

To: All Members of the THE STANDARDS
PANEL

When calling please ask for:

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Calls may be recorded for training or monitoring

Date: 21 July 2022

Membership of the The Standards Panel

Cllr Michael Goodridge
Cllr Maxine Gale

Cllr Peter Marriott

Town/Parish Representatives

Thomas Hughes

Dear Member

A meeting of the THE STANDARDS PANEL will be held as follows:

DATE: THURSDAY, 21 JULY 2022

TIME: 10.00 AM

PLACE: COMMITTEE ROOM 1, COUNCIL OFFICES, THE BURYS,
GODALMING

The Agenda for the meeting is set out below.

Yours sincerely

ROBIN TAYLOR

Head of Policy and Governance

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NOTE FOR MEMBERS

Members are reminded that contact officers are shown at the end of each report and members are welcome to raise questions etc in advance of the meeting with the appropriate officer.

AGENDA

1 **ELECTION OF CHAIRMAN**

To elect a Chairman for the Panel.

2 **DECLARATIONS OF INTERESTS**

To receive from Members declarations of interest in relation to any matters on the agenda for this meeting, in accordance with the Waverley Members' Code of Conduct.

3 **PUBLICATION OF NON-EXEMPT AGENDA PAPERS TO THE PRESS AND PUBLIC**

In line with paragraph 7.2 of Waverley's Arrangements for dealing with Standards Allegations against Councillors and co-opted Members under the Localism Act 2011, to publish non-exempt meeting papers and make them available to the press and public.

Panel members, and other individuals specifically invited to attend the Hearing have received the agenda papers in advance on a confidential basis.

There are no exempt papers for this hearing.

Recommendation

That the meeting papers be published and made available to the press and public.

4 **CHAIRMAN'S OPENING REMARKS**

The Chairman to make an opening statement on the procedure for the hearing.

5 MONITORING OFFICER'S REPORT - COMPLAINTS REGARDING THE CONDUCT OF A TOWN COUNCILLOR (Pages 5 - 152)

This report relates to 2 complaints received about a Town Councillor, the Subject Member.

It sets out the process followed, the relevant codes and protocols, the External Investigator's report, statement received from the subject member and statement received from the Independent Person.

The matter was referred to investigation following consultation with the Independent Person.

Today's panel has been convened to consider the report from the Investigator, to establish the facts about this situation, and consider whether or not the subject member has failed to comply with the town council code of conduct.

Recommendation

It is recommended that the Standards Panel consider and determines whether or not the subject member has failed to comply with the Town Council Code of Conduct for Members and refer their conclusions to the Town Council

The Panel must provide reasons for any conclusions it reaches.

6 CHAIRMAN'S CONCLUDING REMARKS

7 PANEL ADJOURNS FOR CONSIDERATION

The Panel will adjourn to consider whether the Subject Member has failed to comply with the Code of Conduct.

8 PANEL DECISION ON WHETHER THE' CODE OF CONDUCT HAS BEEN BREACHED

The Panel will reconvene and the Chairman will announce the Panel's decision on whether the Subject Member has failed to comply with the Town Council Code of Conduct.

The conclusions of the panel will be reported to the Town Council.

9 EXCLUSION OF PRESS AND PUBLIC

If it is necessary during the hearing to consider any matter that will involve the likely disclosure of exempt information, the Hearing Panel will be invited to consider passing the following recommendation on the motion of the Chairman:

Recommendation

That,

a) pursuant to Procedure Rule 20, and in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following item(s) on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during these items, there would be disclosure to them of exempt information (as defined by Section 100I of the Act) of the description specified at the meeting in the revised Part 1 of Schedule 12A to the Local Government Act 1972; and,
b) in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**For further information or assistance, please telephone
Louise Fleming, Democratic Services and Business Support Team
Manager (Deputy Monitoring Officer), on 01483 523517 or by email at
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WAVERLEY BOROUGH COUNCIL

STANDARDS PANEL

21 JULY 2022

Title:

Monitoring Officer's Report – complaints regarding the conduct of a Town Councillor

Head of Service: Robin Taylor, Monitoring Officer

Key decision: No

Access: Public

1. Purpose and summary

- 1.1 This report relates to two complaints received against Haslemere Town Councillor Nikki Barton.
- 1.2 It sets out the process followed, the relevant codes and protocols, the External Investigator's report and statements received.
- 1.3 The relevant Haslemere Town Council code of conduct (Annexe 1) and the Borough Council's published arrangements for dealing with standards allegations against councillors (Annexe 2) are those that were in effect at the time the complaints were received (not the revised versions that have more recently been adopted).
- 1.4 The matter was referred to investigation following consultation with the Independent Person.
- 1.5 Today's panel has been convened to consider the report from the Investigator, to establish the facts about this situation, and consider whether or not Cllr Barton has failed to comply with the town council code of conduct.
- 1.6 Cllr Barton, the Subject Member, will be invited to comment on complaints, the External Investigator's report, and the statement of the Independent Person, and any other relevant documentation and correspondence and to give her view as the subject member in this case.
- 1.7 She will be asked to answer any questions put to her by or through the Chairman.

2. Recommendation

It is recommended that the Standards Panel consider and determines whether or not Cllr Barton has failed to comply with the Haslemere Town Council Code of Conduct for Members and refer their conclusions to Haslemere Town Council

The Panel must provide reasons for any conclusions it reaches.

3. Reason for the recommendation

3.1 To allow the panel to determine whether or not Cllr Barton has breached her code of conduct.

4. Background

4.1 Table 1 - Timeline of events including commentary on delays experienced

	What	When	Monitoring Officer Comment, including in respect of delays
1	Written complaint from Mr Benson sent to Haslemere Town Councillor John Robini and copied to Haslemere Town Clerk Lisa O’Sullivan. With Mr Benson’s consent, Lisa O’Sullivan forwarded the complaint letter to Monitoring Officer.	28 th February 2020	
2	Written complaint from Neil Baker, of Clarke Willmott solicitors, on behalf of Mr Cox (the complainant), sent to the Monitoring Officer.	12 th March 2020	
3	Correspondence between Monitoring Officer and complainants, including: <ul style="list-style-type: none"> - Providing information to complainants about the complaints procedure that would be followed. - Requesting and receiving additional information from complainants, including which elements of the HTC code were alleged to have been breached and why. - Seeking consent from complainants to disclose 	March and April 2020	The operations of all Council operations between Mid-March 2020 and Mid-May 2020 were substantially impacted by the Covid Pandemic. From 19 March 2020 the Council’s covid response group oversaw the redirection of Council resources, including the work of staff, to support the immediate health, wellbeing and safety of local residents, particularly the vulnerable.

	identity or reasons to justify not doing so		For a short period of time, the handling of conduct complaints was deprioritised whilst both I and Deputy Monitoring Officers prioritised essential covid response duties instead.
4	Desktop case review by Monitoring Officer of all allegations submitted.	April and first two weeks of May 2020	<p>I acknowledged this delay at the time and the reason for it. I apologised, at the time, in writing both to the complainants and the subject members for the delays during March, April and May 2020 this caused as a result.</p> <p>Although the delay was regrettable it was, in my view, the correct decision to deprioritise the processing of conduct complaints such as this one in favour of delivering and supporting front-line covid response efforts.</p> <p>I ruled out, at a very early stage in my informal investigation, any question of Cllr Barton having had a disclosable pecuniary interest that she failed to declare. I found no evidence that Cllr Barton had a Disclosable Pecuniary Interest ('DPI') in the matter.</p>
5	Informal investigation meetings by telephone conference calls with complainants to discuss the detail of their complaints.	21 May 2020	
6	Email from Monitoring Officer to Cllr Barton confirming complaints had been submitted about her and setting out the detail of the allegations made and inviting them to meet and discuss the complaints.	26 May 2020	

7	Informal investigation meeting with Cllr Barton	18 June 2020	
8	Informal investigation and review of all evidence and meeting notes by Monitoring Officer, including review of all additional documentation subsequently supplied by both Cllr Barton and complainants.	July 2020 and early August 2020	
9	<p>Conclusion of informal investigation by Monitoring Officer.</p> <p>Monitoring Officer wrote to Cllr Barton and complainants and confirmed that on the basis of his informal investigation he had concluded that Cllr Barton may have had a non-pecuniary interest that she failed to declare and therefore may have breached her code.</p> <p>The Monitoring officer confirmed he had identified no realistic prospect for an acceptable and appropriate informal resolution (having discussed this question with both complainants and Cllr Barton) and would therefore now consult with the Independent Person on the question of whether this matter should now be formally investigated. Cllr Barton was reminded she had the right to consult the Independent person herself.</p>	12 August 2020	
10	Monitoring Officer wrote to Independent Person confirming the outcome from his informal investigation and sharing all relevant documentation and asking her for a view on whether the matter should be formally investigated.	12 August 2020	
11	Meeting between Monitoring Officer and Independent Person by Zoom to discuss the case.	28 August 2020	By this time, Cllr Barton had made me aware that she wished to exercise her right to consult with the Independent Person.

			<p>I asked the Independent Person not to reach a view until she had had spoken with Cllr Barton.</p> <p>The diary commitments and personal circumstances of the Independent Person and Cllr Barton, prevented the consultation meeting happening until mid October.</p>
12	Meeting between Monitoring Officer and Independent Person.	26 October 2020	
13	Independent Person confirmed her view about the case to Monitoring Officer.	27 October 2020	
14	Monitoring Officer writes to all parties confirming that having heard and reflected on the Independent Person's view that he has concluded the matter should be externally investigated. He advised all parties that complaints would only be investigated at the formal stage on an open basis eg the anonymity granted at the informal stage would not apply to the formal stage. He advised that complainants had been asked to either confirm their consent for their identity to be disclosed or to withdraw their complaint.	30 October 2020	<p>There were originally three complainants. I corresponded with all three on the question of whether they would choose to disclose their identity or withdraw their complaint.</p> <p>Unfortunately, it took much longer than I would have hoped or expected for all of the complainants to reach their decision on this matter. In particular, the complainant who ultimately withdrew their complaint corresponded with me at length on this matter.</p> <p>It was regrettably not until the first week of December that that this matter was resolved, the outcome being that one of the three complainants decided to withdraw from the process whilst the other two (Mr Cox and Mr Benson) confirmed their consent for their identities to be disclosed.</p>
15	Monitoring Officer writes to all parties confirming that Mr Melvin Kenyon of Hoey Ainscough Associates had been	24 December 2020	

	commissioned by him to formally investigate the complaint against Cllr Barton		
16	Discussions between External Investigator Mr Kenyon and Monitoring Officer	January 2021	
17	Formal interviews undertaken by External Investigator Mr Kenyon	4 February 2021 – 11 June 2021	<p>In February 2021, Cllr Barton submitted a complaint to the Chief Executive about how the standards investigation into her had been handled. At the Chief Executive's request, this separate complaint was investigated by separate external investigator. This investigation concluded on 21 June 2021.</p> <p>The External Investigator Mr Kenyon has noted in section 7.1 of his report that this 'parallel investigation' contributed to delays in him completing his own investigation.</p>
18	First draft of report issued by External Investigator Mr Kenyon in confidence to complainants and Cllr Barton. They are given 3 weeks to respond with comments.	20 September 2021	
19	Second draft of report issued by External Investigator Mr Kenyon in confidence to complainants and Cllr Barton. They are given 3 weeks to respond with comments.	12 November 2021	
20	Deadline given for final comments from complainants and Cllr Barton	22 November 2021	
21	Final report from External Investigator Mr Kenyon submitted to Monitoring Officer	29 November 2021	
22	Monitoring Officer meets with Independent Person Vivienne Cameron to discuss the External Investigator's report and, in particular, to hear her view on	13 December 2021	

	whether the matter should proceed to a standards hearing.		
23	Monitoring Officer writes to all parties confirming that he agrees with the view of the Independent Person that this matter should proceed to a standards hearing, that this will need to take place in the new year and that statements should be submitted by 24 January 2022.	22 December 2022	
24	All parties asked about their availability for hearings dates in February 2022.	January 2022	
25	Due to the unavoidable circumstances of some parties, and at their request, Monitoring Officer agrees to extend statement deadline until 14 th March and consults on hearing dates in March and April.	28 January 2022	A number of parties confirmed they cannot make dates in March and April and others do not respond.
26	Due to the unavoidable circumstances of some parties, and at their request, Monitoring Officer agrees to extend deadline for statements extended again until 6 June. Monitoring Officer confirms July date for hearing.	26 May 2022	All parties were asked to confirm their availability for a July hearing date and were reminded on a number of occasions of the need to respond so that a date could be set which was convenient to them. Where a response was received, this was taken into account in the date set. Unfortunately, despite a number of reminders issued, responses were not received from all parties and, where this was the case, this means the dates set in July did not take account of their availability or lack of availability.

4.2 Outcome of Monitoring Officer's pre-hearing process: what is likely to be agreed and what is likely to be in contention

At section 7.1 the Council's arrangements for handling standards allegations (Annexe 2) state that:

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted

This section of the report sets out my comments in this respect. The chair retains the right to issue their directions as to how the hearing will be conducted but in this report I provide my advice, as Monitoring, in that respect.

Cllr Barton's statement is attached at Annexe 4.

Having reviewed this as part of the pre-hearing process, my view about what appears likely to be in contention and what is not is as follows.

Table 2: what appears to be in contention and what appears not to be

Matters which appear likely <u>not</u> to be in contention
<p>1. The Haslemere Town Council code of conduct</p> <p>The question of whether or not Haslemere Town Council should adopt of the Local Government Association (LGA) model code of conduct appears not to be in contention.</p> <p>The External Investigator Mr Kenyon has set out, in detail, within his report the reasons why he believes there was a 'deficiency' within the Haslemere Town Council Code of Conduct which was in place at the time. It is for this reason that he has concluded that it would be 'unfair to derive a breach [relating to the proximity of her home] based on the Nolan Principles alone where the Council itself has failed adequately to translate those principles fully into its Code with sufficient clarity.'</p> <p>Cllr Barton appears to agree with this finding and this matter is therefore not in contention.</p> <p>Although Mr Kenyon's report contains a recommendation that the Town Council adopt the LGA model code, I ask panel members to note that Haslemere Town have since done exactly this (the model code was adopted on 20 January 2022).</p> <p>I therefore recommend that the panel accepts the Investigator's finding in this respect, accepts that this matter is not in contention and that the recommendation has already been actioned and focuses its attention only</p>

matters on those questions which appear to be in contention.

2. Proximity of Cllr Barton's home.

There appears to be agreement that there is no evidence of a breach in relation to proximity of Cllr Barton's home to the site in question.

The External Investigator Mr Kenyon has comprehensively investigated and considered whether or not there was any breach of the Haslemere Town Council code of conduct in relation to the proximity of Cllr Barton's home to the site in question. He has set out, in detail, within his report the reasons why he has ultimately concluded that there was not. As Cllr Barton also takes the view that no breach of the town code occurred in relation the proximity of her home, this question of home proximity appears not to be in contention.

Mr Kenyon has recommended that I, as Monitoring Officer, should take no further action in respect of this aspect and it is important to note that if the proximity of Cllr Barton's home was the only basis upon which a non-pecuniary interest may have been thought to exist then, on the basis of Mr Kenyon's report, I would therefore not have brought this matter before the hearing panel.

I therefore recommend that the panel accepts the Investigator's finding in this respect, accepts that this matter is not in contention and focuses its attention only matters on those questions which appear to be in contention.

Matters which appear likely to be in contention

3. Membership of the Haslemere South Residents Association (HSRA)

There appears to be disagreement as to whether there is evidence of a breach in relation to Cllr Barton's membership of the Haslemere South Residents Association (HSRA).

Whilst there appears to be no real disagreement that Cllr Barton was a member of this organisation, there does appear to be disagreement about whether or not the action (or inaction) of Cllr Barton in registering/declaring/withdrawing as a result of that membership, and the interest it represented, is evidence of a breach of the code on her part.

The External Investigator Mr Kenyon has comprehensively investigated and considered whether or not there was any breach of the Haslemere Town Council code of conduct in relation to Cllr Barton's membership of this organisation.

The External Investigator Mr Kenyon has set out, in detail, within his report the reasons why he has ultimately concluded that there was.

On the basis of her statement, it appears that Cllr Barton disagrees with Mr Kenyon's findings in this respect.

This point therefore appears to be in contention.

As the Council's Monitoring Officer, I therefore recommend that the panel focus their attention on whether or not they accept or refute Mr Kenyon's findings, as set out within paragraph 1 of his report, that:

- (i) By failing to register her membership of HSRA she [Cllr Barton] breached paragraph 5 (5) of the Haslemere Town Council Code which requires registration of non-pecuniary interests as defined in that paragraph since HSRA is a body one of whose principal purposes is to influence public opinion or policy;
- (ii) By failing to disclose her membership at the 28th November meeting she [Cllr Barton] breached paragraph 5 (5) which requires disclosure of non-pecuniary interests as defined in that paragraph; and
- (iii) By failing to declare that interest and failing to exclude herself from consideration of item 109/19 by withdrawing from the chamber, she [Cllr Barton] breached paragraphs 5 (1), 6 (4) and 6 (5) of the Haslemere Town Council Code of Conduct.

Summary

I advise the panel to focus on Cllr Barton's membership of the HSRA as listed above rather than any other matter. This is because it falls within scope of the investigation I asked Mr Kenyon to undertake and because it appears likely to be in contention.

I advise the panel not to focus on: any matters that seem likely not to be in contention (as listed above); and any matters which do not fall within the scope of Mr Kenyon's investigation (including any matters that were ruled out by me at the informal stage or any matters that have been ruled out by Mr Kenyon in his report).

The above advice is not intended to stifle the panel's freedom to pursue any lines of questioning but is offered, instead, as professional advice, on how the panel might most usefully concentrate its discussions on the basis of what appears to be contentious and non-contentious having received both the investigation report and Cllr Barton's statement on that report.

4.4 Conduct of the Hearing

After the preliminary matters have been dealt with (election of chairman, declaration of interests, publication of non-exempt agenda papers, chairman's opening remarks), the hearing will be conducted as follows:

i. **Statement by the Investigating Officer**, who will present his report (Annexe 3) and call any witnesses

ii. **Questions from or through the Chair put to the Investigating Officer** and any witnesses.

iii. **Statement by the subject member Councillor Barton**, who will be given the opportunity to present her case at the hearing and call any witnesses.

iv. **Questions from or through the Chair put to Councillor Barton** and any witnesses.

v. **Views/Submissions of the Independent Person**, who will refer to their statement at Annexe 5, and comment on whether or not they consider that, on the facts presented to the Hearings Panel, there has been a failure to comply with the Code of Conduct.

vi. **Questions from or through the Chair put to the Independent Person**

vii. **Summing up** first by the Investigating Officer and then by the subject member.

viii. **Deliberations of the Panel:**

a) The Panel will adjourn the hearing and deliberate in private to determine whether, on the facts presented, the Subject Member Cllr Barton has failed to comply with the Code of Conduct that was in effect at the time. The Panel must make its decision on the balance of probability, based on the evidence before it during the hearing.

b) The Panel will reconvene the hearing in public and the Chairman will announce whether or not, on the facts presented, Cllr Barton failed to comply with Haslemere Town Council's Code of Conduct.

As noted within the arrangements, the conclusion of the panel will be referred to Haslemere Town Council for such action it considers appropriate.

Note: The panel's mandate and authority is to reach a judgement as to of whether any misconduct has occurred by the subject member. Any complaints relating to alleged procedural deficiencies insofar as they relate to the protocols and processes followed by Waverley Borough Council / the Monitoring Officer would be need to be considered under Council's corporate complaints process or by the Local Government and Social Care Ombudsman rather than under this process. As noted in section 7.1 of Mr Kenyon's report and in table 1 above, a corporate complaint was submitted by the subject member in February 2021 and that process concluded in June 2021. The final investigation report is attached for information at Appendix 6.

4.5 What action can the Hearings Panel take if they conclude there has been a failure to comply with the Code of Conduct?

As set out within Section 8 of the arrangements (Annexe 2) the panel will report its conclusions to Haslemere Town Council for such action as it considers appropriate.

5. Relationship to the Corporate Strategy and Service Plan

5.1 This report relates to:

- Waverley Borough Council's strategic objective 1 which is to promote 'open, democratic and participative governance'; and

- Policy and Governance Service Plan commitment SP22/25PG9.2 which is ‘to resolve any complaints and questions about council procedure and conduct’

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

Total external investigation costs are TBC.

In addition to this, time has been spent by the Monitoring Officer and his Deputy Monitoring Officers handling this complaint. Time has been spent by members of the Democratic Services and Business Support team coordinating the complaints investigation and making arrangements for today’s panel hearing.

6.3 Legal

The Localism Act Part 1 Chapter 7 sections 26-37.

Section 27(1) sets out a duty upon the Council to promote and maintain high standards of conduct among its members. In discharging this duty, the Council is required to adopt a Code dealing with the conduct that is expected of members and co-opted members of the Council under section 27(2).

Section 28(1) provides that the Council must secure that its Code of Conduct is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Section 28(4) provides that any failure to comply with the Council’s Code of Conduct is to be dealt with in accordance with Arrangements which it is required to adopt under subsection (6). Such Arrangements must provide for the Council to appoint at least one Independent Person whose views (a) must be sought by the Council before it takes a decision on any allegation which it has decided shall be investigated; (b) may be sought by the Council at any other stage, and (c) may be sought by a councillor or co-opted member against whom an allegation has been made.

Section 28(11) provides that if a Council finds that a member of the authority has failed to comply with its Code of Conduct (whether or not the finding is made following an investigation under Arrangements put in place under subsection (6)) it may have regard to the failure in deciding:

- (a) whether to take action in relation to the member; and
- (b) what action to take.

Whilst Section 28(11) provides that the Council can decide whether to take action and what action to take in response to a finding that a Councillor has failed to comply with the Code of Conduct, no statutory sanctions currently exist under the Localism Act 2011. All statutory sanctions e.g. to suspend a Councillor which previously existed under the Local Government Act 2000 have been repealed. Sanctions are now limited to that which can be imposed under common law or by agreement with the member concerned.

7. Consultation and engagement

- 7.1 The subject member Cllr Barton exercised her right to consult with the Independent Person, Vivienne Cameron, before the Independent Person reached a view about whether this matter should be formally investigated.
- 7.2 The Monitoring Officer consulted with the Independent Person, Vivienne Cameron, before deciding whether or not this matter should be formally investigated and again before accepting the report from the Investigating Officer Mr Kenyon.
- 7.3 The Investigating Officer Mr Kenyon consulted with the complainants Mr Benson and Mr Cox and with Cllr Barton on the first and second drafts of his report before finalising it.

8. Other options considered

8.1 Today's hearing is taking place because the complaint was not resolved at the informal stage and, upon receipt of the Investigator's report which confirmed there was evidence of a breach of the code, the judgement of the Monitoring Officer, after consultation with the Independent Person, was that there was no realistic prospect of an appropriate local resolution. Many cases like this one are resolved without the need for a public hearing. Although every case is different, such resolution often takes the form of any, some or all of the following: the subject member acknowledging their error; the subject member committing to doing things differently in the future; the subject member apologising; the subject member committing to undertaking learning and development; the subject member engaging with the standards process in an open and positive manner and proactively seeking to resolve the situation without resorting to the need for a public hearing.

9. Governance journey

- 9.1 This matter is to be considered by the hearings panel who are asked to consider the report from the investigating officer and the other agenda papers, to consider any verbal or written statements from the subject member and the Independent Person and to decide whether or not Cllr Barton breached her code of conduct. The panel are required to report their conclusions to Haslemere Town Council.
- 9.2 As per para 13 of the arrangements, there is no right of appeal for the complainants against a decision of the Monitoring Officer or of the Hearings Panel.
- 9.3 As per paragraph 13 of the arrangements, if Cllr Barton wishes to appeal against the decision of the Hearings Panel, she will have a right to have the decision reviewed by another three members of the Standards and General Purposes Committee Panel who have not been involved. The Monitoring Officer will decide whether this will either involve a full rehearing of the case or be dealt with by way of written representation from the member.
- 9.4 The decision notice from today's hearing meeting that is shared with the Town

Council will note that Cllr Barton has 14 days within which to appeal the decision. If they exercise their right to do appeal, the Town Council will be advised of this and will be advised of the outcome of the consideration of that appeal.

9.5 If the complainant feels that the authority has failed to deal with their complaint properly, they may make a complaint to the Local Government Ombudsman.

Annexes:

- Annexe 1 – Haslemere Town Council Code of Conduct (as was in place at the time)
- Annexe 2 – Arrangements for dealing with standards allegations against councillors and co-opted members under the Localism Act 2011 (as was in place at the time)
- Annexe 3 – External investigator’s report
- Annexe 4 – Statement from the subject member Cllr Barton
- Annexe 5 – Statement provided by the Independent Person
- Annexe 6 – Corporate complaint investigation report

Background Papers

There are / are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

CONTACT OFFICER:

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Position: Monitoring Officer

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The Haslemere Town Council Members' Code of Conduct

Adopted May 2019

Introduction and Interpretation

1. (1) This Code applies to you as a Member of Haslemere Town Council ("the Council") when you act in your role as a Member, including the use of email or social media platforms.
- (2) You are a representative of the Council and the public will view you as such. Your actions can impact on how the Council as a whole is viewed.
- (3) is under a duty to promote and maintain high standards of conduct by Members. This Code is based on and is consistent with the seven "Nolan principles" of public life set out in Section 28 of the Localism Act 2011 which the Council endorses:

Selflessness. Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity. Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity. In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness. Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty. Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership Holders of public office should promote and support these principles by leadership and example.

- (4) It is your responsibility to comply with the provisions of this Code when acting in your capacity as a Member.

- (5) In this Code:
 - (i) "Member" includes elected councillors, and co-opted or appointed members.
 - (ii) A "Disclosable Pecuniary Interest" is an interest within the prescribed descriptions set out in Annexe 1 that you have personally, or that is an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if your were civil partners, and you are aware that that person has the interest.
 - (ii) "meeting" means any meeting of
 - (a) the Council
 - (b) any of the Council's committees, sub-committees or working parties.
- (6) If you are unsure about whether or not the code of conduct applies to a particular situation, you should consult the Town Clerk.
- (7) A failure of a Member to comply with this Code of Conduct will be reported to the Waverley Borough Council Monitoring Officer for investigation.
- (8) Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may also result in a criminal conviction and a fine of up to £5,000 and/or disqualification from office for a period of up to five years.

