

JUDGMENT : Mr Justice NEWMAN : Administrative Court. 5th April 2006.

1. The claimant, Port Regis School Limited, challenges the decision of the full Council of the North Dorset District Council, taken on 12th March 2004, that it was minded to accept the recommendation of the Development Control Committee ("the Committee") to approve an application for planning permission by the Trustees of the Gillingham & Shaftesbury Agricultural Society (the interested party). On 9th July 2004 planning approval subject to terms and conditions and the terms of an appropriate agreement subject to section 106 of the Town and Country Planning Act 1990 was granted. A single ground of challenge is made to the decision taken on 12th March 2004. Two members who attended and voted at the full Council meeting are and were freemasons. By reason thereof, it is contended the decision was unlawful because of apparent bias.
2. Although some minor issues of fact were the subject of dispute, the central facts are not in dispute.

The Planning Application

3. The application was for planning permission to use agricultural land as a showground and to erect a pavilion. It was supported by a business plan. The business plan stated that the interested party had held talks with the Masonic Lodge in Gillingham (Kings Court Lodge) about providing a dedicated room in the pavilion for the Lodge's use, in relation to which the Lodge would provide "a capital injection" as well as contribute to the running costs. The capital contribution from the Lodge would be part of some £350,000 private funding for the development.
4. The officer's recommendation to the Development Control Committee at its meeting on 6th January 2004 was that: *"There could be no justification in accordance with normal planning policies for this type of development" and that accordingly it should be refused. The Committee resolved that it was minded to approve the application and referred it to the full Council for decision. This was necessary because the application amounted to a departure from the Local Plan. It has been accepted that it was necessary under the Council's constitution for the full Council to decide whether there was sufficient justification or need to warrant a recommendation for approval. The officers' recommendation to the full Council was that the application should be refused because justification was not made out and there would be unacceptable harm to the countryside. The recommendation was "firmly to refuse planning permission".*

The Council's Code of Conduct

5. The Council's Code of Conduct ("the Code") was adopted on 12th April 2002 in accordance with section 51 of the Local Government Act 2000.
6. The full Council meeting was chaired by Councillor Mrs Jones, a freemason. Among others attending was Councillor Moyle, also a freemason. Each had, in accordance with the Council's Code, declared that they were freemasons for the years 2002 and 2003 and signed declarations to abide by the terms of the Code. In so far as it may be necessary to refer to the precise terms of their entries in the register, I shall do so later. Councillor Mrs Jones is a member of the ladies' Masonic Lodge, Durnovaria in Puddletown and not a member of any other lodge. Councillor Moyle is a member of the Blandford Forum Masonic Lodge of Honour and Friendship, is also a member of the Provincial Grand Lodge of Dorset and a member of the United Grand Lodge of England. There were an equal number of votes for and against the resolution and Councillor Mrs Jones used her casting vote as chairman in favour of the resolution. Councillor Moyle was among those who voted in favour of the resolution.
7. The Code requires every councillor to sign an undertaking to observe the Code. See Part 5 (section 1. paragraph 1.02) which by its terms (paragraph 1.05) requires that:
"1.05 A member must observe this Code of Conduct wherever they –
(a) ...
(b) conduct the business of the office to which they have been elected or appointed ...".
Among the general obligations imposed by the Code is "... an overriding duty as a Councillor to the whole community, and to act in the public interest". Further, "Members have a special duty to their constituents, including those who did not vote for them".
8. At paragraph 5, under the heading "Impartiality", the Code provides:
"5.01 A Member –
(a) must not, in their official capacity or any other circumstance, use or threaten to use their position as a Member improperly to confer on or to secure for themselves, or any other person, an advantage or disadvantage; ..."
At paragraph 6, under the heading, "Decision Making", the Code provides:
"6.01 A Member must, when reaching decisions –
(a) reach decisions on the basis of the merits of the particular case and in the public interest
(b)
(c)
(d) not act or cause the District Council to act unlawfully, in such a manner as would give rise to a finding of maladministration, in breach of any undertaking which the District Council has given, or for the advantage of any particular person or interest rather than in the public interest".
9. Section 2 of the Code is headed "INTERESTS". The material sections of the paragraphs are as follows:-
"8. Personal Interests
8.01 Members must in all matters consider whether they have a personal interest, and whether this Code of Conduct requires them to disclose that interest.

