan was correctly advised of the position under planning law and on the limits to the Council's role as regards the boundary and other civil disputes between the parties. It is clear from the chronology however, and I have found, that notwithstanding that advice Cllr Khan was in regular contact with a variety of senior officers, and his communications received a swift response.
97. In terms of site visits, Mr Fothergill stated that officers attended Property 2 on 4 March 2021 in response to a complaint from Cllr Khan as the complaint alleged that works were being undertaken in breach of the TSN. The nature of that complaint meant that an unannounced site visit was required. I accept that this site visit was undertaken, and on a date not previously offered to Person H for those reasons and not because of Cllr Khan's status or the fact that he had made the complaint. Mr Perry attended Property 2 in response to a complaint from Cllr Khan about a fence that was being erected and Mr Perry attended Property 2 on 1 April 2021, two days after Cllr Khan's email of 30 March 2021 and after the expiry of the TSN. As noted above, no site visits have been undertaken in response to the complaints about Cllr Khan/activities at Property 1.
98. Allegation two is made out and the aspects of the Complaints that relate to it are upheld.
- Allegation three - Cllr Khan used his position to seek to persuade the neighbours to sell him land, on the basis that he could secure planning permission for them in the event that they agreed to his proposal, alternatively that he would 'make life hell' for them in relation to planning if they did not**

99. There is no evidence to corroborate Persons H and E's allegations that Cllr Khan used his position in the way described above and Cllr Khan denies having done so. Cllr Akhtar, who entered into some discussions with Person H on Cllr Khan's behalf, has also denied ever having offered, or being requested by Cllr Khan to offer, any advantageous or disadvantageous treatment with planning matters to Person H. Cllr Khan denies ever having sought to purchase or acquire land from Person H.
100. Cllr Khan and Cllr Akhtar rightly pointed out that planning applications are evaluated by professional officers and, in the case of applications in which members have interests, are determined by the Planning Committee in public session. Cllr Khan does not sit on that Committee and as such has no pre-existing role or involvement in it. His interest in any application relating to Property 1 or Property 2 should be declared. His ability to exert any influence over the outcome of any such application is therefore extremely limited.
101. Person H has pointed out that Cllr Khan is a senior member of the Labour Group and that the membership of the Planning Committee is comprised of a majority of Labour councillors. That is a function of the rules relating to political balance and is not a sufficient basis on which I can conclude that Cllr Khan has influence over the Planning Committee.
102. A planning application submitted in respect of Property 2 was refused by the Council under delegated powers on 13 January 2022¹⁶. Person H stated that they have been informed that one objection to the application had been received from an unnamed councillor. The stated ground of refusal relates to the impact of the proposed development on the Conservation Area within which Property 2 is situated. Person H has alleged that this is evidence of Cllr Khan's influence over the Planning department and of Cllr Khan making good on his threat to make Person H's 'life hell' in relation to planning. Person H has been informed that any concerns about the decision taken are outside the remit of this investigation and should be raised with the Council and/or on appeal.
103. Given that, the lack of any supporting evidence and the inherent improbability of Cllr Khan purporting to rely upon influence on the planning process that he does not have, to secure additional property from his neighbours that he says he does not need or want, allegation three is not made out and the aspects of the Complaints that relate to it are not upheld.

The Code

104. The matters referred to in paragraphs 83 to 98 above constitute evidence that Cllr Khan has breached the following provisions of the Code:

10 Impartiality of officers of the council

As a councillor, you must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to

¹⁶ Reference HH/2021/3249

understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

13 Use of position

As a councillor, you must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

105. There is evidence that Cllr Khan has failed to act in accordance with the following Nolan principles:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships. (emphasis added)

106. Cllr Khan had a direct personal interest in matters occurring at Property 2. He was actively involved in an acrimonious and on occasion heated boundary dispute with his neighbours. Cllr Khan's actions in contacting different senior officers to pursue his complaints and allegations about those neighbours, including a Director and the Chief Executive, and in sending the email of 30 March 2021 are evidence that he inappropriately involved himself in a matter in which he had a direct interest and inappropriately sought to influence officers to act in a manner that was to his advantage in promulgating his dispute against his neighbours. There is evidence that he took advantage of his role and status as a councillor in contacting senior officers and in sending the email of 30 March 2021. There is also evidence that Cllr Khan knew he should not act in that way, as indicated in interview for this investigation (paragraph 48).
107. By virtue of his position as Deputy Leader and a Cabinet member, Cllr Khan had privileged access to senior officers of the Council including its Directors and its Chief Executive, access that would not be available to ordinary residents of the Council. That access is provided to enable him to exercise his official duties. It is not provided as a means for Cllr Khan to advance complaints about a matter in which he has a direct personal interest. Cllr Khan used his access for that purpose in the manner described in this report.

108. There is evidence that Cllr Khan was not acting solely in the public interest in making his complaints and allegations about Property 2 and his neighbours but that he was acting to further his own interests. While it is arguable that any complaint about unauthorised works in a conservation area or to protected trees is in the public interest, the manner in which Cllr Khan promulgated his complaints and his subsequent denial of having done so are inconsistent with him having acted solely in the public interest in raising those complaints.

109. Cllr Khan maintains that he was entitled to take the actions that he did and acted in the public interest. He has claimed that he was open and transparent in his communications and that he is entitled to raise complaints about breaches of planning law. He has stated that in his role as Cabinet Member, he had asked relevant officers to implement protocols which ensured members did not have any role in making decisions to prosecute or instigate enforcement proceedings against individuals as such decisions are at the absolute discretion of officers. Cllr Khan does not accept that there is any evidence that he has breached the Nolan principles in that he was not seeking to exert influence nor did he use his position improperly to his advantage or disadvantage or the advantage or disadvantage of anyone else. Cllr Khan's response to the draft of this report concludes with the following statement:

“It is clear from the evidence on the public planning portal that [Person H] is someone who despises the Council and Council members. [They do] not wish to be bound by the Planning Rules and Laws.”

110. This response demonstrates Cllr Khan's continued and express personal hostility towards Person H, a lack of insight on the part of Cllr Khan and a lack of understanding of his obligations under the Code. Those obligations do not only apply to decision making by members but apply to a range of actions. The requirement for integrity in particular prohibits members from *acting* to gain material or other benefits and requires members to declare *and resolve* interests and relationships. Cllr Khan has not complied with that prohibition or that requirement.

Rosalind Foster
Browne Jacobson LLP
28 January 2022