General Obligations

- 2. (1) **You must** always treat others (including member colleagues, officers, other organisations and members of the public) with respect.
- (2) **You must not do** anything which may cause the Council to breach any of the equality enactments (as defined in section 33 of the Equality Act 2010).
- (3) **You must not** conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct by Members.
- (4) **You must not** disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - (aa) reasonable and in the public interest;
 - (bb) made in good faith and in compliance with the reasonable requirements of the Council; and
 - (cc) you have consulted the Town Clerk or taken other independent legal advice prior to its release.

This particularly includes Haslemere Town Council reports which are exempt, which remain confidential until released by a resolution of Council.

- (5) **You must not** prevent another person from gaining access to information to which that person is entitled by law.
 - (6) **You must not** use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person an advantage or disadvantage.
 - (7) **You must not** undertake any action that could be regarded as harassment, intimidation and/or bullying of member colleagues, officers, or members of the public.
3. When using or authorising the use by others of the resources of the Council:
- (1) **Do** act in accordance with the Council’s reasonable requirements and policies;
 - (2) **Do** ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (3) **Do** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

Gifts and Hospitality

- 4. (1) **Do** exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a Member.
- (2) **Do not** accept significant gifts or hospitality from persons seeking to acquire, develop or do business with the Council or from persons who may apply to the Council for any permission, licence or other significant advantage.
- (3) **Do** register with the Monitoring Officer any gift with an estimated value of at least £50 or hospitality with an estimated value of at least £100 within 28 days of its receipt.

Registration of Interests

- 5. (1) As a Member of the Council **you must** avoid participating in any decision where you could reasonably be seen as having an interest which compromises your honesty or objectivity. Equally, you should avoid any action which might reasonably lead others to conclude that you were not acting selflessly or with integrity. In order to assist with this and promote openness and accountability, the Waverley Monitoring Officer must, by law, establish and maintain a register of interests, open for inspection by the public at Waverley Borough Council’s offices and website, as well as that of Haslemere Town Council.
- (2) **You must** notify the Monitoring Officer of your Disclosable Pecuniary Interests, or other interests which the Council has decided are appropriate for registration (those listed in paragraph 5(4)). On election, you must do this within 28 days of being elected or appointed to office. Details of disclosable pecuniary interests are set out in the Annexe to this Code. You should give sufficient detail of the interests for a member of the public to understand where there might be a conflict of interest.
- (3) **Do** similarly notify the Monitoring Officer of any Disclosable Pecuniary Interest or other interests not already registered within 28 days of your re-election or re-appointment to office. If any of these change you should update your Register of Interests entry promptly.

- (4) **Do** be aware that Disclosable Pecuniary Interests include not only your interests but also the interests of your spouse or civil partner, a person with whom you are living as husband or wife or a person with whom you are living as if they were a civil partner, so far as you are aware of the interests of that person. They also apply to any past and reasonably expected future occupational pension, office, trade, profession or vocation as well as present ones.
- (5) **Do** be aware that the Council has decided that it is appropriate for you to register and disclose non-pecuniary interests that arise from your membership of or your occupation of a position of general control or management in the following bodies –
- (i) bodies to which you have been appointed or nominated by the Council;
 - (ii) bodies exercising functions of a public nature;
 - (iii) bodies directed to charitable purposes;
 - (iv) bodies one of whose principal purposes include the influence of public opinion or policy.
- (6) **Sensitive Information** Where a Member of the council has an interest (whether or not a Disclosable Pecuniary Interest) and the nature of the interest is such that they, and the Town Clerk, consider that disclosure of the details of the interest could lead to the Member (or a person connected to them) being subject to violence or intimidation, then:
- (a) if the interest is entered in the Register of Interests, copies of the register that are made available for inspection or published on the Council's website, must not include details of the interest (but may state that the Member has an interest the details of which are withheld under this provision of the Code).
 - (b) where a disclosable pecuniary interest is not entered on the Register of Interests and would otherwise require disclosure at a meeting, the Member shall be entitled to merely disclose at the meeting the fact that they have such an interest in the matter concerned.
- (7) **Removal of entries in the register** An entry in the register of interests will be removed once the person concerned no longer has the interest or is neither a councillor nor a co-opted Member of the council (other than transitorily on re-election or re-appointment).

Disclosure of Interests and Participation

6. (1) **Do** disclose to a meeting at which you are present any disclosable pecuniary interest, or other interest which the Council has decided is appropriate for disclosure (see paragraph 5(4) above) as soon as you become aware of it.
- (2) **Do** notify the Monitoring Officer of any interest not already registered that is disclosed to a meeting under paragraph 6(1) above within 28 days of the disclosure.
- (3) **Do not** participate in any discussion, or vote, where you have a disclosable pecuniary interest in a matter. **Do** withdraw from the meeting during the consideration of the matter.

- (4) **Do** declare any other non-pecuniary interest(s) that you consider to have sufficient weight so as to undermine your ability to make an open-minded and objective decision. Where this is the case, **do** exclude yourself from consideration of the item by withdrawing from the chamber for the duration of it being discussed.
- (5) In making a judgement about whether a non-pecuniary interest is of sufficient weight as to undermine your objectivity, you should consider what an ordinary member of the public, with knowledge of the relevant facts, would think.
7. Notwithstanding the provisions of Paragraph 5 (1), **you may** participate in any business of the Council where that business relates to the Council's functions in respect of:
- (a) agreeing an allowance, payment or indemnity given to councillors or co-opted members; and
 - (b) setting council tax or a precept under the Local Government Finance Act 1992.

Decision-making and Predetermination

8. (1) Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life, you should not be prohibited from participating in a decision in your political role as a Member.
- (2) However, **do not** place yourself under any financial or other obligation to outside individuals or organizations that might seek to influence you in the performance of your official duties.
- (3) When making a decision, **do** consider the matter with an open mind and on the facts before the meeting at which the decision is to be made, listening to the advice of relevant parties, including advice from officers, and taking all relevant information into consideration, remaining objective and making decisions on merit. While this is particularly relevant for the Planning and Highways Committee, it also applies to other decision-making.

Dispensations

9. (1) A councillor or co-opted member with a disclosable pecuniary interest in a matter may submit a written request to the Town Clerk for the grant to a dispensation allowing that councillor or co-opted member to participate in any discussion and/or vote on that matter at a meeting.
- (2) The Town Clerk may, after having had regard to all relevant circumstances, grant a dispensation allowing that councillor or co-opted member only if they consider that without the dispensation:
- (a) the number of persons prohibited from participating in any particular business in relation to the matter would be so great a proportion of the body transacting the business as to impede the transaction of that business, or
 - (b) granting the dispensation is in the interests of persons living in the borough, or
 - (c) it is otherwise appropriate to grant the dispensation.
- (3) Any dispensation granted must specify the period for which it has effect, and the period specified may not exceed four years.

ANNEXE 1 – DISCLOSABLE PECUNIARY INTERESTS

1. Employment, office, trade, profession or vocation

Any employment, occupational pension, office, trade, profession or vocation carried on for profit or gain. If your employments relates to any Haslemere service or function you should give full details, including any details of past, present of future contracts with an organisation seeking any permission or licence for The Council.

2. Sponsorship

Any payment or provision of any other financial benefit (other than from the Council) made or provided within the period of 12 months ending with the day on which you give a notification for the purposes of section 30(1) or section 31(7) of the Localism Act 2011 in respect of any expenses incurred in carrying out your duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

3. Contracts

Any contract which is made between you (or a body in which you have a beneficial interest) and the Council-

(a) under which goods or services are to be provided or works are to be executed; and

which has not been fully discharged.

4. Land and property

Any beneficial interest in land or property which is within the area of the Council. This includes your own home if you own it.

5. Licences or Tenancies

Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.

6. Corporate Tenancies

Any tenancy where (to your knowledge)-

(a) the landlord is the Council; and

the tenant is a body in which you have a beneficial interest.

7. Securities and Shares

Any beneficial interest in securities of a body where-

(a) that body (to your knowledge) has a place of business or land in the area of the Council; and

(b) either-

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you have a beneficial interest exceeds one hundredth of the total issued share capital of that class.

****Document Ends****



Arrangements for dealing with Standards Allegations against Councillors and co-opted Members under the Localism Act 2011

1. Context

Waverley Borough Council is committed to high standards of conduct by its councillors and co-opted members.

This procedure should be used to deal with complaints submitted under the Members' Code of Conduct adopted by Waverley Borough Council and the Codes of Conduct adopted by Parish and Town Councils in the Waverley area.

2. The Code of Conduct

Waverley Borough Council has adopted a Code of Conduct for members, which is attached as Appendix One to these arrangements and is available on Waverley Borough Council's website at www.waverley.gov.uk and on request from Reception at the Council Offices.

The Code of Conducts of Town and Parish Councils are available for inspection on either Waverley Borough Council's website or the relevant Town or Parish website (if the Parish Council has one) and may also be viewed by arrangement with the Town or Parish Clerk.

3. Making a complaint

If you wish to make a complaint, please write or email to:

The Monitoring Officer
Waverley Borough Council
Council Offices
The Burys
Godalming
Surrey
GU7 1HR

monitoring.officer@waverley.gov.uk

The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for dealing with complaints about member misconduct.

Please provide us with your name and a contact address or email address so that we can acknowledge receipt of your complaint and keep you informed of its progress. Requests not to disclose your name and address to the member against

whom you make the complaint without your prior consent will only be agreed by the Monitoring Officer in exceptional circumstances. If the Monitoring Officer determines that your complaint is to be formally investigated, requests for your name and address to be kept confidential would only be considered for safeguarding reasons or if disclosure could reasonably be expected to prejudice the investigation. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within five working days of receiving it and will keep you informed of the progress of your complaint.

4. Will your complaint be investigated?

The Monitoring Officer will review every complaint received and apply the following criteria make a decision as to whether it will be treated as a 'valid complaint' about a councillor. The following types of complaint will not be considered as 'valid complaints' under this procedure:

- a) Complaints which are submitted anonymously, unless there is a clear public interest in doing so;
- b) Complaints which do not identify a subject Member;
- c) Complaints which relate only to a Member's personal or private life;
- d) Complaints concerning a failure to respond to a request from a constituent or other individual;
- e) Complaints which relate to the alleged actions of employees of the Council or non-voting co-optees which are subject to a different code and the corporate complaints process;
- f) Complaints which relate to a decision of an employee or a Committee;
- g) Complaints which relate to a person who is no longer a Member of the Council or which refer to alleged incidents before the person became a Member of the Council;
- h) Complaints which refer to alleged incidents which happened so long ago that there would be little benefit in taking action now;
- i) Complaints containing trivial allegations, or which appear to be simply vexatious, malicious, politically motivated or tit-for-tat;
- j) Complaints regarding alleged behaviour which has already been the subject of an investigation or some form of action;
- k) Complaints which do not relate to the Members' Code of Conduct.

In all cases where the complaint names a Member of a relevant authority, the Member will be notified of the complaint. If the Monitoring Officer decides that the complaint is 'invalid', this notification is made for information only.

If the complaint relates to an employee or is a service related issue, the Monitoring Officer will refer the complaint to the relevant service in order for them to respond to the complainant directly. The complainant will be informed about the corporate complaints process.

In any case where the Monitoring Officer decides that the complaint is 'invalid', they will write to the complainant explaining why their complaint cannot be dealt with under this procedure. There is no appeal process for decisions taken by the Monitoring Officer at this stage.

If the complaint is judged to be valid, the Monitoring Officer will consider whether an investigation is appropriate or whether it merits formal investigation. The Monitoring Officer will not commence any formal investigation without consulting the Independent Person.

The Monitoring Officer will inform the subject member or co-opted member of receipt of the allegation and its details and of their right to consult the Monitoring Officer and Independent Person. This decision will normally be taken within 30 days of receiving your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you, the member and the Independent Person of his/her decision in writing and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information and may request information from the member against whom your complaint is directed. Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform the Town or Parish Council of your complaint and seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology or other remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint alleges criminal conduct or breach of other regulation by any person, including the alleged non-disclosure of disclosable pecuniary interests, the Monitoring Officer has the power to call in the Police and other regulatory agencies and may determine that it is not possible to commence his own investigation until the Police or other regulatory agencies have concluded their own investigations of the matter. At this stage, any media enquiries will be advised that a review of a complaint is in process and that it would not be appropriate to comment.

5. How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer who may be an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint and an explanation of the arrangements for the investigation and ask the member to provide his/her explanation of events and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration. The report will include details of the allegation, the evidence considered and the investigation's findings.

Having received and taken account of any comments that you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer which will include his/her findings as to whether there may have been a breach of the Code of Conduct.

6. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned and to the Parish Council, where your complaint relates to a Parish Councillor, notifying you that he/she is satisfied that no further action is required and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report. The Monitoring Officer will ask the Independent Person to comment on the investigation report.

7. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology and/or other remedial action by the authority. If the member

complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Panel Lead Member.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel of three Members drawn from the Group appointed by the Council, which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member. In the case of a complaint involving a Town or Parish Member, as well as the three Members, there will be a Town or Parish Councillor attending as a non-voting Member.

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you, as the complainant, to attend and give evidence to the Hearings Panel. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Hearings Panel, with the benefit of any prior advice in writing from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct and so dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chairman will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations in writing to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

Meetings of the Hearings Panel will be held in public unless the Monitoring Officer agrees there are exceptional circumstances that prevent this. The agenda for the meeting will be publicised in advance. Meeting papers that do not contain exempt information will be shared with all members of the panel, the Independent Person, the Investigating Officer and any witnesses. Meeting papers will not be shared in advance with the press and public but will be made available at the commencement of the hearing.

8. What action can the Hearings Panel take where it finds that a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual Waverley members as necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may:

- 8.1 publish its findings in respect of the member's conduct;
- 8.2 report its findings to Council or to the Town or Parish Council for information;
- 8.3 recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.4 recommend to the Leader of the Council that the member be removed from the Executive, or removed from particular Portfolio responsibilities;
- 8.5 instruct the Monitoring Officer to arrange training for the member;
- 8.6 remove the Member from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;
- 8.7 withdraw, facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 8.8 exclude, the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' allowances or special responsibility allowances. In the case of Town or Parish complaints, the conclusion will be referred to that Town or Parish Council for such action they consider appropriate.

9. What happens at the end of the hearing?

At the end of the hearing, the Chairman will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel and send a copy to you, to the member and the Independent Person and make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council. The decision will also be placed on the Waverley Borough Council website, unless no breach is found and the member requests it should not be publicised.

10. Who is on the Hearings Panel?

The Hearings Panel is drawn from the members appointed by the Council. The Independent Person's views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11. Who is the 'Independent Person'?

Waverley Borough Council has appointed three Independent Persons. These are members of the Community who have applied for the post following advertisement of a vacancy for the post and have been appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she:

- 11.1 is, or has been within the past five years, a member, co-opted member or officer of the Council; or
- 11.2 is, or has been within the past five years, a member, co-opted member or officer of a parish council of which the authority is the principal authority; or
- 11.3 is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means:
 - 11.3.1 spouse or civil partner;
 - 11.3.2 living with the other person as husband and wife or as if they were civil partners;
 - 11.3.3 grandparent of the other person;
 - 11.3.4 a lineal descendent of a grandparent of the other person;
 - 11.3.5 a parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 11.3.6 a spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 11.3.7 living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

The role of the independent person is set out in Section 28 of the Localism Act 2011. As part of its arrangements under which decisions on allegations can be made, each principal authority must appoint at least one independent person.

The views of an Independent Person **must** be sought by the Council before it takes a decision on whether an allegation may be investigated, and **may** be sought by the Council at any other stage (e.g. before a final hearing is arranged or where a local

resolution may be appropriate). Where the authority voluntarily chooses to seek the independent person's views on an allegation that it has not decided to investigate, there is no requirement for the authority to take the views of the Independent Person into account.

A member against whom an allegation has been made has the right to consult the Independent Person should they wish to do so.

12. Review of these arrangements

The Council may by resolution agree to amend these arrangements and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter. The Council will keep these arrangements under review and identify any improvements to the processes and ensure that they are helping the Council maintain high standards of conduct.

13. Appeals

- (a) There is no right of appeal for you as complainant against a decision of the Monitoring Officer or of the Hearings Panel.
- (b) If the Member or co-opted member wishes to appeal against the decision of the Hearings Panel, the Member will have a right to have the decision reviewed by another three members of the Standards Panel who have not been involved. This will either involve a full rehearing of the case or be dealt with by way of written representation from the member.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Waverley Borough Council (Haslemere Town Council)

Complaints against Cllr Nikki Barton

Kenyon Brabrook Limited

**Final Investigation Report prepared by Melvin Kenyon for
the Monitoring Officer, Waverley Borough Council**

29th November 2021

Investigation Report – Waverley Borough Council (Haslemere Town Council)

Complaints against Cllr Nikki Barton

1. EXECUTIVE SUMMARY

1.1 THE COMMISSION

Just before Christmas 2020, Robin Taylor, the Monitoring Officer of Waverley Borough Council (“WBC” and “the Borough Council”), commissioned Melvin Kenyon, of Kenyon Brabrook Ltd, to conduct an investigation (“the Investigation”) into two complaints (“the Complaints”) that had been made about the alleged conduct of Cllr Nikki Barton, a member of Haslemere Town Council (“HTC”, “the Council” and “the Town Council”). Similar allegations had been made about the conduct of another member of the Town Council. Those are dealt with in a separate report.

1.2 SCOPE OF THE INVESTIGATION

The Monitoring Officer first became aware of the Complaints when he received two letters. The first had been sent initially to Cllr John Robini, the Mayor of Haslemere Town Council, by a resident, Mr Richard Benson, on 28th February 2020. The second was sent directly to the Monitoring Officer by Neil Baker, of Clarke Willmott Solicitors, acting for Redwood (South West) Limited, the owners and potential developers of the Red Court Estate, Haslemere and was dated 12th March 2020.

There were a number of allegations made in the two letters and the Monitoring Officer next carried out an informal investigation into those allegations, in accordance with the Borough Council’s procedures, to establish whether they should be taken further. That informal investigation was effectively concluded at the end of October 2020 when the Monitoring Officer wrote to the Complainants and the Subject Members by email.

In those emails he said he “had concluded that [Cllr Barton] may have had a non-pecuniary interest that [she] failed to declare at the meeting of Haslemere Town Council on 28th November 2019 and, if upheld, this could constitute a breach of the Town Council’s Member Code of Conduct”. On 27th January 2021 he confirmed that that would be the scope of the Investigation in an email to Melvin Kenyon.

When we were investigating the Complaints, the Monitoring Officer directed us to regard Mr Richard Benson and Mr Brian Cox (acting, in his own words, as a “consultant” for Redwood (South West)) as the Complainants.

This is discussed in more detail in Section 5.3 below.

1.3 CONCLUSIONS AND RECOMMENDATIONS

Having carried out the Investigation, which is presented in detail below, we conclude, based on the balance of probabilities and the evidence available to us, that:

FINAL INVESTIGATION REPORT – PRIVATE & CONFIDENTIAL

1. Cllr Nikki Barton failed to disclose that she was a member of the Haslemere South Residents Association (HSRA) – a body one of whose principal purposes includes the influence of public opinion or policy – at the Haslemere Town Council meeting on 28th November 2019.

She had similarly failed to disclose her membership of HSRA in her “Declaration of Pecuniary and Other Interests” form in accordance with paragraphs 5 (5 iv) of the Code of Conduct when she first completed it in May 2019.

By failing to register her membership of HSRA she breached paragraph 5 (5) of the Haslemere Town Council Code which requires registration of non-pecuniary interests as defined in that paragraph since HSRA is a body one of whose principal purposes is to influence public opinion or policy.

By failing to disclose her membership at the 28th November meeting she breached paragraph 5 (5) which requires disclosure of non-pecuniary interests as defined in that paragraph.

Had she declared that interest on 28th November, she should then have sought to resolve that conflict in favour of the public interest by withdrawing from the chamber in line with paragraph 5(1) of the Code which says “*you must avoid participating in any decision where you could reasonably be seen as having an interest which compromises your honesty or objectivity. Equally, you should avoid any action which might reasonably lead others to conclude that you were not acting selflessly or with integrity*”.

By failing to declare that interest and failing to exclude herself from consideration of item 109/19 by withdrawing from the chamber, she breached paragraphs 5 (1), 6 (4) and 6 (5) of the Haslemere Town Council Code of Conduct.

We further conclude that:

2. Aside from her membership of HSRA, the adjacency of Cllr Barton’s home to the Red Court Estate and the significance of item 109/19 to the success or otherwise of a planning application for development of the Red Court Estate would appear on the face of it to give rise to a further conflict of interest. However, the Haslemere Town Council Code of Conduct, as worded, makes no explicit reference to, or provision for, declaring an interest based on adjacency except in very general terms in paragraph 5 (1).

Whilst this talks about avoiding participation in “*any decision where you could reasonably be seen as having an interest which compromises your honesty or objectivity*” and “*avoid[ing] any action which might reasonably lead others to conclude you were not acting selflessly or with integrity*” it does not define such interest elsewhere in the Code except in terms of Disclosable Pecuniary Interests and non-pecuniary interest.

Whilst the item being discussed *affected* her financial interest and well-being, it did not *relate* to it and so was not a Disclosable Pecuniary Interest. Nor is adjacency defined as a non-pecuniary interest in the Code. Yet, that said, “it is hard to argue that any reasonable member of the public would think it right that somebody should be able to participate in a decision which so clearly affects them and their property¹”.

1. Local Government Lawyer, Paul Hoey, 19th February 2013, Disclosable pecuniary interests – what did the Government intend to capture?

For that reason, whilst we conclude that Cllr Barton should have declared an interest in order to comply with paragraph 5 (1), we are unable to conclude that she breached the Code by failing to declare that interest because of the deficiency of the Haslemere Town Council Code of Conduct. We think it unfair to derive a breach based on the Nolan Principles alone where the Council itself has failed adequately to translate those principles fully into its Code with sufficient clarity.

On the basis of the conclusions above we make the following recommendations:

1. In respect of Cllr Barton's breach of paragraphs 5 (1), 5 (5), 6 (4) and 6 (5) of the Code of Conduct the Monitoring Officer either sends the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seeks local resolution in line with Section 7 of the Waverley Borough Council "Arrangements for dealing with Standards Allegations against Councillors and co-opted Members under the Localism Act 2011".
2. In respect of the adjacency of Cllr Barton's home to the Red Court Estate the Monitoring Officer takes no further action.

We further recommend that:

3. Given that we have identified a clear gap in the Haslemere Town Council Code of Conduct, the Town Council carefully consider whether they should adopt the recently released Local Government Association Model Code (we understand that Waverley Borough Council has already done this). Even if they do not adopt the Model Code they should have regard to the recommendations of the Committee on Standards in Public Life about having more explicit rules around resolving conflicts of interest where members are affected by matters before the Council in line with the tests set out in the Model Code for "Non-Registerable Interests".

1.4 DISCLAIMER

The findings, conclusions and recommendations set out in the Report and the views expressed by us are based on our assessment of the situation as described to us by the various people we spoke to, on the evidence submitted to us and on the balance of probability. The Report is intended to take forward the Complaint, but nothing in the Report, which has been peer-reviewed, should be taken as legal advice or legal opinion and interpretation of the Council's Code of Conduct, any associated policies and procedures, Standing Orders and the like, the Localism Act and, indeed, any other legislation relevant to the Investigation is ultimately a matter for the courts.

2 OFFICIAL DETAILS OF SUBJECT MEMBER

Cllr Barton was first elected as an Independent Haslemere Town Councillor representing the Haslemere South Ward in a by-election on 8th May 2017. She was re-elected in the 2nd May 2019 elections. The Town Council's website states that she is currently a member of the Planning Committee.

Cllr Barton became the Surrey County Councillor for Haslemere, standing as an Independent, on 2nd May 2013. She did not contest the 2017 County Council Elections but was elected a Surrey

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County Councillor, again as an Independent, in a by-election on 2nd May 2019 after the resignation of the sitting Conservative member. She chose not to stand in the 2021 County Council elections.

Cllr Barton's Declaration of Pecuniary and Other Interests indicates that she lives at Oversted, Scotland Lane, Haslemere which we understand to be adjacent to the Red Court Estate.

3 RELEVANT LEGISLATION AND PROTOCOLS

3.1 LOCALISM ACT 2011

Under Section 27(1) of the Localism Act 2011 ("the Act") a "relevant authority" is placed under a statutory duty to "promote and maintain high standards of conduct by members and co-opted members of the authority".

Under Section 27(2) of the Act a relevant authority "must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity" (see 3.3 below).

Under Section 28(1) of the Act a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with prescribed principles of standards in public life – the so-called "Nolan principles".

The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level which endangers public confidence in democracy.

Under Section 28(6) of the Act, principal authorities (in this case Waverley Borough Council) must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. By Section 27(7), arrangements put in place under Subsection (6)(b) must include provision for the appointment by the principal authority of at least one "independent person" whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.

Section 28(11) of the Act provides that if a member or co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take.

3.2 HASLEMERE TOWN COUNCIL'S CODE OF CONDUCT

Under Section 27(2) of the Localism Act, in May 2019, the Council adopted a revised version of "The Haslemere Town Council Members' Code of Conduct" ("the Code") which deals with the conduct that is expected of members and co-opted members of the Council when they are acting in that capacity as required by Section 27 of the Localism Act. Specifically, the HTC Minutes of 16th May 2019 record (minute 47/19) that it was resolved "[t]hat the recently revised code of Conduct at Appendix 5 is adopted".

The Council's Standing Orders (at 13 a) state that, "All councillors and non-councillors with voting rights shall observe the code of conduct adopted by the Council." The Minutes of the 16th May meeting also record (minute 36/19) that "[t]he Town Clerk confirmed that all Councillors have signed the "Declaration of Acceptance of Office" prior to the meeting.

Cllr Barton is recorded as having been present at the 16th May meeting.

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The Code is intended to be consistent with the seven principles of public life – the Nolan principles – and these are referenced in **Section 1** (3) of the Code. The Code applies to councillors only when they are acting in their role as a Member, including the use of email or social media platforms (Section 1 (2)).

Section 5 of the Code, which is headed “Registration of Interests” contains the following sub-Sections:

“(1) As a Member of the Council you must avoid participating in any decision where you could reasonably be seen as having an interest which compromises your honesty or objectivity. Equally, you should avoid any action which might reasonably lead others to conclude that you were not acting selflessly or with integrity. In order to assist with this and promote openness and accountability, the Waverley Monitoring Officer must, by law, establish and maintain a register of interests, open for inspection by the public at Waverley Borough Council’s offices and website, as well as that of Haslemere Town Council.