- 8.02 *Members must exercise personal responsibility in deciding whether they have a personal interest such that they should disclose it. They may seek advice from the District Council's Monitoring Officer and must have regard to any advice from the Standards Committee in doing so.*
- 8.03 *Members must regard themselves as having a personal interest in a matter if the matter relates to an interest in respect of which notification must be given under paragraphs 13 and 14 below, or if a decision upon it might reasonably be regarded as affecting, to a greater extent than other council tax payers, ratepayers or inhabitants of the District Council's area, the well-being or financial position of themselves, a member of their family or a friend, or –*
- (a) any employment or business carried on by such persons;*
 - (b) a person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;*
 - (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or*
 - (d) any body listed in sub-paragraphs (a) to (f) of paragraph 14 below in which such persons hold a position of general control or management.....*

9. Disclosure of Personal Interests

- 9.01 *A Member with a personal interest in a matter, who attends a meeting of the District Council at which the matter is considered, must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.*
- 9.02 *Subject to sub-paragraph 12.02(b) below, a Member with a personal interest in any matter, who has made an executive decision in relation to the matter, must ensure that any written statement of that decision records the existence and nature of that interest.*
- 9.03 *Subject to paragraph 9.01 above, a Member who has a personal interest, but concludes that they do not have a prejudicial interest in the circumstances set out in sub-paragraphs 10.02(a), (b) or (c) below, may speak and vote on the matter.*

10. Prejudicial Interests

- 10.01 *Subject to paragraph 10.02 below, a Member with a personal interest in a matter has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to affect the Member's ability to act purely on the merits of the case and in the public interest or affect them in the discharge of their responsibilities as a Member....*

12. Participation in Relation to Disclosed Interests

.....

- 12.02 *Subject to paragraph 12.03 below, a Member with a prejudicial interest in any matter must –*
- (a) withdraw from the room or chamber where a meeting is being held wherever it becomes apparent that the matter is being considered at that meeting, unless they have obtained a relevant dispensation from the District Council's Standards Committee;*
 - (b)*
 - (c)*
- 12.06 *If a Member is in any doubt about whether they should declare an interest, they should –*
- (a) take advice from the chairman of the appropriate committee, the Monitoring Officer or other appropriate senior officer of the District Council as to whether the situation justifies such a step;*
 - (b) consider whether the public would regard the Member's interest as so closely connected with the matter in question that the Member could not be expected to put their interest out of their mind (for example, the matter might concern a decision by the District Council affecting a close relative); if the Member thinks that the public would regard it in this way, the Member should never decide to take part in a discussion of, or a vote on, the matter in question; and*
 - (c) consider any guidance which the District Council and its Standards Committee have issued on this matter."*

10. The Minutes of the meeting on 12th March 2004 record that the Council's legal services manager informed members "in respect of declarable interests" that "one of the potential uses for the pavilion was partly as a Masonic Lodge". Neither Councillor Mrs Jones nor Councillor Moyle declared an interest as freemasons. As their evidence makes plain, they did not do so because they considered their freemasonry did not give rise to any prejudicial interest. Councillor Moyle states: "By reason of the independent nature of each lodge, I do not believe I was under any duty to declare an interest, nor do I consider that I had any interest in the determination of the application nor in any proposal involving the Gillingham Lodge."

Councillor Mrs Jones states: "I did not declare any interest as I have no involvement with the Gillingham Lodge nor indeed with any other lodge within the jurisdiction of the Grand Lodge".

11. It was accepted in the course of argument that membership of Gillingham Lodge would have given rise to the existence of a prejudicial interest because of the significance of that lodge's interest in the planning application. As it now transpires, by the time of the meeting, the Gillingham Lodge had withdrawn its interest, but that fact was unknown to the Council members present and cannot affect the issue which has been raised.