(2) You must notify the Monitoring Officer of your Disclosable Pecuniary Interests, or other interests which the Council has decided are appropriate for registration (those listed in paragraph 5(4)). On election, you must do this within 28 days of being elected or appointed to office. Details of disclosable pecuniary interests are set out in the Annexe to this Code. You should give sufficient detail of the interests for a member of the public to understand where there might be a conflict of interest.

(3) Do similarly notify the Monitoring Officer of any Disclosable Pecuniary Interest or other interests not already registered within 28 days of your re-election or re-appointment to office. If any of these change you should update your Register of Interests entry promptly. Haslemere Members’ Code of Conduct May 2019

(4) Do be aware that Disclosable Pecuniary Interests include not only your interests but also the interests of your spouse or civil partner, a person with whom you are living as husband or wife or a person with whom you are living as if they were a civil partner, so far as you are aware of the interests of that person. They also apply to any past and reasonably expected future occupational pension, office, trade, profession or vocation as well as present ones.

(5) Do be aware that the Council has decided that it is appropriate for you to register and disclose non-pecuniary interests that arise from your membership of or your occupation of a position of general control or management in the following bodies – (i) bodies to which you have been appointed or nominated by the Council; (ii) bodies exercising functions of a public nature; (iii) bodies directed to charitable purposes; (iv) bodies one of whose principal purposes include the influence of public opinion or policy.”

Section 6 of the Code, which is headed “Disclosure of Interests and Participation” contains the following Subsections:

(1) Do disclose to a meeting at which you are present any disclosable pecuniary interest, or other interest which the Council has decided is appropriate for disclosure (see paragraph 5(4) above) as soon as you become aware of it.

(2) Do notify the Monitoring Officer of any interest not already registered that is disclosed to a meeting under paragraph 6(1) above within 28 days of the disclosure.

(3) Do not participate in any discussion, or vote, where you have a disclosable pecuniary interest in a matter. Do withdraw from the meeting during the consideration of the matter. Haslemere Members' Code of Conduct May 2019

(4) Do declare any other non-pecuniary interest(s) that you consider to have sufficient weight so as to undermine your ability to make an open-minded and objective decision. Where this is the case, do exclude yourself from consideration of the item by withdrawing from the chamber for the duration of it being discussed.

(5) In making a judgement about whether a non-pecuniary interest is of sufficient weight as to undermine your objectivity, you should consider what an ordinary member of the public, with knowledge of the relevant facts, would think."

Section 8 of the Code, which is headed "Decision-making and Pre-determination" contains the following Subsections:

(1) Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life, you should not be prohibited from participating in a decision in your political role as a Member.

(2) However, do not place yourself under any financial or other obligation to outside individuals or organizations that might seek to influence you in the performance of your official duties.

(3) When making a decision, do consider the matter with an open mind and on the facts before the meeting at which the decision is to be made, listening to the advice of relevant parties, including advice from officers, and taking all relevant information into consideration, remaining objective and making decisions on merit. While this is particularly relevant for the Planning and Highways Committee, it also applies to other decision-making.

3.3 WHEN DOES THE CODE OF CONDUCT APPLY?

Under Section 27(2) of the Act a relevant authority "must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority *when they are acting in that capacity*". This Section of the Act narrowed the remit of the previous national Code of Conduct with the result that a council can only investigate matters where a member was acting as a councillor or as a representative of the council at the time of the alleged incident.

Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by the code; a link to that person's membership of their authority and specifically their role as a councillor is needed.

Some activities clearly have no link with a council such as a purely domestic matter or something that a member may do while employed in work completely unrelated to the council. Councillors must actually be engaged on council business or commenting on council business or acting as a representative of the Authority to be deemed "within capacity".

4 **CONTEXT**

4.1 **HASLEMERE**

Haslemere is a town in the borough of Waverley in Surrey with a population of almost 17,000 in 2011. According to Wikipedia, the town lies “close to the border with both Hampshire and West Sussex and is the most southerly town in Surrey. The major road between London and Portsmouth, the A3, climbs and enters a tunnel to the west and a source of the River Wey lies to the south. Haslemere is 11.9 miles (19.2km) southwest-by-south of Guildford surrounded by hills, with Blackdown at 920 feet (280 m) to the south and Gibbet Hill at 894 feet (272 m) to the north. Today, much of the heathland and woodland is owned and protected by the National Trust and has become a popular attraction for walkers”.

4.2 **LOCAL PLAN AND NEIGHBOURHOOD PLAN**

Waverley Borough Council, like every other Local Planning Authority in England, is required to produce a Local Plan, which sets out the vision for future development in the Borough. Local Plans are a local guide to what can be built where and are very important when deciding planning applications.

There is a hierarchy of plans. National Policy sits at the top in the National Planning Policy Framework (NPPF) issued in February 2019. The NPPF sets out government’s planning policies for England and how these are expected to be applied.

Below that is Local Plan Part 1: Strategic Policies and Sites (LPP1) which “specifies the overall spatial strategy for development and growth and allocates strategic sites”. Under LPP1 sits Local Plan Part 2: Site Allocations and Development Management Policies (LPP2) which (as the name suggests) provides the more detailed development management policies and allocates the sites needed for housing and other uses within the Borough.

4.2.1 **LOCAL PLANS AND RELATED MATTERS IN WAVERLEY**

We began the Investigation in February 2021 by speaking to two officials from the WBC Planning Department who gave us useful background information about the planning context in Haslemere and the wider Waverley Borough. It is a complex area, which is set out in legislation. They told us the following:

- Just before the end of 2016 Waverley’s LPP1 was submitted and during 2017 the Borough Council went into an examination of the Plan by an Inspector appointed by the Planning Inspectorate. The Inspector examined whether the Plan met certain tests of soundness and whether it needed modification to meet those tests.
- The Inspector’s Report on LPP1, which was published on 1st February 2018, went through all the issues, and explained why he concluded that the plan was sound. However, it recommended some “main modifications” amongst which was the recommendation that Waverley should pick up some of the housing requirement from nearby Woking. On 20th February 2018 the Borough Council adopted the Waverley Borough Local Plan part 1: Strategic Policies and Sites.

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- Waverley’s LPP1 sets out the minimum number of homes which must be delivered between 2013 and 2032 (11,210 dwellings, or 590 dwellings per annum – d.p.a.) and allocates those by settlement/parish. LPP1 allocates Haslemere 990 dwellings.
- The setting of the numbers was done by the Borough Council, after consultation, taking into account the relative size of the settlements in the Borough as well as any constraints in terms of their ability to deliver the number of dwellings – green belt and landscape constraints on expansion applied to Haslemere, for example.
- LPP2 [which is still being considered at time of writing following the Regulation 19 consultation which ended on 29th January 2021] contains various day to-day development management policies in Waverley, detailed boundaries for areas with particular protection and deals with the allocations of numbers of dwellings for parishes that have not dealt with those allocations through their Neighbourhood Plan (NP).
- Having considered how many houses have already been built in the Local Plan period {2013 – 2032}, how many more have got planning permission and how many “windfalls” there might be (sites not yet identified which will eventually contribute based on past trends) planning officials identified that there was still a shortfall in Haslemere.
- One of the purposes of LPP2 was to identify sites that will allow Haslemere to meet its housing requirement of 990 dwellings as set in LPP1.
- If there is area with a specific housing requirement in LPP1 and you are preparing a Neighbourhood Plan (NP) then you can either (i) leave the Borough Council to identify sites for allocation or (ii) identify them yourself or (iii) in some cases the housing allocation has been met by planning permissions that have already been granted. Haslemere decided to allow WBC to decide where the housing allocations would go within the town.
- LPP2 continues to identify Red Court as a Development Site (amongst ten others) for 50 dwellings in Haslemere (DS06).

4.2.2 NEIGHBOURHOOD PLAN IN HASLEMERE

- Waverley is completely “parished” so under the planning legislation the parishes must prepare the NPs. The Town Council first decided that it would prepare its own NP in late 2012 after the Localism Act became law and on 19th February 2013 Haslemere was designated as Neighbourhood Area. HTC delegated the preparation of the NP to “Haslemere Vision”.
- The making of the NP is a completely separate process to preparing a Local Plan. However, NPs must be prepared in the context of the strategic policies and the housing allocations in the Local Plan.
- Since 2013, when the statutory process started, there have been several versions of the NP which WBC have informally commented upon, most recently in February 2019. The “settlement boundaries” had been redrawn at various times in the different versions of the NP.
- NPs have different roles. An NP can still be prepared even if there are no housing allocations for specialist, environmental matters that are pertinent to a local area, for example. Thus in Haslemere those preparing the NP are keen to define the edge of the settlement area even though they are not doing the housing allocations. A settlement boundary is proposed in their NP which had been submitted for its independent examination at the time when we spoke (see 4.2.4. below).

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- It appeared that the Haslemere NP would like to think that all the housing allocations could be done from within the confines of the existing built up area. However, [when we spoke], the current evidence was that it was likely there will need to be housing development outside the confines of the existing built-up area which will need to be considered when preparing the LPP2 allocations and consequently where a settlement boundary would be defined.
- The Haslemere NP was still emerging, having only just [when we spoke in early 2021] recently been submitted to Waverley for its independent examination. At that time the NP was not part of the Development Plan.
- After Neighbourhood Plans are “made” they then become part of the Development Plan. If someone makes a planning application to build a house in their garden for example then you have to have regard to the policies in the Development Plan. The policies in the Development Plan arise out of the Local Plan and the NP.
- In May 2020 under the Neighbourhood Planning (General) Regulations 2012 a plan was prepared for formal consultation under Regulation 14. WBC formally responded to this public consultation on 27th May 2020.
- After the Regulation 14 consultation has taken place the NP is submitted to the Borough Council, as the local planning authority, for the process of the formal “making” of the NP. In theory because of the advice that has already been given when the NP is being prepared the submitted NP should be something that WBC can accept. However there were [when we spoke] still some issues with regard to some of the policies in the NP that had been submitted.
- The submitted NP is formally examined by an Independent Examiner appointed by WBC and is subject to a six week Regulation 16 consultation [which was to run from 5th February to 19th March 2021]. Any comments that arise from that consultation are forwarded to the Independent Examiner. They will examine the NP and if they think it is appropriate they can make recommendations for modifications for the eventual “making” of the NP. The Examiner then formally makes a report with recommendations that is sent to WBC and the Town Council.
- Ultimately it is for WBC to decide whether it goes along with the modifications suggested by the Examiner but this is done in liaison with the Town Council and further consultation may be needed. WBC then makes a formal decision statement on the NP and a referendum is the final point of the “making” of an NP. If the majority of people who take part in the referendum agree then the NP is “made” and it becomes part of the Development Plan for the designated area.
- Broadly speaking what WBC had [when we spoke] was the culmination of all the work that HTC had done to prepare an NP which they intended would form part of the Development Plan. The vote at the Haslemere Town Council meeting on 28th November 2019 was just one part of the process that had gone on to reach this point.

[When commenting upon the Draft Report Cllr Barton asked us to record the fact that “the settlement boundary as proposed in the Neighbourhood Plan was submitted to independent examination and subsequently finalised and approved by public referendum on 7th October 2021 with an 88% majority in the public ballot”. She also asked us to record that “the current evidence is that following consideration in the LPP2 allocations, WBC has maintained the same settlement boundary as set out in the Neighbourhood Plan and has not allocated any development site on the Red Court land”. She also asked us to note that, “there are no outstanding issues

with respect to the policies of the NP because they were finalised”. Whilst recognising that these statements are beyond the scope of the Investigation, we are content to do that.]

4.2.3. THE INDEPENDENT EXAMINATION OF THE NEIGHBOURHOOD PLAN

It is worth noting that, whilst we were preparing the Report, the Independent Examiner’s Report on the examination of the Haslemere Neighbourhood Plan was received (dated 6th July 2021). It contains the conclusion, “On basis of the findings in this report I recommend to Waverley Borough Council that subject to the incorporation of the modifications set out in this report the Haslemere Neighbourhood Development Plan should proceed to referendum”.

Sections 7.19 – 7.21 of the Examiner’s Report read as follows:

“7.19 The consultation exercise has generated a significant degree of commentary on the proposed settlement boundary for Haslemere. In most cases the comments are based around the differences between the approaches in the submitted Plan and that in the pre-submission Local Plan 2. In particular the latter includes land at Scotland Lane to the south of the town in the settlement boundary. This reflects WBC’s identification of proposed housing allocations in that Plan. Whilst most are within the built format of the town the proposed Scotland Lane site (DS 06) is outside the existing built form of the town. It is anticipated to deliver approximately 50 dwellings. This proposed local plan allocation has also attracted a significant degree of comment as part of its own consultation process.

7.20 The Scotland Lane site is being actively promoted by Redwood Homes South West. The company has made a detailed set of representations on the submitted neighbourhood plan. It also submitted a planning application (WA/2020/1213) for the development of the site for 50 homes in July 2020. At the time of preparing this report WBC had not made a decision on that proposal [but see Section 4.2.4.].

7.21 I looked at the Scotland Lane site very carefully during my visit to the town. Plainly there is a degree of tension between maintaining the character and landscape setting of the town on the one hand and delivering new housing growth within its context of being one of the four principal towns in the Borough”.

[When commenting on the Draft Report Cllr Barton remarked that, “.... events on the ground have moved on since the comments you quote from the Independent Examiner, which are no longer useful or relevant.” Whilst recognising that the Investigation focuses on events that relate to an alleged failure to declare a non-pecuniary interest some two years ago, we are content include her comment in the Report.]

4.2.4. THE RED COURT DEVELOPMENT AND THE PLANNING PROCESS

Planning officers told us that:

- There were two processes that were relevant to the development of the “Red Court” site. A developer had submitted a planning application for the Scotland Lane site (see 4.3 below).
- There was also the Local Plan process. WBC had had to consider in preparing LPP2 how they are going to achieve the target for housing in LPP1.
- In May 2018 WBC had consulted on the “preferred options” version of LPP2 and had hoped to progress it to the next stage before the end of 2018. It had draft policies and allocations in it, and it also had the proposed settlement boundary for Haslemere in it. At that time

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they had identified four or five greenfield sites that would be needed if they were to achieve the allocations. One of these was the site in Scotland Lane.

- One of the officers to whom we spoke believed that the consultation on this version of LPP2 may have sparked the formation of the Haslemere South Residents Association. HSRA had grown up out of opposition to the idea of that site being included in the plan.
- WBC had had to pause this version of LPP2 to look again at some of the issues that had been raised. And there had been elections in May 2019 for Borough and Town Councils so a new Town Council arose as a result.
- Over a protracted period WBC had prepared the next iteration of the LPP2. In the meantime the housing position had improved and it did not appear that there would be a need for as many greenfield sites in the plan as they had previously thought, though there was still a shortfall. As officers they had had to make the judgement - and then it would ultimately go to Council - as to which sites should or should not be included in the plan.
- The Red Court site remained in the plan [when we spoke] as a proposed allocation because they could not make the numbers work without it and it was considered to be the best site available to achieve the numbers.
- The same officer recalled that, in an earlier iteration, those preparing the NP had been content to align the settlement boundary with what was coming through the Local Plan process (and that included Red Court). However, the boundary that arose out of the recent iteration of the NP was one that had been worked on locally (and excluded Red Court).
- A second officer said that, at some point, officers had had to tell those preparing the NP that they could not direct LPP2 because they were not choosing to do their own allocations.
- In the latest version of the NP, HTC had emphasised that they would like to see their development needs met from within the built up area if that was at all possible. There might, for example, be a policy in the NP which encouraged high-density building.
- The second officer said that he felt that there was some misunderstanding on the part of some members of the local community and some of those involved in the process that LPP2 had to fall in line with Haslemere's NP in terms of settlement boundaries. This was not true. As HTC had ceded the responsibility for allocations to WBC, the Borough was responsible for doing the allocations and consequently the settlement boundary.
- Ultimately if the Plan went through the examination process and it was determined that Red Court was an appropriate site for inclusion in LPP2 then it would go forward to the Development Plan.
- There was therefore some tension around how far the NP could dictate what is proposed in LPP2 given that it had been decided by the Town Council that LPP2 rather than the NP should be the plan that would deliver the strategic policy position on the housing allocation for Haslemere.
- As far as WBC was concerned, it had to have an LPP2 which delivered what was set out in LPP1 and, as things stood, the evidence was that at least one greenfield site would be needed and Red Court had not been taken out of LPP2.

Whilst writing the Report we read an article in the Farnham Herald headed "Tensions fray as Red Court refused" which told us that "Waverley Borough Council's Planning Committee defied [an] officer recommendation on Tuesday [20th July 2021] by voting to refuse the 50-home Red Court application in Scotland Lane, Haslemere."

4.3 RED COURT ESTATE

As already noted above, Cllr Barton owns a property which apparently adjoins the Red Court Estate in Haslemere. Red Court proved to be a significant feature of the Investigation.

Brian Cox and Jason Leete told us that, originally, the “Red Court Estate as a whole was 96 acres. Redwood (South West) Limited bought the whole estate [with completion in March 2018 from a Saudi family who had owned it since the 1970s]. It then sold Red Court House, the Victorian residence on the Estate, and 15 acres [to a private buyer]. Redwood South West Limited then decided to call the land it had retained “Scotland Park”, a historic name, to distinguish it from Red Court House and grounds Scotland Lane [runs] to the north of the park and Scotlands Close [is] on the boundary”.

We have reviewed a Knight Frank Estate Agents marketing brochure, shared with us by Cllr Barton, for Red Court. The area being offered for sale at that time (perhaps three years ago) consisted of three separate lots – (i) the Grade II listed house, an “outstanding Ernest Newton country house in a breathtaking setting” built in 1895 and 16.1 acres; (ii) the Gate Lodge and 0.75 acres; and (iii) a pasture field of around 3.21 acres.

According to the Scotland Park website Redwood (South West) Limited submitted a Full Planning Application (WA 2020/1213) for 50 homes to Waverley Borough Council for a housing development on Scotland Park which went on to be discussed at the Town Council meeting on 10th September 2020. The website presents those 50 homes as being a potential part of the Haslemere housing quota of 990 homes that it was required to meet by 2032 (see 4.2 above).

Mr Cox and Mr Leete told us that “[t]he Planning Application for the development of 50 homes sat on part (around 12 acres) of [the remaining] 80 or so acres. The wider site was for an additional 130 homes and [it was] the wider site [that] delivered the community facilities because it was that that subsidised what they were proposing to give to the community”. We were told in some detail about the proposed community facilities.

The Scotland Park website points out that “the [planning] application does not include the wider site, which was previously promoted and this is not for 130/180 homes. It is for 50 homes.” The website goes on to say, “Longer term, there remains the opportunity to provide additional homes on land at Scotland Park. Redwood will continue to promote its wider scheme No planning application will be submitted, at this time. This site will be considered by Waverley Borough Council in a future Local Plan process.” The website also contains details of a Public Consultation which took place in May 2019.

Mr Leete told us that he saw Mr Cox as the project manager for the development of the site. Mr Cox described himself elsewhere as a “consultant” to Redwood (South West) and shared with us in some detail his apparently strong professional credentials. At the time we spoke to him Mr Cox told us he was splitting his time between his home in France and his temporary residence in “the Lodge” (see above). Some of what he told us suggested that he had something of a hands-on role on the Red Court Estate, such as addressing a problem with Japanese knotweed, organising tree-planting and the like.

Mr Leete told us that, “[i]nitially he had [himself] joined the Board of Redwood (South West) Limited with a view to having a more direct personal involvement in the project. However there

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had been a change of direction and Redwood had retained him instead to provide local knowledge and professional advice to the project. He now offered advice and support to Brian Cox and promotion of the planning application that was now in place”.

We have seen several emails that appear to show Cllr Barton’s husband, Jeremy, negotiating with Mr Cox to purchase the “pasture field” referred to earlier (which, we were told, adjoins their home) and, indeed, we spoke to Cllr Barton about this. By the beginning of December 2018 those negotiations appear to us to have been progressing well with a figure of £200,000 being mentioned and the Bartons having arranged a mortgage facility. Mr Barton told Mr Cox that he “was about to be elected to Chairmanship of HSRA and needed to declare and explain a conflict of interest with respect to potentially buying the field that prevented me from taking up that position. This was in preparation for hopefully entering into an agreement with Redwood further to the ongoing discussions”.

It appears, though, that there was little or no negotiation after that because, on 29th April, Mr Barton wrote to Mr Cox saying, “Dear Brian, seems an age since we were last in contact and I hope this finds you well and that you had a nice Easter I’m sorry that our discussions at the end of last year concerning the field did not progress. However, from my own perspective given the passage of time and absence of further discussions, I’m taking it that we should no longer consider ourselves to be potential purchasers of the field at this time and assume this is where you are at too! Thank you for your time in explaining your thinking and being open about Redwood’s proposed development. With best wishes, Jeremy.” When we spoke to Cllr Barton we were told that this email was “very simple, it’s an email that closes off negotiations formally Mr Barton needed to close that off to allow him to carry on being involved in the residents’ association.”

We mention this simply as fact. We will not explore in the Report the comments and allegations made about this matter by either Mr Cox or Cllr Barton.

5 THE COMPLAINTS

Two letters of complaint gave rise to enquiries by the Monitoring Officer and subsequently led to the Investigation. The letters are set out in Sections 5.1 and 5.2 below.

5.1 COMPLAINT – MR RICHARD BENSON

On 28th February 2020, Mr Richard Benson, a resident of Haslemere, sent a letter to Cllr John Robini, Mayor of Haslemere Town Council. It read as follows:

“I am writing to make a formal request that the Town Council suspend the Official Public Pre-submission Consultation of the Neighbourhood Plan which is due to commence on Monday 2nd March 2020.

The reason why I believe that the consultation should be suspended is quite simple. The vote to adopt the resolution put before Haslemere Town Council on the 28th November 2019, is evidently invalid and effectively null and void (point 4 below):

- 1) At the Haslemere Town Council meeting, Thursday 28th November 2019 it was resolved “to adopt the **amended** Neighbourhood Plan document and Summary (Appendices 3 and 4) and put forward to the next stage of process; the public consultation”. [109/19 Neighbourhood Plan].*

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- 2) Before the **amended** Neighbourhood Plan was adopted the proposed development at Red Court Scotland Lane DS15 was **WITHIN** the proposed Settlement boundary. (Item 23/19 Haslemere Town Council Meeting 21st March 2019).
- 3) After the **amended** Neighbourhood Plan was adopted the proposed development at Red Court Scotland Lane DS15 was **OUTSIDE** the proposed Settlement boundary.
- 4) At the crucial meeting on Thursday 28th November 2019, two councillors (Cllr Barton & Cllr [REDACTED]), who attended the meeting and voted for the resolution, failed to disclose that they both had pecuniary interests and non-pecuniary interests in supporting the resolution. The Minutes do not record that Cllr Barton and Cllr [REDACTED] had received a dispensation to attend, participate, and vote at the meeting.
 - (a) They both own properties in Scotland lane on land adjacent to Red Court (DS15). See attached map.
 - (b) They both could benefit financially from stopping any form of housing development at Red Court DS15 – several years of development could deter some house buyers of their properties etc.
 - (c) They both were founder members of the Haslemere South Residents Association (HSRA), a body whose principal purposes include the influence of public opinion or policy. The HSRA was formed in June 2018 to vigorously oppose the inclusion of land south of Scotland Lane (DS15 Red Court) in the final version of Waverley's LPP2.
 - (d) As residents, they have both vigorously objected to the proposed development at Red Court DS15 (Comments on Waverley LPP2 site allocations Barton on 9th July 2018 and [REDACTED] on [REDACTED]).

Since June 2018 the HSRA have been very active in their campaigning and in my view have disseminated damaging misinformation and disinformation through their website and social media accounts, the Haslemere Herald and so on. Some of the comments about the Red Court developers clearly seek to damage their reputations in the local community. Some comments I've been told amount to "malicious intent" and are actionable.

The failure of Cllr Barton and Cllr [REDACTED] to disclose their pecuniary and non-pecuniary interests, in my view, amounts to a flagrant breach of Haslemere Town Council's Code of Conduct.

It is of concern, too, that if Cllr Barton and Cllr [REDACTED] had put their own self interest above the interests of the wider community, they may have unduly manipulated other councillors and groups to secure the change of settlement boundary outcome at the HTC meeting on 28th November. Certainly the impartiality of Cllr Barton and Cllr [REDACTED] needs to be questioned.

More seriously, the Haslemere Neighbourhood Plan would be at risk of being struck out by the Secretary of State Inspector if a legal challenge to its soundness is successfully made by third parties. There is probably no need to spell it out, but this would be a disaster, with vast resources in terms of costs and time – 6 – 7 years of work, much of it by volunteers, going to waste, leaving the town still without an adopted Neighbourhood Plan, thereby missing out on the higher 25% CIL contribution directly into the community.

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After your own investigation I assume you will follow the Code of Conduct:

- 1. (7) : A failure of a Member to comply with this Code of Conduct will be reported to the Waverley Borough Council Monitoring Officer for investigation*
- 3. (8) : Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may also result in a criminal conviction and a fine of up to £5,000 and/or disqualification from office for a period of up to five years.*

In closing, I repeat my formal request that the Town Council suspend the Official Public Pre-submission Consultation of the Neighbourhood Plan which is due to commence on Monday 2nd March 2020.

I fully realise that this will delay matters but transparency and trust are essential elements for an effective and functioning democracy. As is often said “trust arrives on foot and leaves in horseback.”

5.2 COMPLAINT – CLARKE WILLMOTT SOLICITORS

On 12th March 2020 , Mr Neil Baker, Partner and Head of Planning & Environment at Clarke Willmott LLP, sent a letter to Robin Taylor, Monitoring Officer at Waverley Borough Council. It read as follows:

“Consultation Draft Neighbourhood Plan – Haslemere Parish Council

We act for Redwood (South West) limited which is the owner of Red Court Estate, Scotland Lane, Haslemere. We write on behalf of our clients to lodge a formal complaint against two Councillors of Haslemere Town Council namely Councillor Nikki Barton and Councillor [REDACTED] for breach of the Haslemere Town Council Members’ Code of Conduct and the terms of Section 34 of the Localism Act 2011.

It has been drawn to our attention that these Councillors failed to fully disclose pecuniary and non-pecuniary interests. Both Cllr Barton and Cllr [REDACTED] are founder members of the Haslemere South Residents Association (HSRA). However, in the Declaration of Pecuniary and Other Interests forms available on Haslemere Town Council’s website, as required by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, Cllr Barton omitted mentioning any connection to the HSRA and [REDACTED]

The HSRA has been active since June 2018 and as operated as the main vehicle for opposition to the potential redevelopment at the Red Court Estate and, in particular, the inclusion of part of the Red Court Estate within the settlement boundary in Waverley Borough Council’s Local Plan Part 2 (LPP2) and the draft Haslemere Neighbourhood Plan (the Plan).

In addition to being a member of HSRA, [REDACTED] is also a member of [sic] the Scotlands Close Residents Association (SCRA), which is promoting opposition to development of the Red Court Estate. Cllr [REDACTED] does not declare [REDACTED] membership of SCRA on the Haslemere Town Council’s Declaration of Pecuniary and Other Interests form, nor is [REDACTED] recorded as having declared membership of SCRA in any Council minutes of which we have had sight.

Both of the aforementioned councillors submitted personal objections in their capacity as local residents to Waverley Borough Council’s Regulation 18 LPP2 public consultation in Summer 2018.

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This confirms clear personal prejudicial interests which should have involved their later conduct within the Town Council and the progression of the Plan.

At the Haslemere Town Council meeting on the 28th of November 2019, it was resolved that the settlement boundary for the Plan should be amended to exclude the Red Court Estate before the Plan was put forward for pre-submission consultation. The site at Red Court Estate had been previously included within the settlement boundary of the Plan identified as "Site 9".

It is pertinent to know that both Cllr [REDACTED] and Cllr Barton own and reside in properties adjoining the Red Court Estate. As such, both Councillors are clearly affected in their personal capacity by the decision as to whether or not Red Court Estate should be included in the settlement boundary of the Plan or not.

According to the minutes of the 28th of November meeting, both Cllr Barton and Cllr [REDACTED] failed to disclose the interests they have in the context of Red Court Estate as adjoining residents or as founder members of HSRA and, in the case of Cllr [REDACTED] membership of SCRA, in addition. Neither of the Councillors abstained from voting at this meeting. The minutes do not record that either of the Councillors had a dispensation to attend, participate or vote at the meeting.

Further, it is understood that both Councillors were appointed to the Town Council's Neighbourhood Plan working party May 2019 and, therefore, were influential in guiding the settlement boundary policy change proposed at the November Full Council meeting. Cllr Barton seconded the key motion.

We consider that the failures of these Councillors to disclose their pecuniary and non-pecuniary interests on a number of occasions in relation to Red Court Estate amount to breaches of Haslemere Town Council Members' Code of Conduct, such breaches potentially also constituting an offence under the terms of Section 34 of the Localism Act 2011.

We hereby formally request that:

- 1. A formal investigation is launched to review whether Cllr Barton and Cllr [REDACTED] have breached Haslemere Town Council's Members' Code of Conduct;*
- 2. The Monitoring Officer takes relevant steps to suspend both Cllr Barton and Cllr [REDACTED] from their roles; and*
- 3. The Official Public Pre-submission Consultation of the Plan is suspended immediately and that a review is undertaken to ensure probity in any final decision making.*

Please acknowledge receipt of this letter and please also confirm that these matters will be looked into as a matter of urgency."

5.3 AGREED SCOPE OF THE INVESTIGATION

After he had received the letters of complaint, the Monitoring Officer set about conducting an informal investigation into the allegations made in the letters. His investigations included telephone discussions with Mr Cox and Mr Benson on 21st May 2020. They also included an "informal" two-part meeting held with Cllr Barton (who was "accompanied" by her legal adviser Mark O'Connor), by Zoom on 18th June 2020 that was captured in a 24 page verbatim transcript.

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We reviewed many pages of emails and related documentation which had been exchanged during the informal investigation. For the most part, these are listed in Appendix 1. Many of them, in our opinion, proved not to be directly relevant to the core of the Investigation (though they still needed to be reviewed). They included a variety of procedural concerns. We understand, though have not confirmed, that these matters may have been considered during the investigation referred to in Section 7.1 below.

Once his informal investigations were completed, on 30th October, the Monitoring Officer wrote to the Complainants and the Subject Member by email saying that he “had concluded that [Cllr Barton] may have had a non-pecuniary interest that [she] failed to declare at the meeting of Haslemere Town Council on 28th November 2019 and, if upheld, this could constitute a breach of the Town Council’s Member Code of Conduct”. As a result of that, and having sought the view of the Independent Person, he had decided that the matter should be formally investigated.

After Mr Benson decided in early December not to continue to insist on anonymity (which was a condition of the complaint proceeding to the next stage), Melvin Kenyon was appointed to carry out the Investigation. On 27th January 2021 the Monitoring Officer wrote to him by email and said “[t]he core of the matter, from my perspective, and my reason for judging this matter ought to be formally investigated, is that I judge that [the two councillors] may have had a non-pecuniary interest that they failed to declare at the meeting of Haslemere Town Council on 28 November 2019 and, if upheld, this could constitute a breach of the Town Council’s Member Code of Conduct”.

In the same email the Monitoring Officer also wrote, “This is the core of the matter in my view but, as we discussed, you will carefully examine and consider all of the documentation I have submitted to you including the concerns raised by the complainants and I would ask you to bring to my attention any evidence of any part of the Town Council code being breached by either councillor.”

The scope of the Investigation was therefore confirmed and the Investigation began in February 2021. The evidence we considered in preparing the Report, a large proportion of which was shared with us by the Monitoring Officer before the Investigation began, can be found in Section 7 below and in Appendix 1. Paragraphs 5, 6 and 8 of the Haslemere Town Council Code of Conduct are particularly relevant to the scope of the Investigation (see Section 3.2 above). It was verbally confirmed that we were to regard Mr Cox (rather than Redwood (South West) or Clarke Wilmott) and Mr Benson as the Complainants.

6 APPROACH

6.1 DOCUMENTS AND OTHER SOURCES

We have taken reasonable steps to list the source materials we reviewed during the Investigation in Appendix 1 below. The list may not, however, be exhaustive.

6.2 EVIDENCE GATHERING METHODOLOGY

In investigating the Complaints we also gathered evidence at formal interview from the following people, who are listed below in the order in which we interviewed them:

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- (i) Graham Parrott and Matthew Ellis (respectively the Planning Policy Manager and Team Leader (Local Plans and Planning Policy) in the Borough Council’s Planning Department);
- (ii) Brian Cox (Complainant) and Jason Leete (Adviser to Mr Cox);
- (iii) Richard Benson (Complainant);
- (iv) Lisa O’Sullivan (Town Clerk, Haslemere Town Council);
- (v) Pippa Auger (Deputy Town Clerk, Haslemere Town Council);
- (vi) Daniel Bainbridge (Borough Solicitor and Deputy Monitoring Officer, Waverley Borough Council); and
- (vii) Cllr Nikki Barton and Mr Mark O’Conor (Legal Adviser to Cllr Barton).

Before the Investigation began we also spoke informally to Robin Taylor, Monitoring Officer. Our formal interviews took place between 4th February 2021 and 11th June 2021. Because of the COVID-19 pandemic we were unable to carry out any interviews face-to-face as we would normally do. Instead we carried out all our interviews using the Zoom or MS Teams video communications platform.

With the agreement of interviewees, we recorded all the interviews (with the exception of the interview with Graham Parrott and Matthew Ellis). We prepared written records of our conversations with all interviewees – a verbatim transcript of our conversation with Cllr Barton (in line with our normal practice in respect of Subject Members), and summary notes in all other cases. All those interviewed were given the opportunity to comment on the written record whilst it was still in draft and comments made were reflected in the final written records, which were then “virtually” signed off by interviewees.

Once the summaries had been signed-off by interviewees they became the formal record of the interview and all audio recordings and written notes taken at interview were destroyed in accordance with best practice. Where transcripts and summaries were formally signed off the written records now form the only record of the interviews. Where they have not been signed off at time of writing the Report, we will be retaining the audio records in the event that they are relevant in the next stage of the process (if any).

We shared with Cllr Barton the recordings of our interviews with her. Our conversation with her in fact took place over separate two discussions on 20th May and 11th June. This was far from satisfactory.

We had agreed with Cllr Barton that she and Mr O’Conor would be in the same physical location for the first discussion (which both Cllr Barton and Mr O’Conor brought to a close after two hours or so) so that we could overcome the time limitations of our Zoom subscription. In the event, that did not happen. Mr O’Conor confirmed to us that he had not been able to do that because of client commitments. As a result of the Zoom limitations the first discussion was twice interrupted and proved to be somewhat stilted because of Zoom-related administrative necessities, the earlier than expected curtailment, and Mr O’Conor spending part of the time being driven in a car and part (presumably) in his home.

The second conversation ran more smoothly, albeit three weeks later, because it was carried out using MS Teams using a subscription with no time limitations. That conversation began 15 minutes late because of unforeseen technical problems experienced by Melvin Kenyon.

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We sent the two transcripts of our conversations with Cllr Barton to her (respectively) on 21st July and 2nd August. At time of writing Cllr Barton has not acknowledged receipt of the transcripts or otherwise commented on them as requested with the exception of one or two passing comments made when she commented on the Draft Report. Because of an administrative oversight we did not share the first transcript with Mr O’Conor though we did share the second transcript with him which he acknowledged via a “read receipt”. At time of writing the transcripts remain as they did when we sent them to her for comment.

Section 7 of this report contains text drawn directly (i.e. with little editing by us) from the interview records and from other documents and sources. Readers should note that any such text is simply presented as evidence, is not intended to represent our opinion nor does it necessarily do so.

Readers should also note that, in keeping with our independence and objectivity, and whatever our personal opinions, we make no judgement on the merits or otherwise of environmental matters or housing development in Haslemere, whether on the Red Court site or elsewhere.

6.3 THE REPORT

After we had completed the first draft of the Report it was peer-reviewed – for quality and to ensure consistency of approach with similar cases across the country.

Following that review, we shared the Preliminary Draft Report with the Monitoring Officer so that he could satisfy himself that, at face value, the Report was indicative of a satisfactory investigation and was of the required standard.

He confirmed that and on 20th September we issued the Draft Report, strictly in confidence, to the Complainants and the Subject Member and gave them three weeks to respond with comments. We made it clear at that point that the document was a private and confidential draft (and it was marked as such) and that we did not agree to the circulation or publication of the Report and/or any extracts from it without our express permission.

We received comments from both the Complainants and from the Subject Member and, having carefully considered each comment in turn, we reflected those comments in a Second Draft Report wherever we felt it relevant and appropriate. We issued that Second Draft to the Complainants and the Subject Member on 12th November and asked for what we saw as final comment by start of business on 22nd November. The Second Draft had previously been peer-reviewed and shared with the Monitoring Officer.

The Complainants told us they had no comment to make on the Second Draft. The Subject Member replied after close of business on 22nd November. She said that she had had little time to consider the document because of COVID-19 within her immediate family. She continued, “I have skimmed the document and make the following comments which are not exhaustive and may be extended following receipt of the SAR mentioned below.”

She then went on to say, “I made a Subject Access Request (SAR) to Waverley Borough Council (WBC) on 4th October in anticipation of their response within the statutory time limit of 4th November. As you will see below, they have invoked an exception and now will not provide the SAR until 4th January 2022. I will therefore not be in a position to provide exhaustive feedback

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until WBC fulfil their obligations to me in respect of my SAR. Perhaps you are in a position to request the Monitoring Officer to intervene and expedite the delivery of the SAR response in order to prevent further delay to your process?”

We knew nothing of the Subject Access Request and so could not make a judgement on how or whether it related to our work and whether it would be reasonable to delay the release of the Final Report. We therefore sought the advice of the Monitoring Officer.

A few days later he replied and said, “regarding the question of whether any Freedom of Information or Subject Access Request from any subject member should prevent you from sharing the final version of your report with me. I have consulted Daniel Bainbridge on this question. As well as having supported me in his capacity as Deputy Monitoring Officer on this case, Daniel is the Council’s Borough Solicitor and heads up the Council’s team that deals with all FOI and Subject Access Requests. Daniel has confirmed to me that he will be processing the FOI and SAR requests in question in the normal way and will process these as soon as is possible. He has also confirmed that he sees no reason why those processes should delay you in issuing your final report to me. I agree”.

He went on, “to be clear, having read the feedback [from] Cllr Barton that you have shared with me, I have not identified anything in that feedback that should prevent you from now issuing me with your final report If you judge that in light of any feedback there are further changes you should make, then please make those changes and then issue the final report to me.”

We carefully reviewed Cllr Barton’s further comments but saw no reason to make anything other than a couple of (minor) changes in response to those comments. We now submit the Final Report with our final conclusions and recommendations to the Monitoring Officer for his consideration and action and for issue of the Final Report to Complainants and Subject Member.

The Waverley Borough Council arrangements ask the Monitoring Officer to consider whether he is satisfied the investigation has been conducted properly and whether to ask the Investigating Officer to reconsider their report. The Monitoring Officer confirmed to us that he was satisfied that the Investigation had been conducted properly.

7 EVIDENCE

7.1 GENERAL OBSERVATIONS

The Investigation has been very challenging. It took much longer to complete than we wished or had anticipated, not least (but not solely, in our view) as a consequence of an unanticipated parallel investigation that was being conducted into the processes that had been followed by Waverley Borough Council prior to the Complaints being submitted for Investigation (see Section 5.3 above).

That investigation, conducted by independent investigator commissioned by the Chief Executive of WBC, was taking place at the same time as part of our Investigation. We understand that the complaints that led to that investigation (about which we know almost nothing) were not upheld and that the matter was closed towards the end of June.

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After we learned that that investigation was taking place we felt it sensible and fair to the Subject Members, with the agreement of the Borough Council, to suspend our information gathering for some weeks pending the outcome of that investigation. Notwithstanding that, we formed the impression that further delay had been caused throughout the Investigation by some of those involved in it.

After we were commissioned to carry out the Investigation, we were supplied with a 372 page briefing pack for review. At the request of the two Subject Members this pack was later broken down into two separate, shorter packs – one for each Subject Member. Cllr Barton's (redacted) pack was 218 pages long and its contents are listed in Appendix 1. The packs were supplemented by many other documents, emails and the like which we came across in the course of the Investigation. We have made reasonable efforts to list our sources in Appendix 1 but do not guarantee that that Appendix is complete.

There is no doubt that emotions have been running, and continue to run, very high in Haslemere. Throughout the Investigation we heard many allegations of wrongdoing made by Complainants against Subject Members and Subject Members against Complainants. When we spoke to them it is fair to say that all parties did what they could to promote their own "case" and emphasise their own credentials whilst at the same time doing their best to denigrate the "case" and credentials of those they saw as their "opponents".

Against this background, we did our best to disregard such "evidence" and not to allow it to colour our judgement, though we had, of necessity, to listen to it and review it. In preparing the Report we have tried to stick rigidly and narrowly to the scope of the Investigation (see Sections 1.2 and 5.3). As a result a great deal of the evidence we reviewed and the testimony we heard has gone unmentioned and unrecorded in the Report because it is outside the scope of the Investigation notwithstanding the efforts of Complainants and Subject Members to broaden the scope.

7.2 NIKKI BARTON DECLARATIONS OF INTEREST

7.2.1 TRAINING SESSION 13th MAY 2019

At our request, Daniel Bainbridge, Borough Solicitor and Deputy Monitoring Officer, Waverley Borough Council, shared with us an MS Powerpoint pack entitled "Town and Parish Council Standards Workshop". The pack was intended to serve as an introduction to the Code of Conduct for new councillors and a refresher for others.

Mr Bainbridge told us that he and the Monitoring Officer had held a training session using the pack in the Council Chamber at HTC on 13th May 2019, a few days after the Town Council elections in which Cllr Barton was re-elected. He told us that Cllr Barton was present and "had asked some specific questions about the matter of pecuniary and non-pecuniary interests and planning applications He recalled that the Town Clerk had pre-warned them that this might come up because the question of possible development in Haslemere was already in the air at that time and she thought that questions might be asked about interests. In hindsight it was now clear to [him] that Cllr Barton's questions were about Red Court".

Cllr Barton told us that she did not recall the session and was "impressed that they've remembered I asked a question back in 2019". She repeated that she could not recall the session but said, "I've read the Code and I understand it. I've been a County Councillor don't forget. I've

.... served two terms as a County Councillor I'm totally aware of the principles I don't have any trouble understanding the rules at all. I've read them, I've absorbed them, I understand them".

The slide pack contains five slides about the two categories of interest in the Code of Conduct (Disclosable Pecuniary Interests and Non-Pecuniary Interests). The pack is reflective of the Code and includes the requirement to "register your membership/position of authority in bodies that influence public opinion/policy". There is a further slide about predetermination. One of the five slides talks about "Interests and Participation" – for "non-pecuniary interests that you consider to have sufficient weight so as to undermine your ability to make an open-minded and objective decision" it says "declare, withdraw, no debate, no vote". For "other non-pecuniary interests" it says, "declare, participate, vote". Another of the five slides invites discussion on pecuniary and non-pecuniary interests.

7.2.2 CLLR BARTON DECLARATION OF PECUNIARY AND OTHER INTERESTS

Soon after her re-election, and a couple of days after the training session (the form is dated 15th May 2019), Cllr Barton completed her "Declaration of Pecuniary and Other Interests" form.

Having completed her name and address, under "Employment" she wrote "Surrey County Council" and "KPMG – Jeremy Barton". Under "Land" Cllr Barton declared a beneficial interest in her home (which is adjacent to the Red Court site) and provided the address. Under "Other Interests", in the box headed "Bodies to which I have been appointed or nominated by the Council" she recorded "Haslemere Community Rail Partnership", whilst in the box headed "Bodies exercising functions of a public nature" she wrote "Surrey CC". Thus "Bodies one of whose principal purposes include the influence of public opinion or policy" was struck through with no entry as were all other boxes on the form.

7.2.3 PLANNING & HIGHWAYS MEETING 10th SEPTEMBER 2020

On 10th September 2020, at a Planning & Highways Meeting Cllr Barton read the following statement (which is appended to the minutes of the meeting):

"Mr Chairman, I wish to make a declaration of non-pecuniary interest with respect to item on Scotland Park.

"I have taken advise [sic] and make this declaration following careful thought and pursuant to, first, the purpose of such declarations to maintain public trust in the committee's proper functioning as envisaged by the Council's Code of Conduct and, secondly, my commitment to openness and transparency which has formed the basis for my manifesto when elected as an Independent Town Councillor and County Councillor. I have informed Daniel Bainbridge the Borough Solicitor and Town Clerk of my intentions and have fully read the Local Government guidance.

"I repeat for the benefit of this declaration, matters contained in my register of member's interests published on the Council's website, namely that I hold property and live on Scotland Lane within the proximity of the relevant site, that I am a member of the Haslemere Society, that I am a member of the Haslemere Vision working group, that I am a member of the Neighbourhood Plan working group of the council, which Plan is referenced in the applicant's Planning Statement, that I am a member of Haslemere South Residents Association and that I am a member of the National

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Trust, which is referenced in the applicant's Planning Statement as owning land in the proximity of the site.

"In my deliberation as to whether or not my objectivity or independence could be impaired as a result of these declared interest, I have considered the facts, that over the course of the past two years, I had to reflect on whether or not I have had to declare any interest whenever there has been a discussion or vote with respect to either the Neighbourhood Plan or the applicant's promotion of their site in the context of LPP2. The nature of each discussion has been different and the nature of my interests and their relevance has changed over time. Therefore, my deliberations in respect of this meeting's agenda are specific to this point in time and to this meeting.

"As I stated, I can confirm that I shall come to this item ready to listen with an open mind to all the representations made as well as to the views of my fellow councillors, before forming a view, for the purposes of this meeting's function (namely as a consultee rather than a planning authority), with respect to the application under consideration."

The minutes of the same meeting include a discussion of the planning application for development of the Scotland Lane site. That minute is around a page long and the discussion is minuted as "lengthy". In a recorded vote the Council voted against the application by six votes to five. Cllr Barton voted against the proposal. In a counter proposal of objecting to the application six councillors voted in favour (including Cllr Barton), three against, with two abstentions.

On 10th September 2020 Cllr Barton amended her "Declaration of Pecuniary and Other Interests" form. To the entry in the box entitled "Bodies to which I have been appointed or nominated by the Council" she added "*Neighbourhood Plan Working Group*". She put a number of entries into the previously blank box entitled "Bodies directed to charitable purposes" so that it read, "*Royal Horticultural Society, National Trust, Surrey Wildlife Trust, Royal Society of Arts, Haslemere Society, Haslemere South Residents Association, spouse -Trustee and Director - Haslewey*". In the box entitled "Bodies one of whose principal purposes include the influence of public opinion or policy" she wrote "*See above as applicable*". Each of the changes was initialled "NB" and dated "10/09/20"

Then, on 18th September, Cllr Barton moved the "*Haslemere South Residents Association*" entry to the box entitled, "Bodies one of whose principal purposes include the influence of public opinion or policy" and initialled "NB" and dated "18/9/20" the change.

7.3 HASLEMERE SOUTH RESIDENTS ASSOCIATION

Our research on Haslemere South Residents Association (HSRA) (some of it from the HSRA website and the HSRA Facebook page and Twitter account) includes what follows.

7.3.1 HSRA WEBSITE

At time of writing the HSRA "Home" page contains an article entitled "Waverley rejects Red Court planning application! (20 July 2021)" and shows a clickable image of the letter of refusal. There are several earlier postings that mention the progress of LPP2 and the planning application for the proposed Red Court development and Redwood (South West) Ltd.

The "About Us" webpage begins, "We are the Haslemere South Residents Association (HSRA). You are welcome to join us for FREE and show your support. We formed the association in June 2018

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when a developer and Waverley Borough Council first suggested building on the green meadows and woodland behind Scotland Lane. We now have hundreds of local members who are fighting to save our beautiful countryside under threat from unsustainable mass development”.

The remainder of the “About Us” page appears to us to be focused on the Red Court development which is called “a proposed unsustainable development” with “50 acres of wooded wildlife-rich green meadows which serve as the bio-diverse habitat for multiple protected species targeted as a potential site for development”. It describes the potential loss of 125 acres as “an irreplaceable loss [b]eautiful green rural Haslemere will suddenly become a character-less urban sprawl”. The page ends with “[t]he special rural character of a community must be preserved – our community.”

The “Donations & Support” webpage begins with the same paragraph as the “About Us” page. It appeals for donations saying, “HSRA are encouraging residents to help halt the blight we can expect if we do not prevent the development in Haslemere South - formally Red Court - through legal challenges. All the challenges we make cost time, a lot of time and a good deal of money. Our HSRA team work tirelessly and voluntarily, without overheads. All donations and funding go exclusively into our legal battle. We have to challenge everything because the planning system is weighted in favour of developers and the local government”.

The single “Green Wash” webpage contains four pieces from the Haslemere Herald all of which are about Redwood (South West) Ltd and the proposed Red Court development.

The single “Gallery Page” contains a number of photographs and begins, “All the wildlife, AONB Landscape within the immediate area of Red Court – mainly neighbouring gardens or on the AONB/AGLV itself”. It says, “HSRA will be ensuring every action possible is included in our objections. NPPF June 19 – Policy #170 (d)”.

The “Contact” page invites residents to join up for free and offers a form for download called “Save Scotland Lane Form” which is then to be emailed to HSRA (an email address is provided). The form itself contains the following text “Please tick this box to indicate that you are happy for us to hold the above data only for the purposes of campaigning against the inclusion of Red Court in the Development Plan, and any subsequent Planning application. We will not share your information with anyone else as stipulated in GDPR.”

The page named “Details on N. Plan” does not appear to have been updated since an article entitled “the Settlement Boundary (Passed by HTC Nov 28th 2109 (sic))” was published. It reads:

“Great news for all the residents of Haslemere as the rural land around us should now have the additional protection it deserves. This is not a definitive block on development, but the first step to contain Haslemere and prevent urban sprawl. We have more work to do, but with a formal boundary now defined, planning permission for much large developments will be harder to obtain.

“Last Thursday (28th), Haslemere Town Council voted by a large majority to keep the Settlement Boundary where it was originally mapped in the Neighbourhood Plan by Haslemere Vision and where 65% of the community wanted it plus 89% did not want large scale development outside the boundary.

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“Earlier in the year, several Councillors voted to redraw the Settlement Boundary specifically encompassing areas outside the current urban line surrounding Haslemere including Red Court and Longdene. This meant our precious AONB, AGLV and green belt were open to developers to plough and concrete the rural areas which make Haslemere so beautiful.

“Cllr Robini (also the Mayor) proposed a motion to formally assign a boundary line encasing the urban area. The motion was to adopt the revised Neighbourhood Plan with a formal Settlement boundary. Our newly elected Councillors, Cllr Barton(Ind), Cllr Ellis (Ind) and Cllr Weldon (Lib) supported the motion. A set of the last Council group who were re-elected decided to act against the community they support and voted against the motion. Many thanks to the large majority of councillors who supported the motion.

“The final statement in the Neighbourhood Plan States:

"Haslemere Town and surrounding Villages do not have a formally recognised settlement boundary, although there is an informal boundary based on the existing built area as almost all other surrounding land has some form of protection (Green Belt, AONB, AGLV, Land owned by the Natural Trust and the Wealden Heath Special Protection Area).

“Therefore to clarify the situation for future planning purposes the plan proposes a formal defined and recognised settlement boundary that maintains and contains the current urban boundary, to protect the character of the town and prevent unrestricted growth into the countryside.”

“Basically this will make planning of development outside this boundary very difficult. Red Court is naturally part of this protected area. The document will now be passed over for public consultation. This will hopefully be a quick process as the 7 years taken to prepare this plan must now be brought to a final conclusion. This will be adopted into the Local Plan supported by Waverley B.C.”

7.3.2 OTHER DOCUMENTS

A number of documents about HSRA were shared with us as the Investigation progressed. We strove, in particular, to obtain copies of minutes of later HSRA Meetings but were unsuccessful.

The **Minutes of the HSRA Meeting on 22nd October 2018** record that amongst the key points presented by Howard Brown (Technical & Council liaison) is, “We are objecting to Waverley Borough Council about the inclusion of DS15 (Red Court) in the Local Plan (LPP2).” He goes on to say, “The Map (see Appendix [a photographic map of the Red Court site is attached as an Appendix]): Boundaries and land allocation are shown on the map with the current houses (50off) now labelled in the local plan as DS15 (formally DS18). The area of concern is the FULL Red Court land area to the west of the house and south of Scotlands Close. Marked in Red on the Map - This is an expected 250 dwellings from the lodge in Scotlands Lane.”

Gregory Rood (Call to Actions) is minuted as saying, “The HSRA needs help to fulfil its campaign objective: to protect the woodland and wild meadows of the Red Court site which we want to protect to maintain the quality of life and wellbeing of our community and for the biodiversity of Haslemere. Our community is abundant with talented and highly skilled people: we need to make the most of this resource in our fight to stop the construction of a housing estate on Red Court land.”