12. The ambit of the argument can be seen as presenting the following question: whether a freemason, by reason of membership of that Society and for no other reason, is to be regarded as restrained from participating in local government decision-making whenever another freemason or branch of freemasonry has an interest in the outcome of the decision? Although this case concerns local government, the determination of the issue could have implications in many sectors of public life.

The Law

13. There is no dispute that the appropriate test for determining an issue of apparent bias is whether a fair minded and informed observer, having considered the relevant facts, would conclude that there was a real possibility that the tribunal was biased (*Porter v Magill* [2002] LGR 51, per Lord Hope at page 98E). Secondly, when considering the question of apparent bias, it is necessary to look beyond pecuniary or personal interests, to consider whether a fair minded and informed observer would conclude there was a real possibility of bias in the sense that members approached the decision without impartial consideration of all relevant planning issues (*Georgiou v London Borough of Enfield* [2004] EWHC 779 (Admin), para 31).
14. Illustrations of the application of the principle have been relied upon, including the leading cases of *Locabail (UK) Ltd v Bayfield Properties Ltd & Others* [2000] QB 451 and *Lawal v Northern Spirit Ltd* [2004] 1 All ER 187.

The Claimant's Case

15. The claimant's case stressed two aspects of freemasonry which it was submitted were relevant to the case. First, that the freemasons constitute a secretive society. Secondly, that they are a fraternal society. In support, reference was made to the Shorter Oxford English Dictionary definition as "A member of a society for mutual help, called the Free and Accepted Masons, and having elaborate secret rituals". Or "freemasonry" which is defined as "The system and institution of Freemasons. Secret or tacit brotherhood; instinctive sympathy and understanding".
16. I have concluded that the "secrecy", which is said to surround freemasonry and which to a limited extent is accepted governs its rituals, adds little substance to the argument. The councillors had declared their freemasonry. Gillingham Lodge's interest had been declared. Secrecy, as part of freemasonry, undoubtedly gives rise to suspicion and can be seen as heightening the role which the concept of "brotherhood" can play. Nevertheless, in reality, the argument for the claimant turns upon what has, for convenience, been described as the existence of "an oath of mutual assistance" which freemasons are required to take, which is supported by various rituals and declarations, all of which are directed to emphasising the close bond that links freemasons.
17. This ground of challenge, in my judgment, calls for serious consideration and necessarily involves some analysis of what the principle of 'mutual assistance' means within freemasonry and an assessment of the character and import of the rituals and declarations. It also requires the court to reach an informed conclusion as to what being a freemason involves.
18. The court was taken to the Third Report on Freemasonry in the Police and the Judiciary of the Home Affairs Committee of the House of Commons. At paragraph 26 of the Report under the heading "Masonic Oaths and Obligations", the Committee noted:

"On becoming the Master of a Lodge, an individual swears to "maintain, support and uphold, pure and unsullied, the principles and tenets of the Craft". United Grand Lodge explained that these are not formally set out, but include obedience to God and the law, the practice of morality and charity and basic principles of good citizenship. The Charge to the newly made entered apprentice freemason reads,

"As a citizen of the world, I am to enjoin you to be exemplary in the discharge of your civil duties, by never proposing or at all countenancing any act that may have a tendency to subvert the peace and good order of society, by paying due obedience to the laws"

and follows on,

"As an individual, let me recommend the practice of every domestic as well as public virtue: let Prudence direct you, Temperance chasten you, Fortitude support you, and Justice be the guide of all your actions. Be especially careful to maintain in their fullest splendour those truly Masonic ornaments, which have already been amply illustrated – Benevolence and Charity."
27. It has been argued that the masonic oaths represent an unhealthy pledge to assist each other, often acting to the detriment of others or exhorting a freemason to act in a corrupt manner. The Obligations of a Master Mason includes pledges to form a "column of mutual defence" with brother masons, to "succour his [fellow mason's] weakness and relieve his necessities, so far as may fairly be done". The text however adds, that masons should not engage in "offences contrary to the laws of God and the ordinances of the realm". The Charge to a newly made Entered Apprentice Freemason stresses the masonic excellences of character including:- Secrecy (preserving masonic secrets); Fidelity (observing the constitution); and Obedience (submission to the Master and his Wardens whilst acting in the discharge of their respective offices). The charge goes on to exhort masons to be "respectable in life, useful to mankind". The Royal Arch Charge or Long Closing, which is said by United Grand Lodge to be not an obligation but an occasional closing ritual used in some Royal Arch Chapters, urges masons to "suggest the most kindly, the most palliating, and the most favourable circumstances in extenuation of his [a fellow mason's] conduct, even when justly liable to reprehension and blame. Thus shall the world see how close is the bond that links freemasons together". The closing continues to add that "every human creature has a just claim to your kind offices". The Committee also note the text of the obligation of an entered apprentice freemason who swears that

- on violation of any of the secrets that he has sworn he will be "branded as a wilfully perjured individual, void of all moral worth, and totally unfit to be received into this worshipful Lodge , ..., or society of men who prize honour and virtue above the external advantages of rank and fortune."
28. The Lord Chancellor, who is not a freemason, stated that he saw nothing sinister in the suggestion that people swear oaths to assist one another; he expected that such oaths would be appropriate pledges to assist someone as a "good neighbour or good friend". He did not accept that an obligation of mutual help was incompatible with the judicial oath; he believed that such oaths had to be seen in the context and he did not accept that they would affect someone in their official capacity. United Grand Lodge confirmed that masonic oaths would be subordinate to any oath sworn by a judge or a policeman. Sir Ian Percival, a former Solicitor-General and a freemason, argued that the text of the Royal Arch closing (noted in paragraph 27, above) stemmed from worthy intentions to forgive someone who had done wrong and expressed a reasonable hope that "when you have done wrong someone would administer some palliative". Whilst stressing that freemasonry was not a religion, he noted that he believed such sentiments would accord with a Christian approach.
29. We have considered the full texts of a number of obligations and charges that have been supplied to the Committee by United Grand Lodge. It is important to note that the pledges of brotherhood and mutual support enshrined within these oaths are accompanied by exhortations to observe the laws of the realm and to treat others equally. It could be suggested that there might be situations in which freemasons themselves fail to understand the full context of the oaths that they have sworn, and may be tempted by the strong pledges of brotherhood to unjustly favour or protect their fellow freemasons. This proposition was refuted by United Grand Lodge who stressed that throughout the Masonic obligations a freemason is constantly reminded of his duty to be a good citizen. The Committee notes that the elements of masonic ritual which detail gruesome punishments for those who do not keep the masonic secrets were removed from the ritual in 1986 by direction of the United Grand Lodge. United Grand Lodge argue that these passages were only ever symbolic".
19. The court has also been informed about freemasonry. In particular, in a statement from Mr Stuart Caundle, the solicitor to North Dorset District Council who is the monitoring officer to the Council, he exhibits a copy of:
- (1) Constitutions of the Antient Fraternity of Free and Accepted Masons under the United Grand Lodge of England and Wales (UGLEW), dated 2003; and
- (2) Information for the Guidance of Members of the Craft dated 2004.
20. Mr Caundle confirms that having regard to the constitutional arrangements of the UGLEW, he formed the view (to which he still adheres) that "... it was not membership of any Masonic Lodge that could constitute a prejudicial interest but only that of the Gillingham Masonic lodge ...". As a result, he so advised all members present on 12th March. He disputes any suggestion that he advised that membership of any lodge would constitute a prejudicial interest.
21. The constitutional position, as it appears to the court, from consideration of the exhibits to Mr Caundle's affidavit, is accurately stated in Councillor Moyle's statement to be:
- "Lodges are under the administrative jurisdiction of the Provisional Grand Lodge but are otherwise essentially autonomous, although they must act within the scheme of the rules set down by the ultimate governing body of Freemasonry ... [the UGLEW].*
- Every Lodge therefore acts independently from other lodges and may frame its own governance. Consequently any lodge cannot be considered as being affiliated to another ..."*
22. Certain aspects of the constitutional framework, taken from the evidence of Councillor Moyle and Councillor Jones, were highlighted in paragraph 10 of the claimant's Skeleton Argument as follows:
- "The United Grand Lodge has delegated authority for governing Freemasonry to Provincial Grand Lodges. The King's Court Masonic Lodge in Gillingham was under the jurisdiction of the Provincial Grand Lodge of Dorset and the United Grand Lodge of England"*.
- The paragraph is accurate, so far as it goes, but the true outcome depends upon a more detailed consideration of the constitutional framework which the exhibits disclose. The claimant did not advance argument to challenge Mr Moyle's conclusion, which I accept as accurate.
23. Among the "Antient Charges and Regulations" referred to in the first mentioned exhibit, to which a Master elect must promise to uphold, the following would appear to be the most salient to the issue:
- "2. You are to be a peaceful Subject, and cheerfully to conform to the laws of the country in which you reside.*
- 4. You agree to pay a proper respect to the Civil Magistrate, to work diligently, live creditably, and act honourably by all Men.*
- 9. You agree to promote the general good of Society, to cultivate the Social Virtues, and to propagate the knowledge of the Mystic Art as far as your influence and ability can extend"*.
24. As to the Constitutions (the first mentioned exhibit) it contains a statement of "certain fundamental principles" of freemasonry including:

"5. Everyone who enters Freemasonry is, at the outset, strictly forbidden to countenance any act which may have a tendency to subvert the peace and good order of society; he must pay due obedience to the law of any state in which he resides or which may afford him protection, and he must never be remiss in the allegiance due to the Sovereign of his native land".

The second exhibit - Information for the Guidance of Members of the Craft

25. I take the following as the most salient parts for the purposes of the issue which I must determine. Under the heading "DECLARATIONS OF INTEREST" the following appears:

"A recent investigation by the Local Ombudsman suggests that some Brethren may not have fully understood the implications of what is said about declarations of interest in the Board's leaflet 'Freemasonry and Society', which was re-issued in a revised form and with Grand Lodge's approval in September 1988.

In local government, as in many walks of life, the pecuniary interests of those involved in making decisions must be disclosed. Other interests (which may include Freemasonry) may also be appropriate for disclosure. Such interests should be disclosed if they are likely to have a bearing on the matter under discussion or on relationships with any of the people concerned. The disclosure need not be specific (e.g. 'I declare an interest' would be enough). After disclosure of an interest, the standing orders or customs of the committee or council, etc., will govern further participation in making the decision concerned.

Brethren who may be involved in local government or where similar rules apply should consider the foregoing advice against the background of the leaflet 'Freemasonry and Society'. If difficulties arise, the Grand Secretary should be consulted (through the Provincial and District Grand Secretaries if appropriate). (Extract from Report of the Board of General Purposes, adopted 13 December 1989).

MASONIC SECRETS

The Board considers that it may be opportune to remind Brethren of the scope of Masonic 'secrecy', so that in explaining Freemasonry to their families and friends they may know what they may and may not discuss.

Every Freemason is bound by his obligations not to reveal the traditional modes of recognition. This admits of no compromise. The ceremonial ways of proving that one is a Freemason should not normally be used outside the context of Masonic meetings. Brethren making improper disclosure or use of the signs, tokens and words of Craft and Royal Arch Masonry render themselves to Masonic disciplinary sanction. The promise not to reveal the modes of recognition may also be seen as symbolic of a wider pledge by a Brother to abide by all his obligations, non-Masonic as well as Masonic.

Brethren will also wish to bear in mind that it is greatly desirable that even those parts of our ceremonies which do not fall strictly within the scope of the preceding paragraph should be kept private, and not disclosed without very good cause, in order that the impact of those ceremonies on candidates may not be diminished."