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The **Minutes of the HSRA Meeting on 15th November 2018** held at the Georgian Hotel, Haslemere, indicate that Jeremy Barton (Cllr Barton's husband) opened the meeting. Cllr Barton herself (unlike three other councillors who attended) declared a pecuniary interest.

Stewart Brown (Chair of Haslemere Vision) and Peter Hampson are minuted as having made comments about Red Court and there were several other references to DS15 and Red Court. The HSRA Chair, Jeremy Barton, is minuted as saying, "[t]he best opportunity to avoid development at red Court is through its exclusion from LPP2 as a development site. It will be a bigger challenge to successfully stop development through the planning permission process if DS15 is approved."

What was presented to us as an **HSRA Announcement apparently dated 2nd December 2018** signed by Acting Chair Howard Brown says that HSRA "now has a constitution and has a formal committee which will focus all the local attention to the 70 acres of land adjacent to Red Court to prevent planning on AGLV and/or AONB land.

A further **HSRA Announcement dated 12th December 2018** and signed by the HSRA Committee is headed "RE: Fighting the destruction and proposed planning on AGLV & AONB green spaces on the hills by Red Court, South Haslemere". It appears to be an appeal for funding.

The **Minutes of the HSRA Meeting on 29th December 2018** refer to Redwood, Scotlands Close, Scotlands Lane, DS15, and the upcoming election on 2nd May 2019 "when the current councillors could be ousted who do not support the protection of Haslemere's culture; biodiversity; green spaces (AGLV or AONB) and do not support local public opinion. With a few more members we should have enough voters to change the council dominance which will influence LPP2. Independent (preferable) or Conservative nominees are required who live more than 300m from the proposed site (The Mayor stated this at the last meeting)". One of the "Actions" is recorded as, "A unanimous agreement was to write to all councillors stating that HSRA are running a public domain poll on their views on DS15 and the whole AONB status site. This would have the caveat that non-responses are treated as straight forward support and highlighted as such. This would be used as part of the pre-election canvassing material. The legal status of this need to be checked before any action taken".

Another **HSRA Announcement dated January 2019** – a further appeal for funding – says "2019 promises to be quite a year in regards to the proposed development at Red Court Scotland Lane. This year we must fight hard if we are to stop the development of 200 + houses on such beautiful and wildlife important land".

An **email sent by Brian Cox dated 4th December 2018** references a stand which HSRA appear to have had at the Haslemere Christmas Fair under their "Save Scotland Lane" campaign" (Mr Cox's words).

7.4 BRIAN COX AND JASON LEETE

When we spoke to Brian Cox (BC), who was accompanied when we spoke to him by Jason Leete (JL), the relevant parts of what was said to us are set out below.

It is useful for the reader to be aware, as we were as a result of desktop research we carried out before we agreed to speak to JL, that he had formerly been a director of Redwood (South West) Limited, having resigned on 15th June 2018. We nevertheless asked him to confirm it when we

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spoke to him. When we spoke he told us that, following his resignation, “Redwood had retained him ... to provide local knowledge and professional advice to the project”.

We therefore knew before we agreed to speak to him that he had previously been a board member of Redwood (South West Limited), the development company on whose behalf Clarke Willmott solicitors had written a letter of complaint to the Monitoring Officer (see Section 5.2 above). We were also aware before we spoke to JL that he is a partner in an estate agency with offices in Grayshott, which is four miles from Haslemere.

JL said, “The meeting on 28th November 2019 related, as far as Redwood were concerned, to a fundamental change to the Neighbourhood Plan – the redrawing of the Settlement Boundary. This was the first time that Redwood established that there “had been an event that was against their interests”. “Subsequent enquiries had established that the two councillors were members of the Working Party that had informed that meeting though that had only come to light more recently”.

JL said that, “[a]s far as he understood the two councillors had not declared their membership of Haslemere South Residents Association (HSRA) before the Town Council meeting on 28th November 2019. At the 10th September 2020 meeting they had finally declared their membership of HSRA having previously remained silent on that.

BC said that he understood that HSRA had been set up in 2018. One of its main objectives was to object to the development at Red Court. NB’s husband [Jeremy Barton] is Chair of HSRA and both he and NB were founder members of HSRA.”

BC continued and said that there was a second group, Scotlands Close Residents Association (SCRA). Scotlands Close contains properties which are direct neighbours of Red Court/Scotland Park. He quoted from the minutes of the Scotlands Close Residents Association from the AGM of 31st January 2020 At Item 10 of those minutes Red Court was discussed. The minute reads “As stated above no application has been made to planning. Settlement boundary. Haslemere Town Council have reversed the previous town council's decision to support a change in the settlement boundary. ██████ and Nicky [sic] were thanked in their absence for their hard work on this matter. This decision will make it harder for Red Court to get planning permission”. Brian Cox then said he, “did not know whether NB was a member of SCRA but he had “no doubt that she attended meetings and advised””.

[When reviewing the Draft Report Cllr Barton said, “This evidence is pure speculation and is not grounded on any fact whatsoever; the simple facts are that I have never attended a single meeting of SCRA nor advised SCRA. And the fact that I am referred to by my first name is because I am known by residents in the town by my first name].

JL then referred to Haslemere Vision and the Neighbourhood Plan Working Party, which were distinct organisations. Haslemere Vision (HV) “was a body independent of the Town Council who set themselves up in 2014 or 2015 to take on the early work of formulating the Neighbourhood Plan”. They were charged with deciding what the NP should consider when it was in its early embryonic stages and come back to the Town Council with its ideas. They undertook various public consultation exercises as part of that. JL was not sure how they had reported to the Town Council but that was all history, he said. In its original guise there were town councillors who were members of Haslemere Vision as well as residents from around the town.

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In early 2019, JL said, HV handed over what was then the final version of the NP to the previous administration of the Town Council. The Council then approved/adopted that version of the NP for public consultation. It had been stated in the minutes of a HV meeting at the Georgian Hotel on 6th May 2019 that they had handed the NP over to the previous administration. At that point, the settlement boundary within the NP had contained the Red Court Estate; it reflected and supported the emerging Waverley Borough Council's LPP2 and endorsed the inclusion of Red Court within the settlement boundary. Thereafter HV would only be dealing with other projects. JL said, "The NP was then very much the Town Council's baby".

In May 2019 there was a change in the administration of the Town Council. There was then a "blurring at the edges" of what Haslemere Vision became. It was clear that things changed in the summer after the May 2019 election but they only became aware of that when the agenda of the 28th November 2019 meeting was published. It was then that they became aware of potential prejudice to Redwood's interests.

BC said that he had subsequently obtained meeting notes of the Town Council's Neighbourhood Plan Working Party. From around June 2019 onwards that working party had started to have meetings about how the NP would move forward for public consultation. After the election Mayor Robini had appointed both councillors onto the Working Party and in the meeting notes of the 3rd June meeting it is recorded that Cllrs Barton and [REDACTED] were present.

JL said that not only had the two councillors voted at the 28th November meeting but had also guided the policy that was decided upon that evening. Asked how he knew that, JL referred to the various meeting notes of the Working Party and suggested MK should review them. He should look in particular at the minutes of 30th October 2019 where the Working Party established that there were fundamental issues with the NP to include the settlement boundary map; 1st July 2020, which obviously post-dates the November 28th Town Council meeting but provides context, the minutes record that Cllr ...Barton was elected onto the Housing Team (which was to analyse all the feedback from the public on housing comments), one amongst various teams that were put together to analyse comments arising out of the public consultation process into the Town Council's NP. [Cllr Barton and the other councillor] took charge of reviewing the comments and formulating the ongoing policy.

In [JL's] opinion, a lay person armed with all the facts could not conclude that the two councillors had not influenced the item that was put before the Town Council on 28th November and were not prejudiced, as immediate neighbours. On what basis were they able to vote on the matter? Redwood had not been represented at that meeting and neither BC nor JL had attended. It had not been on their radar as a substantive issue at the time.

MK asked, "What's in it for Cllrs Barton and [REDACTED] to object to the development?". JL replied that the clear and obvious proximity of their own properties to the Red Court site was the clearest prejudice they might have. He saw them as "nimby's" and thought that was their prime concern. There may also be a degree of wanting to support their neighbours who are themselves "nimby's".

Asked whether the value of their properties might be affected by the development, BC said that there was certainly some concern. He had been told that by a member of HSRA with whom he had walked the site alongside the Interim Chair, Howard Brown, who had said the same thing but had nevertheless set himself up as a champion of the environment. Their issue was diminution

of property values. He had a witness to that. They had no concern, for example, about the community benefits, he said.

JL said that their motivations were clear from the personal letters of objection that the two councillors had submitted on the Regulation 18 Part 2 Local Plan in July 2018. NB (then a councillor but writing as a resident) had said that it impacted on her enjoyment of the visual amenity she enjoys as a resident of Scotland Lane and as a user of the South Downs National Park which overlooks the site. BC said that he felt that diminution in property values was driving HSRA.

7.5 RICHARD BENSON

When we spoke to Richard Benson the relevant parts of what he said to us are set out below.

RB lives around 200 yards away fromthe Red Court Estate. RB was initially a member of the Haslemere South Residents Association (HSRA) – in June 2018 [when he had attended a meeting to which] 50 people had turned up. It had been proposed that a residents’ association be formed. That was agreed. Cllr Barton had knocked on his door, told him about the proposed development and invited him to the home where she lives with her husband, Jeremy 50 people had turned up. Jeremy Barton (JB) had led the meeting and proposed that a residents’ association be formed. That was agreed.

By November/December there was a formal constitution and things like social media accounts and a website were set up. This was done in a very proper way because [Jeremy Barton] was a stickler for such things by virtue of [a professional concern] for governance and the like. A Committee of HSRA had also been formed with Jeremy Barton as Chairman Around that time JB had to back off as Chairman because he was negotiating with Brian Cox to buy a piece of land between his own property and the Lodge. This was in addition to a strip of land that was leased from the Red Court Estate which the Bartons also wanted to buy. Because of this Howard Brown took over as Interim Chairman after JB recused himself. Eventually the negotiations went nowhere and JB returned as Chairman in late January 2019.

He first met BC in December RB had been passing BC’s home and was invited in. BC offered to walk him round the site He had therefore spent time getting to know him. By contrast the HSRA just appeared to want “war war” rather than “jaw jaw”. RB had tried to act as go-between between BC and Howard Brown and, the Chair, Jeremy Barton.

[HSRA’s] approach was becoming “toxic” In around February 2019 RB therefore decided to step away from HSRA and they also stopped sending him anything and RB was blocked from social media accounts. RB simply wanted an honest assessment of the proposed development.

NB was a founder member of Haslemere Vision which was incorporated in early 2013. HV was independent of the Council. It was the official group responsible at that time for preparing the Neighbourhood Plan – they did surveys, developed policies produced a report. HV was made up of a number of councillors as well as local residents. There was an interplay between the Council and HV as the plan developed. HV had a number of sub-groups looking at different parts of the NP.

HV produced the first version of the NP in 2016 and then continued working on it. They passed their final draft NP to the Town Council who approved the draft at a meeting on 2nd March 2019,

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shortly before the May elections. At that point Red Court was within the settlement boundary. The NP was then put forward to the next stage of the process which involved public consultation.

So, the Town Council now “owned” and approved the NP. After the election the Council created an NP Working Party and three members of HV were invited to join the NP Working Party. HV now turned their attention to two other projects acting as a resource and to act as a consultant to the Town Council. The Town Council’s NP Working Party were required to deliver the next stage of the NP.

[After the] May election Nikki Barton and Cllrs Ellis, Weldon and Odell became the NP Working Party in conjunction with people put forward by HV. In RB’s opinion this presented an opportunity for ■ and NB to reverse what had been agreed, something he believed they were desperate to do. They went ahead and did that and changed various policies. The most important policy change involved the settlement boundary which had previously included the Red Court site.

On the night before the key meeting of the Town Council on 28th November 2019 there was a meeting of Haslemere Vision that considered considerable changes to the draft NP following a “new eyes” review of the NP. A major change was the redrawing of the settlement boundary to, it was claimed, properly reflect the housing consultation. Terry Weldon was to propose the changes at the 28th November meeting.

MK then asked RB what more he knew about the Haslemere South Residents Association RB replied that “NB and her husband initiated the founding of HRSA”. The Bartons had encouraged members of what was still an informal group to put in an objection to the inclusion of Red Court in the Waverley Local Plan Part 2 (LPP2) and Development Plan DS18: (July 2018 Public Consultation) and had said they had people who could help them frame an objection –“they are very well-organised”, said RB. NB and ■ had put in personal objections on 9th and ■ July respectively. This was when NB was a sitting Town Councillor The informal group had gone dormant in the summer and then sprung up again in September when people started to question what was happening.

On 22nd October 2018, the HSRA minutes of a meeting at the Georgian Hotel record that Jeremy Barton was Chair The minutes record that there were 72 attendees. The minutes record [a member of the committee] saying, “The HSRA has worked through all the relevant policy documents associated with the local LPP2 plan and developed a new comprehensive objection document to put before Waverley planning. As the situation is changing this will be continually edited until the last minute. We will be keeping HSRA members updated and provide a clear guideline for making their objections known to Waverley and Haslemere councillors and our local MP Jeremy Hunt in near future, with the aim of getting DS15 (formerly DS18) taken off the LPP2 altogether. HSRA members are reminded that Haslemere town councillors are up for re-election on 2nd May”.

So, RB suggested, “part of the game of the HSRA was let’s change the councillors”. RB said that this was “beautifully aligned”: take over the Council and the HSRA and HV and get what they’ve always wanted RB said that the Register of Interests for NB after the May 2019 election did not mention HSRA. RB also said that one set of minutes also spelt out (but not in so many words) that the value of members’ houses would go down if the Red Court development went through.

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RB continued. On 15th November 2018 there was a meeting of HSRA at the Georgian Hotel. The minutes of that meeting read, “Jeremy Barton, Chair of the HSRA, is on record as saying the best opportunity to avoid development at Red Court is through its exclusion from LPP2 as a development site”. The whole purpose of the HSRA was to stop development.

HSRA are very organised. Their campaign is very sophisticated and they have access to professional advice. They are well-connected at the “Haslemere Herald”. NB features regularly in the Haslemere Herald.

[When commenting on the Draft Report Cllr Barton observed, in more general terms, that there is an imbalance in the Report “in your references to column-inches in the Haslemere Herald attributed to HSRA, while ignoring the column-inches in the same newspaper authored by the complainants leading the reader to believe that the Herald has only ever put forward the HSRA view”. We are content to record that comment in the Report.]

RB also spoke about the Scotlands Close Residents Association (SCRA). It represents an area which has around 60 houses built in the 1950s and 1960s on Scotlands Close and Chiltern Close. It was built on a field that was once part of the Red Court estate. It predates HSRA [T]he Chairman of the SCRA [is] also a trustee of Haslemere Society (and is, of course, General Secretary of the HSRA). As an aside, the Haslemere Society had put in an objection to the planning application that was considered on 10th September 2020. NB had revised her Declaration of Interests on 10th September to include her membership of the HSRA and of the Haslemere Society.

SCRA is a standard residents association – the usual things, dog mess, lorry traffic etc.. However, when the Red Court development was mooted, references started to appear on the minutes of the SCRA.

7.6 LISA O’SULLIVAN, TOWN CLERK

7.6.1 OUR CONVERSATION WITH LISA O’SULLIVAN

When we spoke to Lisa O’Sullivan, Haslemere Town Clerk, the relevant parts of what she said to us are set out below.

The Town Council is the statutory body for preparing the Neighbourhood Plan. Nine years ago when it first began it was felt that the Neighbourhood Plan should not be prepared in-house but that there should be community involvement.

As a result Haslemere Vision was formed. That organisation is separate from the Town Council but has Town Councillors sitting on the different groups that made it up. It has its own secretariat. Haslemere Vision was tasked with preparing the draft Neighbourhood Plan and bringing it back to the Town Council. Essentially Haslemere Vision did the “legwork” – community events, data analysis and the like.

Haslemere Vision prepared a draft plan which was then knocked into shape over a period of around three years by the Neighbourhood Plan Working Party, which is distinct from Haslemere Vision, though the two groups share some of the same members. The Neighbourhood Plan Working Party is internal to the Town Council. Its membership is partly Town Councillors and partly individuals from Haslemere Vision. Its objective was to bring the final draft of the Neighbourhood Plan to Council. Cllr Barton had been elected in a by-election two years before that and had joined the Neighbourhood Plan Working Party after her election though LO was not sure when that was. The minutes of 27th November 2019 Steering Group Meeting, the last

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minutes on the Council website, show Cllr Barton as present and record that she was a member of the combined working party that was advising HTC and was representing the Council in that role.

LO knew that Haslemere South Residents Association were very active and were vocal in their opposition to development at Red Court/Scotland Lane. Representatives of HSRA had been to various Council and Planning Meetings. They had voiced their opposition to various planning matters and in particular to the setting of the boundary in the Neighbourhood Plan in relation to Red Court.

LO said that the Monitoring Officer at Waverley Borough Council was the official keeper of the Registers of Interest and Town Councillors were required to submit their Declarations of Interest to him. It was the responsibility of councillors to do this and not the Clerk. Councillors “owned” the documents. Clearly they retained a copy at HTC and the latest versions were to be found on the Town Council website.

If a councillor wished to make a change to their Declaration of Interests during their term of office they would amend the document. LO would then send it to the Monitoring Officer and arrange for it to be posted on the Town Council website.

MK asked whether LO recalled an email she had sent to the Monitoring Officer on 18th September 2020. She had attached amended Declarations of Interests for both Cllr [REDACTED] and Cllr Barton. LO did not know why the councillors had changed the documents at that time. The decision to make changes was entirely theirs.

MK then referred to statements that had been made by each of the councillors at a Planning Meeting on 10th September. LO suspected that they had made these statements having not made similar statements at the 28th November 2019 Town Council Meeting so that they could clarify their positions.

LO had written to the two councillors twice before meetings suggesting that they needed to consider whether they should be declaring non-pecuniary interests under the Members Code of Conduct. The first was on November 14th 2019, and she resent the email in early September 2020.

Both felt that there was nothing that would make them want to withdraw from the meetings. However, they had nevertheless declared that they had a non-pecuniary interest before the 10th September meeting. LO understood that both councillors had taken legal advice at some point in 2020 but she did not know what that advice said and they had not discussed it with her. LO said that she would send MK copies of the emails and any responses she had received [MK: LO later did that].

LO said that neither councillor had approached her for advice about whether they should declare an interest prior to the meeting on 28th of November 2019. She did not recall speaking to either of them about it prior to the meeting either. It was the individual councillor’s decision whether they declared an interest or not.

MK asked LO what had made her write to them. She replied that she had been doing a background paper for the Mayor, John Robini, because he knew that the Neighbourhood Plan was likely to be a contentious matter at the meeting and he wanted more information. He had only recently been

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re-elected to the Council and needed to get up to speed and be in full possession of the facts. However, LO had not discussed the matter of declarations of interest with the Mayor.

Whilst she was doing this something had triggered the thought that she had a duty as Clerk to remind them that they ought to consider whether they should declare an interest. That was why she had sent the emails. She knew they had spoken to the Monitoring Officer and to Daniel Bainbridge, but it had been their decision not to declare an interest. She felt she had done the right thing in sending the emails.

MK asked LO to say a little more about the emails and her interactions with the two councillors. LO replied that, as previously mentioned, she had written to them both because she wanted to be sure that she had reminded them to consider carefully whether they needed to declare an interest. Councillors always needed to reflect on what the reasonable person in the street might think about their participation in an item at a Council meeting. She felt it was the right thing for her to do as Town Clerk.

MK asked whether, if they had decided that they needed to declare an interest, that would have affected what they could do or say at the meeting. LO replied that, in general, if a councillor declared an interest on an item, it did not prevent them from making a statement as a member of the public and thus they could say what they wanted to say on the matter during Public Speaking. That had happened in the past and was perfectly legitimate. But declaring an interest meant that a member did not get to have a say during a discussion on whatever the item was and, of course, they could not vote on that item. In fact they had to withdraw from the meeting whilst the item was under discussion.

LO confirmed that the councillors had voted at the meeting. They had voted on a version of the Neighbourhood Plan that would go forward for inclusion in the broader LPP2 plan though a key part had changed since the earlier version in that the settlement boundary now excluded the Red Court site which had previously been within the settlement boundary. HTC was not the decision-maker here, WBC is the decision-maker. There were further steps to go through, including a referendum, and it was not the case that HTC made a final decision on the matter.

LO then consulted the minutes of the meeting. She confirmed that there had been no declarations of interest. The Mayor had proposed that the revised version of the Neighbourhood Plan should go forward to public consultation and that was seconded by Cllr Barton. There had then been a counter-proposal that the original Plan should go forward. There had then been a lot of debate but that was not recorded in the minutes because they did not prepare verbatim minutes. The vote had not been a recorded vote but she had a vague recollection from 18 months before that there had been a significant majority in support of the proposal to put the revised Plan forward”.

After we spoke to the Town Clerk we sought further evidence on the voting at the meeting. The HSRA website confirms that “Haslemere Town Council voted by a large majority to keep the Settlement Boundary where it was originally mapped in the Neighbourhood Plan by Haslemere Vision.” The HSRA Twitter account says “Success” “Settlement boundary votes by HTC to remain where it should be, not an imaginary line through some AONB fields” later, saying “An email will be sent to HSRA members”. It retweets Cllr Terry Weldon’s tweet saying, “At last week’s TC meeting we agreed to amend the proposed neighbourhood plan to exclude AONB land from

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settlement boundary. Strongly supported by all L[ib] D[em], Green and Ind cllrs, but initially opposed by 5 out of 7 conservatives”.

7.6.2 ROBIN TAYLOR CONVERSATION WITH LISA O’SULLIVAN

When Mr Taylor spoke to Ms O’Sullivan she told him the following:

“Neither councillor had approached her for advice on whether to declare an interest at the Town Council’s meeting on 28th November 2019 but she had raised the issue with them. Both were clear that they had no interest to declare.”

“[She] was aware that both were or had been members of the [HSRA] and that they published statements on the [HSRA] website regarding the draft Neighbourhood Plan which had since been taken down”.

“[She] confirmed that no other complaints had been received about this issue although there had been a lot of “muttering” in the town. The draft Neighbourhood Plan was a really controversial issue”.

“[S]he stated that she believed that both councillors had a case to answer regarding their failure to declare a non-pecuniary interest”.

[When commenting on the Draft Report Cllr Barton wrote, “It is inappropriate and prejudicial for the Investigating Officer to have taken account of the Town Clerk’s view as to whether the Subject Member had a “case to answer”. This statement is not relevant or admissible because it is precisely the Investigating Officer’s role to determine that question and not the Town Clerk’s role”. Whilst we disagree with that we are content, in the interests of fairness and balance, to include that comment here.]

7.7 PIPPA AUGER, DEPUTY TOWN CLERK

When we spoke to Pippa Auger, Haslemere Deputy Town Clerk, the relevant parts of what she said to us are set out below.

PA provides support to the Neighbourhood Plan Working Party. She came into this around the end of 2017 or early 2018. The Neighbourhood Plan (NP) itself had been around since perhaps 2013 and a Neighbourhood Plan Working Party (WP) was constituted in November 2015 [see minutes]. PA agreed to send MK minutes pertaining to the WP and related meetings [which she subsequently did]. The WP was not a decision-making body, of course.

As she understood it Haslemere Vision (HV) was set up by a group of residents who thought that putting a Neighbourhood Plan together would be a good idea. HV had been external to the Town Council but, at some point (though PA did not know when), the Town Council thought it should be involved in the process. However, they relied on HV to do the real leg work because HV had the volunteers and time to do it.

In late 2017, early 2018 the situation was that, after HV had reached a particular point in the development of the NP, representatives would meet with a couple of Town Councillors (at that time Cllrs Piper and Odell), who would report progress to the Town Council. At that point, the whole plan had been discussed, though there were a few issues. A big outstanding question was whether the Town Council would do its own site allocations or whether they would be done by the Borough Council. PA would need to consult her notes but, at some point, it went from HTC doing the site allocations to WBC doing them. She recalled general discussions about whether

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they would allocate land in an AONB or not (not necessarily Red Court). She recalled discussions about wording a policy that would say that this might be done as a last resort.

They then reached a point where the NP was ready to go to the Regulation 14 consultation. They started to consider how they might promote the consultation in 2019. However, “the elections at the beginning of May rather changed the dynamic of the Town Council”. Cllr Piper was not re-elected, though Cllr Odell was, and remained on the Working Party. Other new and existing councillors said they wanted to be on the WP.

By 3rd June 2019 Cllr Barton, Cllr Ellis (newly elected) and Cllr Weldon (newly elected) were members of the WP. That would have been preceded by other meetings at which membership of the WP was discussed – the minutes would show that. Before this date, the NP that had been handed over by HV to HTC had included the Red Court site within the settlement boundary Cllr Terry Weldon was quite vocal about the fact that he did not really like the NP. He felt that more should be done to exclude AONB and tighten the settlement boundary. He does not live near the Red Court site.

In June 2019, the WP was starting to sort out the next steps in relation to the Regulation 14 consultation. That consultation was about taking the NP to the local residents with the Town Council in effect saying this is what they want to happen having listened to what you the residents have told us. This involved advertising and promotion of the NP as it stood. PA recalled that the matter of site allocations delayed the Regulation 14 consultation in that a formal document was needed from WBC confirming that they would be doing the site allocations and not HTC. Cllr Weldon expressed doubt about the settlement boundary that was in the NP at that time. He also had concerns about the wording of the NP. However, he did nothing about it at that time.

By October 2019 WBC had provided the necessary document confirming that they (rather than HTC) were doing the site allocations. This therefore allowed the Council to present the NP to the public. Someone on the WP then suggested a “minor amendment” to one of the policies. Once again Cllr Weldon expressed his dissatisfaction with the NP and it was agreed that would circulate his suggestions by email by 24th October 2019. Any substantial changes would be reviewed by Cllr Odell, as Chair of the WP, and she would discuss with the Town Clerk whether the NP needed to go to Full Council in the light of any changes that were suggested. It was Cllr Weldon who made the amendments to the NP at the Working Party stage.

At the meeting on 30th October there was further discussion about promotion of the Regulation 14 consultation. There was disagreement about the settlement boundary map at that meeting, so everything then stopped once more. PA recalled that Cllr Weldon had expressed doubt and been quite strident about it but her notes did not indicate whether others had expressed doubts.

It was agreed at that meeting that Cllrs Weldon and Ellis would meet with representatives of HV to discuss suggested textual amendments and that a representative of HV would speak to WBC about inclusion of a revised settlement boundary in the NP. The objective was to have the revised wording and the matter of the settlement boundary ready for discussion at the Town Council meeting on 28th November 2019 since the changes were such that it needed to be voted on by Full Council.

The launch of the consultation was to be postponed pending resolution of the boundary issue. PA recalled that, even though a majority of the WP felt this way, Cllr Odell was not happy about

this proposed change because she had previously been involved in the preparation of the NP. At that time, the WP consisted of Cllrs Odell, Weldon, Ellis and Barton from the Town Council and three representatives of HV.

PA was not involved in any of the business meetings that followed that decision... She had been present on 28th November. She recalled that HV did a brief presentation during Public Participation saying why they thought it was appropriate that the NP be changed. She recalled that, in general, those elected before the May election wanted the NP to remain as it was (Cllr Barton excepted) whilst newly elected councillors wanted to adopt the revised NP with the new settlement boundary. It had not been a recorded vote. The item to amend the NP was proposed by Cllr Robini, the Mayor, and seconded by Cllr Barton. PA agreed to try to locate the Town Clerk's notebook to see whether the split in the vote had been recorded by her at the time. [She later did that and there was no record of how the vote had split.]

PA recalled that, after the May election, Robin Taylor and Daniel Bainbridge came to Haslemere to carry out some training of members. They were going round all the towns and parishes. PA recalled that the Town Clerk had specifically asked them to cover pecuniary and non-pecuniary interest in their presentation to members. "Nobody ever said that anybody living next to Red Court should or shouldn't vote. But Lisa and I were aware that a planning application was going to be coming in and we were aware that this was an issue. Lisa and I spoke about it. Lisa advised [redacted] and Nikki what she thought was the appropriate way for them to deal with this. She had told them they could still have their say even if they declared an interest and did not vote. I felt this was good advice. Dan Bainbridge had said that it would not be considered to be a pecuniary interest."

Asked about the Haslemere South Residents Association, PA said she had met the Chair, Howard Brown, in the course of Council business. She and the then Chair of the Planning Committee had gone to his house because he wanted to show them how close the proposed development at Red Court would be to his property. At that stage there had been no planning application. She did know there had been "a lot of upset for a long time about this".

PA recalled that ...Cllr Barton had later changed [her] Declarations of Interest to reflect [her] membership of the Haslemere South Residents Association. She also recalled [a] written statement that [she] had read out before the Planning Meeting on 10th September 2020 which had considered (and then objected to) the Scotland Lane planning application when [she] had declared a non-pecuniary interest and had stated that [she was a] member of HSRA.

7.8 DANIEL BAINBRIDGE, BOROUGH SOLICITOR AND DEPUTY MONITORING OFFICER

When we spoke to Daniel Bainbridge, Borough Solicitor and Deputy Monitoring Officer, Waverley Borough Council, the relevant parts of what he said to us are set out below.

MK said that he had been told that, after the elections in 2019, DB and RT had gone to Haslemere and other towns and parishes (as is standard following local elections) to train councillors on the Members' Code of Conduct. He asked DB what he recalled about that. DB said that he remembered it clearly. He had delivered a couple of training sessions with RT around that time. He recalled that the Town Clerk, Lisa, had been there and the meeting had been chaired by Cllr David Round with Lisa supporting. They had been in the Council chamber at HTC.

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There were some councillors present who had been on the Town Council prior to the election. Amongst those was Cllr Barton who had asked some specific questions about the matter of pecuniary and non-pecuniary interests and planning applications. He recalled that the Town Clerk had pre-warned them that questions relating to planning applications might come up because the question of possible development in Haslemere was already in the air at that time and she thought that questions might be asked about interests. In hindsight it was now clear to DB that Cllr Barton's questions were about Red Court. That said, DB commented, questions relating to planning applications are common during Monitoring Officer training/briefing sessions. So, it would be wrong to regard questions on planning applications as anything out of the ordinary.

DB had replied as he usually did: "It was for them as councillors to determine whether they had an interest or not"; "Ask yourself whether you own the land and whether there was therefore a pecuniary interest"; "Do you live next door?" "Do you live so close that it might be considered to be prejudicial to their decision-making and that they should therefore withdraw from the meeting?" "Have you given the impression to the public that you oppose the development and nothing will change your mind?" and so on. He seemed to recall that there had been similar questions at another parish they had visited. They had said very much the same thing at other sessions and repeated their advice.

The session had been straightforward and was not contentious. He and RT were always very careful never to say, "Yes, you have definitely got an interest" or "No, you definitely don't have an interest" especially in a training session when specifics were not being discussed. The key point was that it was ultimately for councillors to decide whether they had an interest or not. The Monitoring Officer did not have the power to remove councillors from meetings.

DB told us he had had no verbal or email interaction that he could recall with Cllr Barton between the training session and the arrival of the complaints. He had no recollection of any interaction in respect of the 28th November meeting.

He had, however, had a telephone discussion with her sometime later in 2020 prior to the Planning Committee Meeting on 10th September which had considered the Scotland Road planning application. She had called and left a message, he thought, on 10th September, because the Monitoring Officer was on leave that day. After that she had made [a] prepared statement before the meeting about being [a] member of HSRA but still being able to consider matters at that meeting with an open mind. DB had not kept a note of that conversation which, with hindsight, he should have done; it would have been helpful.

After she called and left her message, DB spoke to Lisa O'Sullivan, who also called him and informed him that Cllr Barton might call him and ask whether she could speak at the Planning Meeting. He had told Lisa that he was happy to give advice. When he spoke to NB [he had told her], "[Y]ou need to make your own decision, here are the factors to take into account, you live next door to the site, public perception, public statements by you etc.". He had been careful to say that his advice was "without prejudice" to the ongoing complaints. He had not, however, said, "Yes, you're fine to sit in the meeting". He went on, "You do tend to say to a councillor when it's ok to sit in a meeting but you tend to avoid saying you shouldn't and instead say you may be well-advised to think about that. I know I played it with a straight bat and said that she needed to consider what I said and "make your own decision for yourself."" He remembered then calling Lisa back and telling her what he had advised Cllr Barton.

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MK asked DB what he considered a “non-pecuniary interest” to be. He replied that, in terms of outside bodies, one would expect a councillor to record their membership of a political party; memberships of outside bodies like being a school or university governor; residents associations (he knew that some councillors had either declared these at meetings or chosen not to go to meetings in the past); some councillors mentioned National Trust membership and might mention it in passing at meetings; directorships (which can fall into the pecuniary list).

DB continued, “Any outside body where there could be any suggestion that you may have an influence in respect of your decision-making. Whether you believe that to be the case or not it is surely better to play safe and to put that in your Register rather than decide not to and then it later cause you a problem because someone says, “Hold on a minute, you didn’t declare that you were a member of x and y” when you have a planning application or whatever in front of you.”

DB continued, “I would not take the “kitchen-sink” approach and suggest that councillors declare everything, but if you are involved in an outside body that involves other residents within your ward or within your Borough, within your council area, then I think it’s pretty probable that you are going to declare that as potentially a non-pecuniary interest because it could cross that line to being so influential that it means that you might need to consider not taking part in an item of business”.

“Living close to or next door to the Red Court site is not *automatically* a non-pecuniary interest and that you should withdraw from the debate on an item as they had discussed at the training session in May 2019. Other factors come into play that you need to think about.”

MK asked DB to say more. He replied, “The property of the person next door is not disclosable on the Register as a non-pecuniary interest. If it were it might mean that I could not as a councillor help that person. However, other factors might come into play – a planning application on the house next door, for example, or planning policy – that mean that not the land itself but rather the situation means that it needs to be declared as in interest. Even if it was not a “non-pecuniary interest” it was a matter of fact and degree and it was disclosable. Can a reasonable person sitting in the chamber in the public gallery regard me as impartial when considering a planning application on the house next door? That seems very unlikely. The advice might therefore be that you would be well-advised to not sit in a meeting when that was being discussed. You would also need to consider rhetoric and what they might have said outside a meeting and how the reasonable person in the street might regard that.”

In some ways the context for that advice, prior to the 2019 elections, was a controversial planning application in a ward in Godalming. “A councillor there came to us and asked what they could do in terms of public statements – because they were quite anti the development but wanted to sit on the Planning Committee as the only member of their party on the Planning Committee and represent their constituency. So we helped them to tread the right line in terms of what they might say publicly to make sure that they weren’t so obviously opposed to it that they couldn’t come to the meeting with an open-mind. And they took that on board and did that really well in public by supporting residents but not saying “over my dead body” and that kind of thing.”

They had given similar advice at the training session. I sympathise with Cllr [REDACTED] and with Cllr Barton because, like the councillor in Godalming, they were elected to oppose development in their ward. And there’s nothing wrong with councillors campaigning for their residents.

“So, it comes back to “What do you want to do? You’ve got to make a choice. Are you going to campaign against this development very strongly and then accept that you may not be able to walk into the Council Chamber for a Council or Planning Committee Meeting? Or are you going to walk a finer line to enable you to do a bit of both? Or are you going to say, “I’m not going to get involved at all in public and I’m just going to sit on the Planning Committee?”. And I think that as Monitoring Officer and Deputy Monitoring Officer we want to find a way for councillors to be able to do both things. And there probably will be situations when you can’t do the things you wanted to do when you were elected. That’s the burden of becoming a politician. A councillor can, of course, be as forceful as they wish to be in Public Participation so long as they don’t then take part in a vote.”

In summary, DB said “I have no concerns about the advice I have given to either councillor at any stage whether that be at the training session, or later on the phone or by email”.

7.9 HASLEMERE SOUTH FACEBOOK PAGE

We looked at the Haslemere South Facebook page. There were many posts opposing the Red Court development. Some mentioned Cllr Barton by name. A single post, referred to below, is typical of the posts that can be found on the Facebook page.

On 22nd May 2019 the Fourth Edition of Haslemere South News is pictured. On page one it reads, “Urgent: A planning application for 180 houses on *your* local AONB land is imminent. Join HSRA to protect this land: www.haslemeresouth.com There is no cost to join; we are a caring community group. We are asking all local residents to attend the Redwood Consultation and leave a comment opposing this development. Details inside.

Page 2 says, under “Who are we?”, “We are *Haslemere South Residents Association* (HSRA). You are welcome to join us and show your support. We formed our association in June 2018 when Waverley Borough Council first suggested building on the land behind Scotland Lane. We now have over 250 members (mostly local Haslemere Residents) and more than 1000 online followers who are fighting to protect the beautiful countryside that’s now under threat from mass development by the developer Redwood.”

Page 3 urges residents to “make their opposition to this development known”. The consultation event at the Lodge (Scotland Lane) is [23rd – 25th May] or at Haslewey 29th – 31st May. A planning application for 180 houses on this AONB land is almost certain to follow without delay”. It then gives details on how to comment on the consultation.

We noted that there appeared to be no posts between July 18th 2019 and August 28th 2020 though there are regular posts before and after those dates.

7.10 CLLR NIKKI BARTON

7.10.1 DISCUSSION WITH CLLR BARTON

When we spoke to Cllr Barton (over the course of two separate discussions) we prepared verbatim transcripts of what she said. Relevant extracts from those are set out below. As already noted in Section 6.2 Cllr Barton did not take the opportunity to review the transcripts or make anything other than one or two comments in passing about them to us prior to the production of the Draft Report.

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During a discussion on the interpretation of “non-pecuniary interest” Cllr Barton said, “I think, from my understanding it’s based on my consideration of my own objectivity in my ability to attend a meeting. When I read my Code of Conduct, that is what it’s about. I examine my conscience, my objectivity, and my ability to attend a meeting clear that I am able to make a decision. A well-informed and unbiased decision and as this meeting was about the whole Neighbourhood Plan, it wasn’t a planning meeting, the whole town voted on the whole plan, all eighteen councillors voted, it was pretty much unanimous, seventeen in favour, one abstention.

“It wasn’t a planning meeting; in any planning meeting I always declare an interest. No other town councillor declared any other interest of any kind at this meeting and there are councillors in that meeting who have declared pecuniary interests in other items in the Neighbourhood Plan.”

Cllr Barton then read out the following. “The targeted way in which the complainants have raised their allegations against me is clear from the simple fact that they complain about a meeting in November 2019 when I voted for the Neighbourhood Plan draft which they do not like and yet they do not complain about a meeting in March 2019 when I voted for an earlier draft of the Neighbourhood Plan which they did like. So I absolutely voted for the Neighbourhood Plan both times. My voting record in the March and November meetings shows I was not allowing any non-pecuniary interest to impact my objectivity and therefore had none to declare in both meetings. I was weighing up and voting for what I believed to be the best decision for the town at that moment in time.

“While talking about the two meetings, let me explain that the Mayor David Round and his wife, Melanie O’Dell, in March 2019 had previously declared an interest at a planning meeting in 2018 relating to specific items impacting allocation of sites for development in Waverley’s Local Plan. I did the same. However, neither the Mayor nor his wife declared any interest at either the March 2019 or November 2019 HTC Neighbourhood Plan meetings when the agenda item was the entirety of the Neighbourhood Plan. Note that it was the Mayor himself who proposed the Neighbourhood Plan at the March meeting, and it was the Mayor’s wife with the same non-declared interest who seconded the motion at the November meeting. Of course, it would seem absurd if all Councillors of a given town had to declare interests at the approval of a town wide Development Plan when all of the Councillors have interests in the town by virtue of living there or being members of Residents’ Associations there. Indeed, in Haslemere all Councillors without exception even have property or property interests within close proximity to the protected green space, that is protected from development under the policies and protection of the draft Neighbourhood Plan. This complaint is not about the complainants’ concern for declaration of interest. This complaint is one weapon in a developer’s fight to build homes where the community doesn’t want them and to make millions in the process”.

She continued, “And finally, let me just comment on my membership of the HSRA. It is the case that I am a member of Haslemere South Residents Association. I note that in an email of 31st October 2020, Mr or Mrs Cox asserts that HRSA is my group It’s manifestly not the case that HRSA is my group. I’m simply one member amongst over 300 now members of the local resident’s association. It’s a not for profit community group and under its constitution any funds on winding up must go to a charity with similar community objectives. HSRA has been active on a number of fronts including COVID community support, social gatherings, addressing local road speeds, commenting on developments in South Haslemere. Specifically, it is not constituted simply to oppose the proposed Red Court development as has been suggested by the complainants.

“It is right and proper that a Town Councillor should be a member of a residents’ association. That’s what it’s constituted for - the benefit of that councillor’s constituents. I note also that some councillors elected to Waverley Borough Council explicitly represent residents’ associations. Indeed, I was elected on the basis that I would establish an association. It was in my manifesto and that was *well* before developers bought Red Court. As you can see in the documents, I am not an officer of HSRA and as a councillor, have recused myself from discussions on planning matters at HSRA members’ meetings. I was democratically elected on a manifesto that clearly stated I’d work to protect the environment. The complainant’s proposed development is viewed by my constituents as having a significant impact on the ecology and landscape of the area and as their Town Councillor, my constituents rightly anticipate I will ensure their views are heard by all who have a locus in the outcome of the Haslemere Neighbourhood Plan and any related planning applications”.

“[My home, Oversted, adjoins the wider Red Court Estate] but the development as Mr Cox pointed out actually in one of his emails sets out that I’m over three hundred metres from the housing development proposed and with the screening, I won’t see any of it. I mean he’s actually trying to use that to persuade me not to object to it so it’s really ... it’s basically along a nice lane quite a long way away from me actually with a lot of vegetation and Brian Cox’s gatehouse between us as well”.

“[Red Court] came onto the market Knight Frank were selling it. It came on in three lots.... It came on as the house, the field which we adjoin and then the larger area of landscape that is some distance from us with a gatehouse and the big house’s drive in between and the Lodge basically. And so we immediately contacted Knight Frank and said if that little lot of that little field is coming up for sale, you know, we expressed an interest in it because it was in three bits and they initially said, “Yes why not?” Then it was withdrawn, and we just didn’t hear any more of it so we just thought well, you know, that was it really. So that was the first I guess we knew change was coming. We didn’t pursue it because there was nothing we could do about it.”

“We actually had the brochure when we went to look round the house and there was clearly a black mark round the field. The estate to the house was sixteen acres and the rest as a development opportunity We didn’t know who the client was. At that point, it was an Estate Agency issue We contacted Knight Frank and we got very favourably at the beginning because I suppose they were keen to sell bits of it. And then they said it had been withdrawn, the whole thing was being bought by somebody, I think. We actually got a mortgage in train once we’d spoken to Knight Frank. We got a bit of a loan lined up following the discussion with Knight Frank and then we were told it wasn’t on the market any more. So we just thought, “Well. It’s a shame but never mind”. That was it basically”.

“And then Brian Cox got involved at that point, we’d never heard of Brian Cox, we’d never met Brian Cox, we didn’t know he existed. It was purely an estate coming up for sale. We saw it on Knight Frank. As I say, I arranged a house visit and yes, and on the strength of looking round and understanding that the field was one lot, we said, could we buy it and we didn’t have nothing to do with Brian Cox at all at that point even didn’t know he existed, knew nothing about Redwood, Red Court, no it was purely an estate agency interaction”.

“HSRA is a not-for-profit community organisation and it was set up, I can’t remember the date when it was set up, and I’m an Independent and I’d been serving at Surrey County Council, and I

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had been part of the Independent and Resident Association Group. And there's a whole load of councillors who have no political allegiance like myself, they're all RAs. Epsom and Ewell and all those sorts of places have been RAs for a long, long time. And in one of my first manifestos, I said that I think that we ought to set up a Residents Association for our area. It's just a really good thing to have as a community group. So its constitution it's for the benefit of the community. The area for example surrounds the local war memorial recreation grounds, so it's supporting keeping that in great shape, it's keeping an eye on traffic speeds, we recently had a meeting with Highways about the speed of traffic on Scotland Lane, it's about the environment, occasionally things go around between the residents about the Neighbourhood Watch so it's not we had an Easter Egg hunt in one of the residents' gardens. I think ...maliciously, particularly Cox is painting it out to be a kind of radical, one issue group and it truly isn't. I mean it's got over 350 members now. It's a residents' association Melvin, it's no more than that!"

NB then confirmed that she had been a founder member of HSRA, "Yes, absolutely". [The first embryonic meeting of HSRA] was held in the garden [of our house] and I think we had nearly a hundred members, I mean a hundred people came to the first meeting [W]e have a garden that slopes away quite a lot [and] when we realised how many people were interested in creating, for the first time ever in this area, a community meeting, when we got so many responses I offered to host but it was a community service to offer the space basically in 2018, sometime". Asked whether she knew that there might be a development when HSRA was formed, she replied that "residents of Scotlands Close got in touch with me absolutely [I was aware]. It was a massive event in our community. [It] was one of many issues we discussed at that meeting. "At times [my husband has been Chair] but he's very inactive, we've basically a general secretary who does most of the work. And I'm not an officer of any kind My husband recused himself from being Chair various times."

Asked about Haslemere Vision, Cllr Barton said, "I was ... a founding member back in 2013 and Haslemere Vision basically is, I don't know if you know about localism but back in the day, the whole idea was that you'd devolve responsibility to a community to develop a Neighbourhood Plan which would ideally, in the best case consult widely and repeatedly, your community to see really, in essence where the future development goes in a town but also it can look at other priorities for the town in terms of environment, transport, all those sorts of things. And so I was part of a group that was set up, we thought it was a great idea for Haslemere, Haslemere needed its plan. Farnham was developing its plan, Milford, Whitley, Cranleigh, you know, all the other communities in Waverley were and it's been eight years in the making and finally it had a consultation. It had two or three consultations, it's been run incredibly professionally under the stewardship of Stuart Brown. If you look on the Haslemere Vision website, every meeting is minuted, every discussion is minuted it is a really, really fantastically well-run ship and there we go, that's what Haslemere Vision is. It's about developing the Neighbourhood Plan and it should be coming to final referendum. It's at the moment having its Regulation 16 Assessment by the Inspector at Waverley and then it will come back to the town for a final community yea or nay vote basically, and you just need over fifty percent for it to come into force."

Soon after the beginning of our second conversation with Cllr Barton and after a discussion about what was meant by "non-pecuniary interest", she said, "This meeting [the meeting on 28th November 2019] was not a planning meetingIt was a meeting about the Neighbourhood Plan.

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She continued, “I do think that’s a really important distinction to keep bearing in mind. I do feel the investigation is almost being carried out as if it was the Red Court Planning Application had come to committee and in fact, the fact is it was a Neighbourhood Plan meeting on a whole plan and actually the Neighbourhood Plan, I just wanted to sort of clarify with you having been on the working party the Haslemere Town Council delegated its powers to allocate housing sites to Waverley in fact. So, this Neighbourhood Plan didn’t even include sites in fact which even further in fact undermines any accusation of proximity because actually they didn’t have the power. Waverley has the power to do that.

“So, again, yet again, I’m feeling slightly..... yes there’s a kind of skewing of what this meeting was. It was actually a Neighbourhood Plan meeting with no discussion of any particular sites. I would just like to reiterate, because I really want this on the record, that I have voted twice on the Neighbourhood Plan. Once in March where the Settlement Boundary did include Red Court and I voted for it. Despite knowing that my residents and the town were against it, but I support the Neighbourhood Plan so I voted for something because objectively I support the Neighbourhood Plan principle, I was a founding member of the Neighbourhood Plan so I supported it then and I then I supported it again in November.

“Now my complainants don’t like the fact that the second time I voted for it, it had changed in its nature but I voted for it the first time and the second time. So to me it’s completely a scandal actually that they can pin this upon me. Actually, they can’t have it both ways, they can’t have their cake and eat it. If I voted against it the first time and then for the second time or vice versa, then maybe there’d be a case but I have done nothing but support at every step the Neighbourhood Plan. I just want to make that clear.

“I just also want to say that whether I live close to a potential development site was not at all relevant in the Neighbourhood Plan meeting. The fact that I live in Haslemere could be argued to be relevant as was the case for all councillors but in my research I have found not a single Parish Council meeting has approved a Neighbourhood Plan where all councillors declared an interest in the matter based on where they lived in terms of proximity to any element of the Neighbourhood Plan. I haven’t found one. I’ve done loads of research. In terms of proximity, I wanted to make sure you aware of [a] decision [which] related to a councillor who lived a few hundred yards from a development site and was determined not to have a declarable interest based on just proximity. The proximity did not result in an interest that was prejudicial, and I can provide you with the decision of the Standards Board where this was declared, this was in Farnham”.

Next we turned again to HSRA. Cllr Barton said, “I don’t think that HSRA falls into any categories of the Code of Conduct. It’s not a membership I have on behalf of the Council. That’s the first point. It’s not a political lobbying organisation. It’s not a charity, even though its assets go to charity if it’s wound up. It’s simply a community group and I think I’ve sent you the constitution. I’ve also told you that the group has arranged all sorts of other events - traffic calming, Easter egg hunts, we’ve had a COVID food bank collection every Tuesday that I have a box on my drive and that’s part of HSRA as well so I think it cannot be And then also both Farnham and Cranleigh the Councillors there that approved the neighbourhood plans they are members of residents associations. They didn’t declare that membership as an interest in any council or committee meetings, and I can provide you with the minutes of those meetings. So that’s Farnham and Cranleigh RA. And then I also just wondered whether a member of the public would have

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expected any of those councillors in Waverley Parish Council such as Cranleigh as myself to believe their objectivity would be impaired by their membership of a residents' association.

“For this purpose, of course the complainants view is not relevant because they're not an ordinary member of the public. Not only are they representatives of his development company, they're also really objective in their views. The members of the public in Haslemere as well as in Farnham and Cranleigh for example, expect the opposite. That it's totally consistent for councillors to be members of residents associations when developing and approving a neighbourhood plan and for there to be no conflict of interest or impairment of doing what's right for the community based on the evidence and information available in an objective way.

[When commenting on the Draft Report Richard Benson said, “[t]hroughout Cllr Barton[’s] transcript [she] make[s] false and baseless claims that I am part of the developers team and that I have a vested interest. I am happy to provide an affidavit rebutting these false and baseless allegations. (It is just an attempt to link anyone who opposes them with the “dirty word”, “developer, developer’s friend etc.”)]

“And I thought you might be really interested in Liz Townsend, Chair of Cranleigh Parish Council, she hasn't declared any non-pecuniary interest in any meetings concerning their Neighbourhood Plan, apart from her being a Waverley Borough Councillor. This is important because she was the founder of Cranleigh's residents' association, called the Cranleigh Civic Society, and that organisation has many community objectives similar to those of HSRA. That organisation has also been really vocal on matters relating to protecting the countryside from developments around Cranleigh, as has HSRA. The Chair of the Parish Council was also Chair of the council's committee on the neighbourhood plan. She drafted herself amendments to the neighbourhood plan for approval by the Council and there was no conflict of interest here she was just doing what ordinary members of the public expect of their Councillors and she never declared any interest. So across Waverley there are residents associations, councillors and members of RAs who have all been part of the Neighbourhood Plan who have never declared an interest of any kind in any meeting. It's just what the public expect.

“Haslemere Vision was founded about eight years ago and it's been had over 60 volunteers, community volunteers, it's carried out lots of public research, it's sponsored by the Town Council, it's hugely professional it employs an inspector who kind of guides it. Every meeting is minuted. So, I'm just one of a team that has grown and grown I was part of, I guess there were five of us at the very beginning that saw the Localism Act I think back in 2013 thought Haslemere needs a Neighbourhood Plan and then basically, I've sort of stepped back for a long, long time lots of people have been involved. I'm just one of a very large army, basically. Community army”.

Turning to the Neighbourhood Plan Working Group Cllr Barton said, “There's the Haslemere Vision which has a sort of steering group. So they've got a large team of volunteers and then they've got the steering group and they've got a Chair etc. etc. They have basically different working groups to do with environment and transport and housing and community housing. And then, because the Neighbourhood Plan is officially sponsored by the Town Council, there is also a Town Council Working Group which involves a number of Town Councillors who are interested The Mayor puts out a call and asks if anyone wants to be on this group. And anyone who wants to be on the group put their hand up basically. It's quite hard to get people to be on a group. So, I was on that group. And then we come together so we have meetings of the working party which is representatives from the Haslemere Vision volunteer community team with the town councillors who have opted or volunteered their time basically to be part of that. And then Pippa

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Auger, who is the Deputy Clerk, one of the Deputy Clerks, she minutes the meetings and then the Vision also when they have separate meetings also minute their meetings. So if you look on the Haslemere Vision website you will find all the minutes of every meeting”.