Councillor Moyle

26. The claimant drew particular attention to Councillor Moyle's entry in the Register of Interests dated 2nd May 2003 where he described his registrable interest as being membership of the UGLEW and not any particular lodge. The form itself presented two opportunities for Mr Moyle (and others) to disclose his Freemasonry. Under the heading "I further give NOTICE of the following other interests:", at box (c) the following heading or category appears:

"I am a member or hold a position of general control or management of the following company/ies, industrial and provident society/ies, charity/ies or body/ies directed to charitable purposes".

In 2002 Mr Moyle entered:

"Grand Charity Friends of Zetland Court

Dorset Masonic Charity".

27. At (f) the following heading or category appears:

"I am a member of the following private club or society (whether or not a fee or subscription is paid. Examples include Rotary Club, Round Table, Lions, Probus, Masonic Lodge, etc)".

Mr Moyle entered *"Blandford Forum Masonic Club ... United Grand Lodge of England"*.

In 2003 he entered United Grand Lodge of England under (c) and under (f) stated: *"see (c)".* Counsel submitted that in so doing, it could be seen that Councillor Moyle, in 2003, felt it was unnecessary to refer to any particular lodge. This was said to be significant. In such circumstances, he suggested the distinction which was now being drawn on the basis of the autonomy of lodges should be regarded as misplaced. I confess I am unable to derive much help from this part of the evidence, having regard to the substantial and authoritative material which is available to show what part the lodges have in the constitutional framework of freemasonry.

The Issue

28. The issue raised by this case is important for freemasonry, as well as of being of considerable importance to those who are freemasons. Actual bias is not alleged. Nor is it a case in which the councillors are said to have had a sufficient pecuniary or proprietary interest to attract automatic disqualification (Dimes case, 3 H.L. Cas 759). Nor is it a case in which it is said they acted as decision-makers in a cause which should be regarded as their own

(*R v Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte (No. 2)* [2000] 1 AC 119). Conceivably, it could have been argued that any decision touching the interests of a freemason's lodge was capable of being seen as advancing freemasonry, in the broadest sense, and therefore to the promotion of a cause in which both councillors, being freemasons, were parties and had an interest. That said, I should not be taken as suggesting the case should have been argued in that way nor that, if it had, it would have produced a different result from that to which the present argument should be subjected. On the contrary, it seems to me that, as I have already concluded, the true analysis of the underlying facts is that each lodge is autonomous and thus the contention that a real possibility exists that a decision will be taken so as to advance freemasonry, as a cause, by assisting a lodge, of which the decision-maker is not a member, is a possibility which is not different in substance from the suggestion now advanced that the, so-called, oath of mutual assistance gives rise to such a possibility.

29. Freemasonry is not a religion, but it requires of every individual who is admitted to the "Craft" that he or she holds fast to specific and numerous tenets and rules governing conduct and behaviour. Unlike religious doctrines to which practising members of a religious sect can be taken to subscribe, the tenets and rules, save to the extent that they require belief in God and allegiance to the Sovereign, are of a kind which govern the everyday behaviour and conduct of masons.
30. There is no case, to which I have been taken, where the issue I have to decide has been determined, but assistance can be gained from the observations of Lord Bingham (CJ) in the case of *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 at paragraph 25, page 480. The Court of Appeal gave detailed consideration in four cases where it had been suggested judges should have recused themselves. Lord Bingham observed:

"25. It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge. Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances (whether in text books, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same Inn, circuit, local Law Society or chambers (*KFTCIC v Icori Estero SpA* (Court of Appeal of Paris, 28 June 1991, *International Arbitration Report*. Vol. 6 #8 8/91)). By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see *Vakauta v Kelly* (1989) 167 CLR 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be".