Talking about her concern for the natural environment Cllr Barton said, “I’ve worked for the European Commission in sustainable transport. I’ve worked no it just runs through me like a stick of rock. I studied geography at university , I set up the Surrey Hills and South Downs community rail partnership which is all about promoting sustainable transport and I brought on board for the first time ever for Haslemere Surrey Hills, the South Downs, the National Trust to work with the community to promote the visitor economy I’m part of “Love Haslemere, Hate Waste”. We’re just starting a food waste reduction project in town, I’ve got composting bins for the local schools to reduce their food waste, I support Tusk which is a big conservation charity in Africa and we go out every year as a family and run in a half marathon in a game reserve to protect wildlife”.

We then spoke about “Declaration of pecuniary and other interests” (see also Section 7.2). We asked Cllr Barton why, in what might be described as her “manifesto” before the 2019 election under the title “Haslemere First” she referred to the Community Rail Partnership, Haslemere Vision, the Neighbourhood Plan, and HSRA but only mentioned the Community Rail Partnership in her declaration. She replied that she “didn’t believe that they fell into the [categories on the form].” In particular, HSRA “totally” did not fall into the category of “a body one of whose principal purposes includes the influence of public opinion or policy. It’s a community group”, she said “.... you just need to read its constitution basically.”

We then asked Cllr Barton about the reference in the minutes of the Haslemere Vision Steering Group the night before the Full Council meeting. She replied, “I think there was a wider discussion about the settlement boundary. About Longdene House, about Red Court, about AGLV about ANOB, I mean it was just a very extensive About the Green Fingers. We’ve got some protected areas that run into the town. The whole discussion was about all the issues in town and it was also very much about the town’s views, we talked a lot about the questionnaire, the findings the fact that the town had supported a certain settlement boundary in all the consultations Statements, saying very much that it reflected, totally reflected the community’s expressed wishes, so it was just a discussion basically, not just me [T]he previous administration had moved the settlement boundary in certain places against the expressed wishes of the Vision and the community and I think the [community] were quite shocked and appalled actually”.

She continued, “[T]he first version that came to the community was something that the Vision felt didn’t reflect the community and desire and for some reason the settlement boundary in places had been moved with really no consultation either. It went against every principle, everything that the community had said but that said, I voted for it [in March 2019], because in terms of the big picture, I voted for that Neighbourhood Plan because that’s what it was all about, the Neighbourhood Plan and when a new administration was elected, it was led by Terry Weldon, a Lib Dem. There were lots of issues about the previous version that people weren’t happy with. There was a lot of re-editing. Policies were changed, it was quite distinctly revised by everyone and so the new version that basically matched the Vision and the Community’s expressed desire which was basically to protect the green ring around the town. But it wasn’t the only thing that was changed in that document it was months of work and Terry Weldon led that and every change is minuted and in the end everybody I think felt.... environmental policies were changed,

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a lot of the grammar was terrible, it was an updated version and the settlement boundary was just one of many things that were upgraded.”

When we asked Cllr Barton why she had voted for the Neighbourhood Plan as it was in March 2019 with her concern for the environment [before the settlement boundaries and other changes were made] she replied, “Because I believe in a Neighbourhood Plan. The Neighbourhood Plan is about the plan for the town going forward, without a Neighbourhood Plan the town has no it’s about its future basically. So I mean I suppose I hope it demonstrates to you how loyal I am to the principle of a Neighbourhood Plan that I voted for it despite my concerns. I’m a Neighbourhood Plan supporter it leaves the town completely.... It doesn’t have any control I mean every community has a Neighbourhood Plan now, that is the way forward”.

Asked if she had had concerns about the Plan at that time she said, “It was a balance you know. I just weighed up the.... I was very objective. I looked at it and I thought it is what it is. It has come through the Town Council as the sponsor and I knew it didn’t reflect the community’s views in parts. I knew that it went against every consultation. Every consultation had shown categorically 89% of those that took part in the consultation wanted to protect the green ring around the town. Sixty volunteers helped carry out that consultation. But, because I believe in the Neighbourhood Plan, I voted for it because it’s the big picture. So it was a compromise for me but I felt we needed a plan”.

“Two Conservative Councillors moved the settlement boundary [in March] without any consultation and I have to say I have to ask some questions why they moved it frankly The Council voted for it in that form. [I]t was essentially seventeen Conservatives and myself as one Independent and the Vision team were heartbroken after all the work they’d put in and they felt very the community were not... I think the community felt quite confused frankly. But as I explained, the town had delegated its powers of allocating housing sites to Waverley at that point. So yes, it was a confusion I have to say, but I voted for it because, you know, I’m a Neighbourhood Plan supporter”.

“One thing that really concerns me about all of this is that my accusers are making out that I’ve got inordinate amount of power in all of this. I’m just one person, I’m one Councillor, I was one of a large group on a committee, all minuted meetings. Somehow it’s been painted out that I personally have managed to somehow, sort of swing the whole course of the Neighbourhood Plan like I’ve rewritten it somehow. I mean it’s ludicrous in fact. If only I had the power. I’m one of eighteen Councillors, I feel the malicious nature of this, in effect it’s a developer and his agent trying who thought they had green ticket to develop on protected landscape against all the community’s wishes and what happened when the new Neighbourhood Plan came forward, a whole team of people looked at it and said - the whole new administration that was elected in 2019 said they looked at the Neighbourhood Plan and said this does not reflect the community’s wishes. We must do something about it.

“Now, I did not lead that. That was Terry Weldon and he said look at the grammar and others said look at the policies so you know I really think I’m being given an inordinate amount of control over what is in effect, you know, this is a whole town meetingthe Neighbourhood Plan has an inspector, it’s a very professional process, as if somehow little old me has come along to somehow rewrite the whole plan I find ludicrous and I do feel *amazed* that Waverley have given these complainants such, *such* a voice I feel the victim, frankly, of a developer, because the

community don't want the settlement boundary to let this person build two hundred homes on an Area of Outstanding Natural Beauty, they are hounding me basically. I think it's disgraceful actually and the waste of public money in all of this is an absolute disgrace. And I *will* be chasing up to see how much it's all cost because frankly, you know, this was a non-pecuniary interest in a Neighbourhood Plan meeting, eighteen councillors not one person declared a thing They are trying to pin on us that we live nearby, I also think it's revenge for me personally, I can't speak for the other person, but believe that it's revenge [REDACTED]

We then asked Cllr Barton about her considerations prior to the 28th November meeting. She replied, "I did consider it very, very carefully. I got the Code back out, yeah, I thought hard about it. It wasn't a planning meeting; in every planning meeting I always declare any interest. It was a Neighbourhood Plan meeting and it was on the whole Neighbourhood Plan. It was not on any specific housing sites because that wasn't included in the Neighbourhood Plan and no other Councillor declared anything. There was no objectivity risk and I didn't think the public would consider that either. I don't believe that any member of the public would have looked at me as somebody not able to make an objective decision on the Neighbourhood Plan given that they'd seen me vote for it back in March. I hadn't declared back in March. And I voted for it. So, no, I did, I was grateful for her email and yes, I considered it "I believe that no member of the public knowing me as their Councillor, as their representative, would have had any expectation other than I would support the Neighbourhood Plan".

Questioned about why she had not declared an interest (the vote in favour had been overwhelming), Cllr Barton said, "neither of those organisations [HSRA and Haslemere Vision] fall into any of the categories in the Code of Conduct. I thought about that really carefully. Neither of them do".

We then moved on to the Planning Committee Meeting on 10th September. We asked why, if HSRA is not a body that influences public opinion, she had amended her Declaration of Pecuniary and Other Interests to include it. She replied, "Well frankly I suppose I was feeling that, erm, I just wanted to.... I knew I am being watched every moment by this developer. I just wanted to in an abundance of caution and to make sure that I just covered every box for this planning meeting, I decided to just go for it frankly and I put HSRA in several places because, frankly, it doesn't fall into any category and that's why it pops up everywhere. I'm trying to cover every base otherwise I would have been hounded for that planning meeting as well. I just thought, "hey, here we go", I don't believe it should be on that form frankly but to avoid Mr Benson and Mr Cox's lawyers chasing me from Bristol again for the planning meeting, again, completely outrageous I believe, I just declared, I just put everything down there. I absolutely do not believe it should be on the form." She then confirmed that she had made her formal statement at that meeting out of an "abundance of caution" as well and, "this was a Red Court planning meeting, that's why I declared all of that. This was a *site-specific* meeting The other meeting was a Neighbourhood Plan meeting, so you can't compare the two. Completely different, completely different things".

We then asked why Cllr Barton had moved the HSRA entry on the form from the "bodies directed to charitable purposes" box, to the "influencing of public opinion" box a week later. She said, "Oh I don't know erm..... I suppose I was concerned because I actually, I think I was informed that I was corrected that HSRA is not a charity, I think that's what happened, I now recall. I was told by the secretary of HSRA at the time that it was not so I thought, "Oh crikey, I'd better where

else shall I put it? I think the Code of Conduct is not clear at all for where groups like HSRA fit. People like me are sort of forced into trying to find a category for it and frankly, it's none of the above and yet I can be hounded for not putting I mean really there should be a group "residents association" frankly, on that form."

We then said that we had been shown evidence that Cllr Barton had not completed her Declaration of Interests for the County Council. She laughed and replied, "It was a genuine mistake. I was elected mid-term, so I served from 2013 to 2017. And then [REDACTED] [REDACTED] so I didn't stand again at the elections in 2017. Then mid-term there was a by-election in Haslemere in 2019 because the Conservative candidate had to stand down and I was re-elected. And so I was out of the monitoring sort of cycle. I just sort of stepped back on the train, so to speak, and I had a meeting, I spoke with the Monitoring Officer, who I explained it was a genuine..... I mean, I'm not on any committees, I had nothing to declare anyway. And he discussed it with the Chair and they agreed, actually, that it was a Monitoring Officer mistake, actually, because they were supposed to contact me and they hadn't. So it was a genuine mistake. I was a mid-term sort of stepping on the train and all there is on that Declaration of Interest is my husband works for KPMG basically, so that's it. So, there we go, a genuine mistake".

7.10.2 TRANSCRIPT OF ROBIN TAYLOR CONVERSATION WITH CLLR BARTON

On 18th June 2020, Cllr Barton (supported by Mr Mark O'Connor) met informally with Robin Taylor, Daniel Bainbridge (in his capacity as Borough Solicitor and Deputy Monitoring Officer) and their colleague, Sue Petzold (Corporate Complaints Officer) over Zoom. The meeting was in two parts and was transcribed verbatim. We have set out some of what Cllr Barton said during that meeting below (with page numbers for reference).

Page 5: "The meeting was in relation to the whole settlement boundary of the whole town, there was no one site discussed at that meeting, it was a series of amendments to the whole Neighbourhood Plan which was brought before Council. All 18 councillors have non-pecuniary and potentially pecuniary interests in the same way, all without exception are residents or landowners and all live within about 500m of the settlement boundary or the protected spaces being discussed. There were no declarations of interests from any councillor from any of the 18 at that meeting. It was not a planning meeting; it was in relation to accepting some amendments to the whole Neighbourhood Plan. "There were other councillors in that room who have declared an interest in respect of Longdene House and the development on the AONB in the same fashion that I have in relation to Red Court previously but they didn't declare any interest and all councillors in that room were discussing the whole Neighbourhood Plan which was relevant to everyone in that room. So, there was nothing specific - there was not a word about Red Court or any specific sites. And if none of us could engage in that vote, which was a whole Plan, it would make a mockery, we might as well have all gone home because actually, it was a town-wide discussion about the Neighbourhood Plan. So, I think that's why I am finding it quite an extraordinary allegation against me given this was a town-wide discussion.

"From my understanding, my non pecuniary interest is my own analysis of my objectivity and the settlement boundary in the wider discussion in that room was on something that I had very clearly examined my conscience about, the amendments to the Neighbourhood Plan were on the basis of a whole town-wide consultation, the amendments were absolutely reflected [in] the community desire to protect AONB AGLV and green space. The Neighbourhood Plan revision

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actually made a statement immediately at that meeting fully supporting the vote that was happening So I thought I was absolutely objectively viewing as a councillor listening to the public, engaging with the public consultation and had not a shred of doubt that I was doing the right thing in regards to the whole settlement boundary. It wasn't a planning discussion, it wasn't a site specific discussion, it was about the whole Neighbourhood Plan and, yeah, I suppose I was absolutely following my conscience as a councillor who has stated in her manifesto, who was declared in public repeatedly my support for the Neighbourhood Plan, of the protection of green spaces, and I didn't have any doubt. So, yeah, none at all, I don't have a shred of doubt I examined my conscience fully”.

Page 6: When asked by Mr Taylor about the email she received from the Town Clerk, Cllr Barton said, “I can't recall to be quite honest [whether I proactively asked the Clerk for advice]. I think she might just have been looking through as a good Clerk and just thinking, you know, there's no doubt that it is a contentious issue, that site, no doubt, and that's why I have been super-careful.... I am very conscious that I am watched very carefully on that site and so I have acted in accordance each time when it is necessary I declare. Whenever I need to leave the room, I have done. And on this issue it was not a discussion of any site, it was the whole town's Neighbourhood Plan.

“I suppose my question is, for me, the dictionary definition of “impartial” is my ability to judge or consider something fairly without allowing my own interests to influence me, and I truly believe that my views in relation to Red Court are not based on personal interests. My views on the settlement boundary and the wider Neighbourhood Plan are completely consistent with supporting green fields, AONB residents at Longdene House and Sturt Farm, other developments on AONB and AGLV have contacted me for support, which I have done If I really wanted to have my best interests at heart, I would be supporting this Red Court settlement all the way throughBut I'd like just like to state that I have been so squeaky clean, honestly, had I really wanted to engage in poor behaviour, then I would have done. This is much more costly to me to stand up for my principles which I have stood for at every stage of my role as a councillor”.

Page 7: Mr O'Connor then interjected and said, “ as Nikki says that was a whole town meeting ... I see from the Planning Committee minutes from 21st June 2018, [that] was a specific site discussion where Nikki has clearly declared an interest ... correct me if I'm wrong, Nikki, you have recused yourself or left [a] meeting when things that were too close to home were being discussed”. Cllr Barton continued, “Absolutely out of caution because I want to do the right thing. I have no pecuniary interests in the development of any kind. And in fact one of the allegations against me is I could benefit financially by stopping any development at Red Court, I've actually spoken to the Estate Agents this week, Knight Frank, and they've indicated that my house value would probably go up with 50 executive homes or 180 executive I'm happy for you to speak to them. So, I have no pecuniary interest in the site of any kind. Me no more than anyone else who lives locally and I just basically declared an interest because I live near the site, my land borders it. I just assumed I had to. But now I have the advice from Knight Frank, I don't think I even have to declare it any more, because I'm just a resident”.

Page 9: Cllr Barton said, “There were a number of amendments between the first Neighbourhood Plan and the second. It wasn't just the Red Court site the first time around even though the Red Court site was included, I voted for that because I support the Neighbourhood Plan. What I was very disappointed about was a site allocation of Red Court was totally counter to what the

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Neighbourhood team had put in their original version [and] to all the public consultation evidence. 65% to 90% wanted no development on AONB and that site was put in at a very strange meeting and was counter to the Neighbourhood Plan's express desires. So, when a new administration came in, there were a few new people in there who re-examined it. I was part of the working party along with a number of others Terry Weldon was Chair and he brought us together and looked through the consultation results and he looked at what the Vision's notes were and he said, "this does not reflect what the community has pressed super-strongly in consultation". There were a lot of drafting errors in the documentation as well and we, all of us, worked really hard to make it a much better, tighter document, and it was. 89% to 90% wanted not to move the boundary – the settlement boundary to allow large developments on green field sites. That was express[ly] stated by the public and the first Neighbourhood Plan was completely contrary to that."

Page 10: "The Chair of the Neighbourhood Plan of Haslemere Vision absolutely stat[ed] that the vote that happened at that meeting was something the Neighbourhood Plan absolutely endorsed because it reflected the community's desires. This wasn't a small group of people leading the Town Council down a certain alley-way, this was reflecting a wide consultation with the community".

Page 11: Mr Taylor then said, "As I understand it, you and your husband are founder members of the HSRA which was formed in 2018, and I understand [had the] specific purpose of opposing the Red Court site and your husband is Chairman. So, I wanted to check if that is all correct that you are still a member of the HSRA. Cllr Barton replied, "It is not correct. I proposed the setting up of a Residents Association in my May manifesto of 2017 before I think Red Court had ever been sold. It was all about bringing together the community and community cohesion. I am an Independent and Residents Associations across the Council and the Borough are a really good thing to form and I put in my manifesto that I would form one for Haslemere South. So that is the origin of it. It was formed in 2018 and I was one of a large group of people who came together to set it up so we were all founding members. I wasn't a leader in that. It was a community thing. I can share with you the Constitution [which Cllr Barton then read out]. So, no, none of that is correct. My husband has been Chair and there was discussion of the field which lies next to our house and is owned by the developer. He stood down acknowledging that was probably a good thing to do and so it's a Residents Association and I have shared with you its purpose."

She continued, "I am not on the Steering Group, I am just a resident. I have to clarify when the residents got together to have a specific meeting on Red Court, I have always declared my interest that I live, that, you know, at HSRA meetings and that is all minuted and I can send you the minutes of those meetings. And I am an elected representative, so it is only proper for me to be engaged in my Residents' Associations and what their concerns are and be part of the neighbourhood planning system. I mean, it would be very strange if I wasn't I am elected to serve Haslemere South Ward as a Town Councillor. I am a County Councillor for the town my whole raison d'être is to engage with locals, represent their views. I am a bridge between them and the Council. I am an advocate for local residents and they expect me to lead campaigns on their behalf I recuse myself, I declare an interest when I need to."

Page 12: Asked by Mr Taylor what influence she felt HSRA had had on the revised Neighbourhood Plan Cllr Barton replied, "I am not part of the organisation of HSRA. I'm a member by function of

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living in Haslemere South. I personally believe it hasn't had any impact I don't believe I have any non-pecuniary interests . It hasn't, in my judgement, impaired my ability to be objective.”

Mr Taylor then asked whether she had declared her membership of HSRA on her Declaration of Interests form she replied, “No, probably that's an error on my behalf. I need to do that I apologise. It's a society, basically”.

Part 2 Page 2: Following a break in the conversation Mr Taylor asked Cllr Barton to confirm that she and her husband had approached Mr Cox to purchase the field to the west of her property. She replied, “Before Brian Cox was even involved in the whole project we discovered that the whole property had come up for sale and we contacted the estate agents. It was in the public domain it was up for sale. And it was divided into three lots, which was the field, which we adjoin, there was the house with, I think, 16 acres, and the rest of the site. And we contacted them and said if there was any opportunity to buy the field, we would put in an offer, and we did. And we were really hopeful, and really excited and then there was a long period of silence, and then Brian Cox moved into the Gatehouse, which adjoins the field and then this series of engagements happened. But once we were rejected from buying it we just accepted we couldn't buy it. It wasn't a material but it was a very strange experience because Mr Cox then started putting conditions on us being able to purchase it.”

“So, just to explain that this field lies *adjoining* our property and forms one side of the drive down to the Red Court house and suddenly these conditions started appearing and Mr Cox proposed putting allotments on these fields, to which we were like “Oh well” and then he said he would hold back from the allotments and we could buy it after all ... subject to contract”.

“[After he sent an email to] me at my Town Council address and my husband at his personal address ... that really shocked me so we walked away. I thought he was basically asking me as a public official to drop my opposition in LPP1 a personal objectionand to make a public support, as a councillor I just had to walk away from that I'm just not willing to engage with him. I think it is utterly outrageous.”

Page 7: Mr Taylor asked whether Cllr Barton argued for the settlement boundary change. She replied, “I certainly did! Because it reflected the consultation and it was the original boundary that the Vision drew ... and all the evidence shows that councillors and the many stakeholder groups, including the Vision, Haslemere Society, multiple residents' associations have been considering the Neighbourhood Plan and the settlement boundary with great diligence and independent thinking [It] is grandiose to suggest that I, as one councillor, could have had that impact And don't forget, when the boundary was shifted in the March 2019 meeting, I voted for it because I support the principle of a Neighbourhood Plan at that point I supported the plan with a settlement boundary which incorporated the site. I didn't agree with it elements of it because I felt it ran counter to the consultation, but I still voted for it, because it was the wider Plan. I am a big Plan person, I am not a one site person “If I am being linked with bad behaviour on behalf of HSRA as an organisation I want to reiterate that I have no position in the residents' association.”

Page 10: Later she said, “18 councillors made a unanimous decision on November 28th 2019 – one abstained and 17 voted. That's a unanimous vote and my one part is being challenged. So, what

if I had stepped aside? It would still have gone through. If I abstained, if I had left the room – you know 16 to 1 with 1 abstention?”

8 EVALUATION OF EVIDENCE AND CONCLUSION

8.1 WAS THE SUBJECT MEMBER ACTING IN AN OFFICIAL CAPACITY?

Before reaching a conclusion on whether a breach or breaches of the Code took place, we must first establish whether Cllr Nikki Barton was “in capacity” when she attended the Haslemere Town Council Meeting on the evening of 28th November 2019. The legal position has been discussed in some detail in Section 3.3 above. Given that the Subject Member was serving as a member of the Town Council during the meeting **we conclude from the evidence available to us that Cllr Barton was acting in official capacity when she attended the Haslemere Town Council Meeting on 28th November 2019.**

8.2 WHAT IS A DISCLOSABLE PECUNIARY INTEREST?

In February 2013, Paul Hoey, of Hoey Ainscough Associates, published an article in *Local Government Lawyer* in which “he examine[d] the limited circumstances in which the Government intended disclosable pecuniary interests to arise and explain[ed] what this means for monitoring officers”. This respected article serves as background to the evaluation which follows below in that, in discussing what a disclosable pecuniary interest is, it also derives useful examples of what a disclosable pecuniary interest is not. This, as we shall show, is relevant to our consideration of whether the Code has been breached. We have attempted below to summarise the key points from what is (still) regarded as the “seminal” article on the question of “What is a disclosable pecuniary interest?”. In doing so we unashamedly quote from and paraphrase the article:

- For an interest to be a “disclosable pecuniary interest” (DPI) it must be an interest which falls into one of the categories set out in regulations. If it is not covered by one of those categories, then it is not a ‘DPI’.
- If a councillor (or his or her partner) has a DPI, they must do two things. They must register that interest and if they “have a DPI in any matter to be considered” they must not take part in the discussion or vote on the matter without a dispensation.
- If you have a DPI and you fail to register it or you participate in a meeting without dispensation, then under the Localism Act you have committed a criminal offence.
- The legislation which created the criminal offence was only ever intended to cover a very narrow range of interests and to capture more serious matters. To be a DPI the business has to relate to, not merely affect, your DPI and is therefore much narrower than a “prejudicial interest” under the national Code which was repealed by the Localism Act (which talked explicitly about a matter “relating to or affecting your interest”).
- Four examples illustrate the point.
- Example 1: If a councillor makes a planning application themselves about their own property it is hard to argue that that councillor does not have some sort of financial interest in the outcome of the planning application. This is meant to be a DPI and clearly relates to their registered interest.
- Example 2: If the councillor’s next door neighbour makes a planning application it is hard to argue that any reasonable member of the public would think it right that somebody should be able to participate in a decision which so clearly affects them and their property. But the

Government did not intend to capture this as a DPI. It “affects” their property but it does not “relate” to that property.

- Example 3: If the planning application were for something local, say a bail hostel one hundred metres down the street, then once again most people would think that a councillor would have their judgement clouded by their proximity to the development and its potentially controversial nature, but it fails the intended DPI test still more than their neighbour’s property.
- Example 4: Whilst it can be argued that a councillor who lives in a neighbourhood where a supermarket development is being proposed has an interest to declare, equally most people would expect a councillor to take part in matters which affect their community significantly. However, it was not the Government’s intention nor would it be sensible to disallow democratic participation to such an extent at pains of a criminal offence.
- So, the Government intended only Example 1 to be classified as a DPI but not examples 2 and 3, which do not carry criminal sanction.
- There is an argument for saying that any vote on Examples 2 and 3 could be said not to uphold the principles of selflessness, integrity, or objectivity.
- However, it is a matter for the local authority to determine where the public interest lies in relation to “other matters”, and not the DPI test, and to frame their Code of Conduct accordingly.

This interpretation of DPIs is widely shared by local government and the Haslemere Code itself reflects this by making clear that as well as DPIs, members must disclose (Section 5.5) “non-pecuniary interests that arise from your membership of or your occupation of a position of general control or management” in certain bodies (which it then lists). That said, the Code goes no further than this narrow definition of what it calls “non-pecuniary interests”. This too is significant, as we shall see.

There is no doubt that Cllr Barton’s property adjoins the Red Court Estate (nor, indeed, that the Bartons were in discussion around the end of 2018 to purchase the pasture field which was at that time for sale as one of the lots on the Red Court Estate). However, based upon the definition of a “Disclosable Pecuniary Interest” discussed above, we do not believe that the matter under consideration at the November 28th 2019 Town Council Meeting “related to” her property. We believe that Example 2 above is relevant (see below).

8.3 EVALUATION OF EVIDENCE

We now turn to the core allegation that Cllr Barton failed to declare a non-pecuniary interest in respect of the 28th November 2019 meeting. When examining this core allegation, it appears to us that there are two matters to consider and we examine them in turn below.

Based on the evidence available to us and on the balance of probability we make the following observations.

8.3.1 HASLEMERE SOUTH RESIDENTS ASSOCIATION

8.3.1.1 The role of Haslemere South Residents Association

First, we consider the Haslemere South Residents’ Association (HSRA).

Many of those to whom we spoke recognised the importance of HSRA and its nature and purpose to the core question of whether or not there had been a failure to declare a non-pecuniary

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interest by Cllr Barton. Section 7, and in particular Section 7.3 and 7.9 above contain a significant amount of evidence about HSRA and, for the most part, we will not repeat that here.

There were some mentions of the Scotlands Close Residents Association (SCRA), in the evidence that we reviewed. However, we discounted those at an early stage and have not presented them in the Report, because SCRA appears to us to be a fairly traditional Residents Association which appeared to have little more than a passing involvement in, or influence on, the matters under consideration. In any event, Cllr Barton stated that she had never attended a single meeting of SCRA nor advised them.

For the sake of simplicity we have chosen too not to discuss Haslemere Vision (which had done the “legwork” on the Neighbourhood Plan for seven years) and which met, with Cllr Barton in attendance, the evening before the 28th November Town Council Meeting to “ratify” the Plan. Haslemere Vision’s then Chair spoke on behalf of Haslemere Vision at the Town Council Meeting. Nor, for the same reason, have we spent time on the workings of the Neighbourhood Planning Working Party who were by then leading the Neighbourhood Plan process for HTC with members of Haslemere Vision advising. Cllr Barton was a member of the Working Party.