31. It seems clear that freemasonry has not, by its own tenets and practices, made it easy for "a fair minded ... observer" to be "informed". The requirement that it is the conclusion of an informed fair minded observer which should determine whether apparent bias is made out requires particular attention. The claimant, a well known pre-preparatory and preparatory school, could normally be taken as comprising a body of informed and fair minded persons, but the argument advanced on its behalf, to a large degree, turns on the contention that there are "widespread suspicions that Freemasonry has an unhealthy influence in public life, including local government".
32. The viewpoint finds support in the Second and Third Report of the Home Affairs Select Committee where numerous allegations are recorded about the improper influence of freemasonry in public life. In paragraph 56 the Home Affairs Committee Report (Third) concluded: "It is obvious that there is a great deal of unjustified paranoia about freemasonry and we have no wish to add to it..... We believe however that nothing so much undermines public confidence in public institutions as the knowledge that some public servants are members of a secret society one of whose aims is mutual self-advancement – or a column of mutual support, to use the Masonic phrase..... The solution is disclosure.....".

33. The recommendation of the Committee has been implemented and, as we have seen, disclosure of membership is required in local government and it took place on the occasion now under challenge. In that respect, freemasonry has moved on, but it would be unrealistic to believe that the firmly held suspicion, that being a member requires partiality to be shown to freemasons and to freemasonry, has been dispelled. Without information which illuminates what is meant by "a column of mutual support", the perception that freemasonry will give rise to apparent bias in decision making will prevail.
34. I am conscious that the extent of the suspicion is such as to make it likely that a large section of fair minded people would agree with the claimant's expressed position and subscribe to a belief that there is always a real possibility that a freemason will assist another freemason or freemasonry, whatever may be called for by the merits of a decision which has to be taken in connection with local government, but I have concluded that a fair minded observer, informed of the facts in connection with freemasonry which have been placed before this court and having regard to the circumstances of this case, would not conclude that there was a real possibility of apparent bias affecting the decision of the full Council on 12th March 2004.

REASONS

35. A fair minded appraisal has to be made of the following facts:
- (1) The "column of mutual defence" or "column of mutual support" gives rise to an obligation to "succour" the weaknesses of "brother masons" and to relieve "... his necessities so far as may fairly be done". It suggests charity and mercy to those in need, not unquestioning support under any circumstances. There are a number of other obligations which a mason assumes which must also be taken into account, some ancient and others modern. I shall only repeat some of them for they appear earlier in the judgment. A mason "must not engage in offences contrary to the laws of God and the ordinances of the realm". He is enjoined to be "... exemplary in the discharge of ... civil duties ... by paying due obedience to the laws". The fundamental principle set out at paragraph 24 above is uncompromising and clear. It clearly extends to the discharge of public duties under the Local Government Act 2000.
 - (2) It is noteworthy that the information and guidance now given to masons includes advice on the need for declarations of interest to be made including, where appropriate, membership of freemasonry.
 - (3) Councillors Moyle and Jones, being masons, were governed in their conduct by the various obligations and standards of conduct dictated by freemasonry as well as by the declarations signed by them in accordance with the Code established by statute. They were required by law and by their freemasonry to adhere to the legal obligations imposed upon them by the Local Government Act. A fair minded approach to this information leaves little or no room for a suspicion that "... Freemasonry has an unhealthy influence in public life, including local government".
 - (4) I have concluded that the true meaning to be attributed to the so-called oath of mutual assistance is that, when all the oaths, declarations and rituals are read together and in context, freemasonry does not require a freemason, when in local government, to be partial to any other freemason or to the interests of freemasonry. I have concluded that freemasonry, by the standards it requires, underpins the requirements of impartiality and fairness set by the law, for example, by requiring observance of the law of the land and that others be treated equally, and that a mason "... be exemplary in the discharge of [his] civil duties".
 - (5) I note that Lord Irvine, the Lord Chancellor, did not accept that the oaths of mutual assistance were incompatible with the judicial oath. Further, I take the observation of Lord Bingham in *Locabail*, that "ordinarily ... masonic associations" would not require a judge to recuse himself, as supporting the conclusion to which I have come.
36. I have concluded that, in the circumstances of this case, membership by the two councillors of the general body of freemasonry does not give rise to apparent bias in connection with the decision of the full Council reached on 12th March 2004 and the application for judicial review is dismissed.

Hereward Phillpot (instructed by Wilsons) for the Claimant
Peter Wadsley (instructed by Lester Aldridge) for the Defendant