It is fair to say that the characterisations of HSRA that the Complainants and Cllr Barton, as Subject Member, presented were very different.

When she spoke to Mr Taylor she denied that HSRA had been set up to “oppose the Red Court site”. She had proposed the setting up of a Residents Association in her May 2017 manifesto before Red Court had ever been sold. HSRA was about bringing the community together and community cohesion. That was its origin. She was not on the HSRA Steering Group.

When we spoke to Cllr Barton she told us that HSRA was “not *constituted* [our italics] simply to oppose the proposed Red Court development as has been suggested by the complainants”. It is certainly true that the HSRA Constitution that Cllr Barton shared with us does not indicate a focus on Red Court and that it is very generic in nature though it is not the Constitution of HSRA that is at issue here.

She also told us that HSRA was “simply a community group”. She spoke of traffic-calming, Easter egg hunts and a COVID food bank collection, for example. She said very clearly that she did not see a space anywhere on the Declaration of Interests form for residents associations. She certainly did not see it as a “political lobbying organisation [or] a charity”. She saw HSRA as “a residents association, it’s no more than that”.

Mr Cox, Mr Leete and Mr Benson presented a very different story. To give one example, Mr Benson who told us that he had been there at the start of HSRA before becoming disaffected stated in his Complaint (see Section 5.1 above) that “HSRA was formed in June 2018 to vigorously oppose the inclusion of land south of Scotland Lane (DS15 Red Court) in the final version of Waverley’s LPP2”.

Given the importance of establishing facts here, we looked in considerable detail at HSRA. Our research (rather than complainants’ or subject member assertions), which is presented in Sections 7.3 and 7.9, left us in no doubt about the overriding importance of the proposed Red Court development and the settlement boundary to HSRA and its members. The content of the HSRA

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website is dominated by references to Red Court (most recently the rejection of the Red Court Planning Application on 20th July 2021).

We considered a telling example to be the content and name of the form which prospective members are invited to download and complete (it has the file name "Save Scotland Lane Form"). Both website and Facebook page appear to us to suggest that it had (and has) a strong role in coordinating responses to consultations, planning applications and the like in relation to Red Court.

We found the few documents that were presented to us as copies of Minutes of HSRA meetings to be most useful. At the meeting on 22nd October 2018, around a month after HSRA was formally constituted, Gregory Rood is minuted as having said "HSRA needs help to fulfil its *campaign objective* (our italics): to protect the woodland and wild meadows of the Red Court site which we want to protect to maintain the quality of life and wellbeing of our community and for the biodiversity of Haslemere. Our community is abundant with talented and highly skilled people: we need to make the most of this resource in our fight to stop the construction of a housing estate on Red Court land."

Elsewhere those minutes say, "All letters and statements objecting to the DS-15 Red Court proposed development must be in the Council required format and only include material facts. The HSRA committee will help anyone who requires assistance in writing these letters".

What appears to be an HSRA Announcement (dated 2nd December 2018) states that HSRA, "now has a constitution and has a formal committee which will focus all the local attention to the 70 acres of land adjacent to Red Court to prevent planning on AGLV and/or AONB land". A further announcement dated January 2019 appeals for funding and says, "This year we must fight hard if we are to stop the development of 200 + houses on such beautiful and wildlife important land".

In the face of such evidence it is impossible *not* to conclude that HSRA's (maybe sole) *raison d'être*, at least at its inception, was to resist development of the Red Court site. Furthermore, references we saw in the HSRA minutes to the impending elections in May 2019 suggest a wish, too, to have some influence over the outcome of those elections.

We have discussed in 8.3.1 above the importance of the settlement boundary to the proposed development of the Red Court site. What we said there is equally relevant here but will not be repeated.

The HSRA webpage talks of "[G]reat news for all the residents of Haslemere" and says, "the Settlement Boundary [is to be kept] where it was originally mapped in the Neighbourhood Plan". It says that the previous "urban line surrounding Haslemere include[d] Red Court and Longdene" and, at the end, says "Basically, this [decision] will make planning of development outside this boundary very difficult. Red Court is naturally part of this protected area."

We do not doubt that there was a recognition on the part of the author of the webpage that the settlement boundary included in the Neighbourhood Plan and the proposed development at Red Court were intertwined. Whilst the tone of the article is, for the most part, more generalised than Red Court, the author felt the Town Council's decision on 28th November 2019 was important enough to share with the members of HSRA.

We will also see below (Section 8.3.1.3) the Town Clerk's comment that "[r]epresentatives of HSRA had been to various Council and Planning Meetings. They had voiced their opposition to

various planning matters and in particular to the setting of the boundary in the Neighbourhood Plan in relation to Red Court.” If the Town Clerk’s recollection is correct, it appears possible too that, for a period, a statement made by Cllr Barton about the Neighbourhood Plan appeared on the HSRA website though, if that is correct, we do not know what that statement said.

The content of the HSRA Facebook page is similar in many ways to that of the webpage. We found it strange that there appeared to have been no posts between July 18th 2019 and August 28th 2020 though there were regular posts before and after those dates. As a result we could not look at postings covering a period of more than a year.

We therefore conclude, based on the evidence available to us and the balance of probability, that HSRA was, to quote Section 5 (5 iv) of the Code of Conduct, a body “whose principal purpose [was] to influence public opinion or policy” in respect of Red Court. In doing that we further conclude that it also had a clear and demonstrable interest in the settlement boundary.

8.3.1.2 Cllr Barton’s membership of Haslemere South Residents Association

Cllr Barton confirmed that she was a founder member of HSRA (amongst 300 others, she said). Her husband was Chair at various times and the initial, informal meeting of what soon became HSRA, was held in their home in June 2018. Cllr Barton confirmed (perhaps most formally at the Planning & Highways Meeting on 10th September 2020) that she was and is a member of HSRA. However, she told Mr Taylor that she was “just a resident” and as an elected councillor it was right and proper for her to be involved in HSRA. She was “not part of the organisation of HSRA” and was a member by function of living in Haslemere South.

There is evidence that Cllr Barton attended a training session on the Code of Conduct soon after her election and we know that that session covered “Registration of Interests” and the requirement to “register your membership/position of authority in bodies that influence public opinion/policy”. Cllr Barton told us that she could not recall whether she had attended the training session but told us, “I’ve read the Code and I understand it. I’ve been a County Councillor don’t forget. I’ve served two terms as a County Councillor I’m totally aware of the principles I don’t have any trouble understanding the rules at all. I’ve read them, I’ve absorbed them, I understand them”.

However, training or not, Cllr Barton did not record her membership of HSRA at all on the Declaration of Interests form when she completed it soon after her re-election. She said that that was because the form did not provide an obvious place for her to record that membership and she did not see HSRA as anything other than a plain residents’ association. On 10th September 2020 she altered the completed form and recorded HSRA as a “body directed to charitable purposes” (which, it appears, it was not) before moving it to the box below – “Bodies one of whose principal purposes include the influence of public opinion” - on 18th September. The statement she made at the Planning & Highways Meeting on 10th September includes a public declaration of her membership of HSRA.

8.3.1.3 The Town Clerk and the Borough Solicitor

We concluded after we spoke to the Town Clerk that she thought there was a need for Cllr Barton to declare an interest at the Town Council Meeting on 28th November 2019 (Section 7.6 above). When she spoke to Robin Taylor she appears to have been more explicit – she “believed both

councillors had a case to answer regarding their failure to declare a non-pecuniary interest". She talked about "muttering in the town" because "[t]he draft Neighbourhood Plan was a really controversial issue".

She told us in particular that, "Haslemere South Residents Association were very active and were vocal in their opposition to development at Red Court/Scotland Lane. Representatives of HSRA had been to various Council and Planning Meetings. They had voiced their opposition to various planning matters and in particular to the setting of the boundary in the Neighbourhood Plan in relation to Red Court." In other words, she saw a connection between the settlement boundary (a key and maybe contentious part of the Neighbourhood Plan that was to be discussed) and the Red Court site. We know that some members of HSRA, at least, were clearly aware of that connection. She also told Mr Taylor that both councillors had published statements on the HSRA website about the Neighbourhood Plan which had since been taken down. We do not know if Ms O'Sullivan's recollection is correct.

In writing to Cllr Barton on 14th November she told us she felt it was her "duty" to go as far as she reasonably could in signalling to her that there was a need to declare "a non-pecuniary interest". She could go no further because councillors "owned" their Declaration of Interests and it was the "individual councillor's decision whether they declared an interest or not".

Daniel Bainbridge, the Borough Solicitor and Deputy Monitoring Officer, talked at some length about declarations of interest (Section 7.8) and the 13th May training session. Whilst Cllr Barton told us that she could not recall the session, Mr Bainbridge told us that she "had asked some specific questions about ... pecuniary and non-pecuniary interests and planning applications" which he felt, in retrospect, had been about Red Court. He also said that there was nothing out of the ordinary in fielding questions about planning applications during such training sessions. He had been pre-warned by the Town Clerk that questions about planning applications might come up "because the question of possible development in Haslemere was already in the air at that time". In fact we know that Redwood were planning to hold a public consultation about development at Red Court a couple of weeks after the training session so what Mr Bainbridge said appears plausible. At the same time we note Cllr Barton's apparent surprise that he could remember her question many months later.

8.3.1.4 Cllr Barton's comments

Whilst Cllr Barton recalled the email from the Town Clerk on 14th November she did not, she told Robin Taylor, recall having sought advice from her about declaration of non-pecuniary interests at the upcoming meeting of the Town Council. She suggested that the Clerk was being "super-careful" about what was a "contentious issue".

However, she had "got the Code back out", did not have a "shred of doubt that [she had] examined [her] conscience fully" and she explained in considerable detail to Mr Taylor why that was. She said much the same when we spoke to her. The meeting on 28th November was discussing the town-wide Neighbourhood Plan and she had no need to declare an interest. There was an "abundance of caution" in her decision not to declare an interest, she said

8.3.1.5 Conclusion

Having carefully considered the voluminous evidence available to us we conclude that the founding of the Haslemere South Residents' Association was triggered by the acquisition of the Red Court Estate by Redwood (South West) Ltd and the likelihood that they might wish to develop some or all of the site for housing.

We do not conclude that HSRA was somehow an ordinary, "vanilla" (our description) residents' association whose genesis lay in Cllr Barton's 2017 manifesto. Nor do we conclude that HSRA had, at that time, a simple, generalised interest in preserving the green spaces and habitat of Haslemere alongside concerns about traffic calming, Easter egg hunts and the like. (That said, we do not conclude that HSRA was somehow "Cllr Barton's group" and we do not question Cllr Barton's own concerns for the environment, particularly in relation to sustainable transport).

Instead we conclude that HSRA took an active role, from the autumn of 2018, in orchestrating local opposition in Haslemere South to development of the Red Court/Scotland Lane site, as clearly evidenced by its website, its Facebook site, and the minutes of some of its early meetings.

We conclude that the link between Red Court and the settlement boundary was well-understood within HSRA and more generally by residents in the area. We conclude that HSRA was, to use the wording in paragraph 5 (5 iv) of the Code, a "bod[y] one of whose principal purposes include[d] the influence of public opinion or policy".

We are not persuaded (as we were not in Section 8.3.2) by the distinction that Cllr Barton drew between a meeting to discuss the Neighbourhood Plan, including settlement boundaries, and a meeting to discuss a planning application for a housing development on the Red Court Estate. We are not persuaded that there is no connection between the Haslemere settlement boundary and the development at Red Court, of which the latter had a high profile not least because of the actions of HSRA. On the contrary, we consider the two to be closely intertwined.

We concluded that it was all but inconceivable that Cllr Barton, as a founder member of HSRA, wife of its Chairman, a host of what proved to be the inaugural meeting of HSRA, and member of the Neighbourhood Plan Working Group was unaware of the significance of the settlement boundary and its importance to the chances of development on Red Court by the time of the November 28th 2019 Town Council meeting. In fact, Cllr Barton told us that she knew about the matter of the settlement boundary as early as March 2019.

That said, we found no evidence to suggest that that knowledge necessarily influenced her input into the development of the Neighbourhood Plan between May and November 2019. Nor did we find any evidence to support the allegation that she somehow "guided" other members of the Neighbourhood Plan Working Group towards a specific outcome. We were presented with what we regard as objective evidence to suggest that Cllr Terry Weldon may have been particularly influential in ensuring that the outcome of the review of the Neighbourhood Plan reflected the public consultation as he saw it though we have not examined that in any detail.

We think it very unlikely that an ordinary, well-informed member of the public would have seen Cllr Barton, their County Councillor for four years and known, she told us, by residents in the town by her first name, as an "ordinary" resident and a member of HSRA by function of living in Haslemere South. We note Cllr Barton's explanation as to why she did not, in mid-May 2019,

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choose to include HSRA on her “Declaration of Pecuniary and Other Interests” form. However, our evidence-based perception of HSRA, leads us to conclude that Cllr Barton ought to have included it on her “Declaration of Pecuniary and Other Interests” form in the way she eventually did in late September 2020. It seems to us that her failure to do so in May 2019 was potentially misleading to a member of the public.

Turning to the 28th November 2019 meeting, Cllr Barton had received an unsolicited email from the Town Clerk suggesting that she should be considering whether she ought to declare a non-pecuniary interest at that meeting. That, we believe, ought to have served as a warning to her and she should, at the very least, have sought the advice of WBC officers on the matter. However, she appears not to have done that even though she said she had an “abundance of caution” in making her decision.

It may well be that she thought carefully about the matter before concluding that her membership of HSRA did not have sufficient weight so as to undermine her ability to make an open-minded and objective decision. However, this was not a simple matter of Cllr Barton’s own objectivity. We do not believe that an ordinary member of the public, with knowledge of the relevant facts, would have arrived at the same conclusion. The maxim “if in doubt, declare” should surely have applied here or, to quote the phrase in the 13th May 2019 training slides, “declare, withdraw, no debate, no vote” (see Section 7.2.1).

Having carried out the Investigation, we therefore conclude, based on the balance of probabilities and the evidence available to us, that:

1. Cllr Nikki Barton failed to disclose that she was a member of the Haslemere South Residents Association (HSRA) – a body one of whose principal purposes includes the influence of public opinion or policy – at the Haslemere Town Council meeting on 28th November 2019.

She had similarly failed to disclose her membership of HSRA in her “Declaration of Pecuniary and Other Interests” form in accordance with paragraphs 5 (5 iv) of the Code of Conduct when she first completed it in May 2019.

By failing to register her membership of HSRA she breached paragraph 5 (5) of the Haslemere Town Council Code which requires registration of non-pecuniary interests as defined in that paragraph since HSRA is a body one of whose principal purposes is to influence public opinion or policy.

By failing to disclose her membership at the 28th November meeting she breached paragraph 5 (5) which requires disclosure of non-pecuniary interests as defined in that paragraph.

Had she declared that interest on 28th November, she should then have sought to resolve that conflict in favour of the public interest by withdrawing from the chamber in line with paragraph 5(1) of the Code which says “*you must avoid participating in any decision where you could reasonably be seen as having an interest which compromises your honesty or objectivity. Equally, you should avoid any action which might reasonably lead others to conclude that you were not acting selflessly or with integrity*”.

By failing to declare that interest and failing to exclude herself from consideration of item 109/19 by withdrawing from the chamber, she breached paragraphs 5 (1), 6 (4) and 6 (5) of the Haslemere Town Council Code of Conduct.

8.3.2 PROXIMITY OF CLLR BARTON'S HOME TO THE RED COURT SITE

Next, we consider the proximity to the Red Court Estate of the home Cllr Barton shares with her husband.

The address of that property appears on Cllr Barton's "Declaration of Pecuniary and Other Interests" form. The property, she told us, is located to one side of a three acre pasture-field – part of the Red Court estate - which she and her husband were negotiating to buy towards the end of 2018. To the west, along the other side of the field runs the drive to Red Court House. The Knight Frank brochure, the Scotland Park website, and the map in the document pack we reviewed together confirm the proximity of the Barton property to the pasture-field and, therefore, to the Red Court Estate.

When commenting on the Draft Report, Cllr Barton told us that the Red Court Lodge and Red Court House and their respective plots lie between her property and the proposed development site. Should the development go ahead (and assuming there are no plans to demolish those buildings), then the development would not be visible from her property, she said. Whilst her property cannot, therefore, be said to be "right on top of" the 50 house development as it is currently proposed, Cllr Barton also told us when she spoke to us that she saw the overall development as being for 200 homes, not 50. Notwithstanding these details, simply put, Cllr Barton's home is adjacent to the Red Court Estate.

Several times Cllr Barton drew a clear distinction between the Town Council Meeting on 28th November 2019 (when she *had not* declared an interest) and the meeting of the Planning and Highways Committee nine months later on 10th September 2020 (when she *had*).

We note that she had previously declared a pecuniary interest at the 21st June 2018 meeting of the Planning & Highways Committee "in proposed site allocation DS18 which forms part of the proposed Local Plan Part 2 as she is a resident of Scotland Lane".

To be clear, the Planning and Highways Committee on 10th September was considering the Redwood (South West) Planning Application for the development of 50 houses on "Scotland Park". By contrast, the Town Council Meeting was considering the revised Neighbourhood Plan before it was submitted to the Borough Council for inclusion in LPP2. That, she said, had implications for the *whole* of Haslemere and not just Red Court, so she considered that the two matters under consideration were very different. Cllr Barton several times used the descriptor "town-wide" to make the distinction when speaking to Robin Taylor and said as much to us.

We of course understood the distinction she was making, thought carefully about that distinction and recognise the differences between the two instances. However, the redrawing (if that be the appropriate phrase) of the settlement boundaries and the exclusion of the Red Court Estate in the version of the Neighbourhood Plan which was considered at the 28th November meeting (albeit that the settlement boundaries had also changed elsewhere in Haslemere), was, in our opinion, very significant to the success or otherwise of a planning application for a housing development on Red Court/Scotland Park.

We note that at the 22nd October 2018 HSRA meeting, the minutes record Kirsten Ellis as saying "We will be keeping HSRA members updated and provide a clear guideline for making their objections known to Waverley and Haslemere councillors and our local MP Jeremy Hunt in near

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future, *with the aim of getting DS15 (formerly DS18) taken off the LPP2 altogether* [our italics]. Here Ms Ellis appears to us to be speaking on behalf of the HSRA Committee and saying explicitly that HSRA's intentions in relation to LPP2 are very specifically about the Red Court site rather than making generalised comments about the settlement boundary across Haslemere. She was, it appears to us, recognising the importance and significance of the inclusion or otherwise of DS15/DS18 in LPP2.

At this point we note the remarks made by the Independent Examiner (see Section 4.2.3). At 7.19 of his report he says, "[t]he consultation exercise has generated a significant degree of commentary on the proposed settlement boundary for Haslemere. In most cases the comments are based around the differences between the approaches in the submitted Plan and that in the pre-submission Local Plan 2. *In particular* [our italics] the latter includes land at Scotland Lane to the south of the town in the settlement boundary". It therefore seems to us that the Independent Examiner was commenting here on a perceived strong link between the settlement boundary and the Scotland Lane/Red Court site, a link that was strong enough to suggest that he should "look at [it] very carefully during [his] visit to the town". In other words, more than any other development perhaps, the proposed development of the Red Court site had a high profile in Haslemere.

As we understand it, the earlier (March 2019) version of the Neighbourhood Plan, which *included* Red Court within the settlement boundary (and which Cllr Barton voted for at that time), would have made it far more straightforward to obtain planning permission for development on the site. Certainly, Mr Cox and Mr Leete, who have obvious interests in the development going ahead, saw great significance in the change of settlement boundary.

On 28th June 2018 (18 months before the Town Council meeting), the Haslemere Herald (in one of several articles to be found on the internet which refer to the Red Court development and related matters) was already reporting, in the context of the Local Plan, that "Residents of Scotland Lane, in Haslemere, are objecting to the allocation of at least 50 houses at Red Court Estate, which was sold for £9.5 million to developers Redwood earlier this year".

Days later, on 6th July 2018, the Farnham Herald reported that "Concerned residents turned out in force at Haslemere Town Council's planning meeting to protest that sites allocated for up to 700 new homes were "unsustainable"". The context of the article appears to have been LPP2 with mention of several areas in Haslemere.

The same article says, "Proposed extensions to Haslemere settlement boundaries into surrounding countryside, mean land at Longdene House is now included within the settlement paving the way for new housing s[c]hemes The town council's acceptance of the boundary changes came under fire from a group of Scotland Lane residents, who oppose the inclusion of Red Court Estate, which is allocated for at least 50 houses." The article quotes Haslemere Town Councillor Nikki Barton as "question[ing] why the boundaries had to be changed". Cllr Barton had, in a personal capacity, a year after she became a Town Councillor, formally objected to DS18 Red Court, Scotland Lane on 9th July 2018.

Cllr Barton told us that she had been a founder member of the Haslemere South Residents Association and she told us that the initial, informal meeting of what became HSRA was held in the garden of her home in [June] 2018. Her husband, Jeremy Barton, became Chair of HSRA

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though he appears to have recused himself from that role whilst he was negotiating to purchase the pasture field adjacent to the Barton home. He appears to have returned to the role in the Spring of 2019 when there was no longer a prospect that he would buy the field. We note that Cllr Barton was not herself an officer of HSRA. HSRA's opposition to the Red Court development is examined in more detail in Section 8.3.1 above.

Cllr Barton told us that she had voted in favour of the version of the Neighbourhood Plan (which included Red Court within the settlement boundary) when it came before the Town Council on 21st March 2019 because she "believed in a Neighbourhood Plan". She then explained to us in detail how, after a new administration was elected, the Neighbourhood Plan had been rewritten over a period of months under the leadership of Cllr Terry Weldon. Policies were changed, the wording was corrected and the settlement boundary was "just one of many things that were upgraded". This, she told us, was to align the document with the work of Haslemere Vision and the public consultation and to "protect the green ring round the town".

We have not tried to verify Cllr Barton's statement about the lack of alignment of the March version of Neighbourhood Plan with the output of the public consultation and accept it at face value as we do her reasons for voting as she did in March 2019.

However, notwithstanding Cllr Barton's description of what went on between May and November 2019, it appears extremely unlikely to us that she can have been unaware at that time of the potential significance of the location of the new settlement boundaries proposed in the revised Neighbourhood Plan to possible development of the Red Court/Scotland Lane site.

It appears that she knew of its significance whilst she was taking part in the review between May and November. Certainly the 30th October 2019 Neighbourhood Plan Working Party, which she attended, appears to have discussed the settlement boundary at some length. Cllr Barton also told us that she was aware of the matter when she voted on the previous version of the Neighbourhood Plan in March of the same year.

A few weeks later, the Scotlands Close Residents Association, in the Minutes of their AGM on 31st January 2020, say, (Item 10 Red Court Plans), "... Settlement boundary. Haslemere Town Council have reversed the previous town council's decision to support a change in the settlement boundary. [REDACTED] and Nicky [sic] were thanked in their absence for their hard work on this matter. This decision will make it harder for Red Court to get planning permission".

This appears to us to confirm that some local residents knew of the link between the settlement boundary and planning permission at the Red Court Estate though Cllr Barton does not appear to have been there to receive thanks for her work on the matter. In fact, she told us that she had never attended a meeting of the Scotlands Close Residents Association. We have not tried to verify this and accept it at face value.

Referring back, then, to Paul Hoey's article on Disclosable Pecuniary Interest (discussed in 8.2 above) and looking in particular at his Example 2, we note that it says, "If the councillor's next door neighbour makes a planning application it is hard to argue that any reasonable member of the public would think it right that somebody should be able to participate in a decision which so clearly affects them and their property".

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We agree with this statement whilst recognising that Mr Hoey’s article is referring to a planning application and that the 28th November meeting was not discussing a planning application. That said, we can see from their Facebook page that HSRA was orchestrating a response by residents to the Redwood public consultation in May 2019 and, therefore, that possible development of the site was very much a “live issue” six months before the Town Council meeting.

Given the significance of the changed settlement boundary to the likelihood of success or otherwise of a planning application at Red Court and the proximity of her home to the site, we believe that Cllr Barton should have declared an interest in item “109/19 Neighbourhood Plan” that was discussed on 28th November 2019 and taken no part in either the members’ discussion or the vote.

Despite Cllr Barton’s emphasis on it, we do not consider what other councillors did or did not do, whether in Haslemere, Cranleigh or elsewhere in Waverley, to be relevant to what Cllr Barton – an experienced councillor - herself did or did not do at that meeting. Instead, we believe that what is important here is not her “own objectivity” or how *she* perceived the matter but how an *ordinary member of the public*, with knowledge of the relevant facts, would have perceived her involvement. If a member’s view of their own objectivity is the only measure by which they are to be judged, then it necessarily follows that, in circumstances such as these, unless they agreed that they had breached the Code, they would never be found to be in breach of it.

When considering the proximity of Cllr Barton’s home to the Red Court Estate and whether there might be a breach of the Code, we now refer to paragraphs 5 (1) to 5 (5) of the Code.

Paragraph 5 (1) says “As a Member of the Council you must avoid participating in any decision where you could reasonably be seen as having an interest which compromises your honesty or objectivity. Equally, you should avoid any action which might reasonably lead others to conclude that you were not acting selflessly or with integrity.” Paragraph 5 (1) then refers to the Register of Interests as the context for that statement and Part 1 of the Register of Interests invites councillors to list their Disclosable Pecuniary Interests.

Paragraph 5 (2) refers to “Disclosable Pecuniary Interests, or other interests which the Council has decided are appropriate for registration (those listed in paragraph 5(4))”. These paragraphs together serve to emphasise that “Disclosable Pecuniary Interests” also include the interests of a Member’s spouse or civil partner etc..

We note that the Code lists and defines seven principles of public life – the Nolan principles - in its preamble (paragraph 1 (3)). It talks of the need to avoid participating in any decision which might lead to a suggestion that a Member is not acting in a way which is consistent with those principles (paragraph 5 (1)).

However, we cannot see that the Haslemere Code of Conduct explicitly provides for the situation described in Example 2 of Paul Hoey’s article in that it sets out no procedures that a councillor should follow with regard to matters that are adjacent to their own property (as is the case in this instance with the adjacency of Cllr Barton’s property to the Red Court estate). It is this type of gap in local codes which the Committee on Standards in Public Life criticised and wanted to see addressed in January 2019 when it “published a report on local government ethical standards and called upon the Local Government Association to create a model code of conduct to enhance the consistency and quality of local authority codes”

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We therefore conclude that Cllr Barton should have declared an interest in respect of the adjacency of her home to the Red Court Estate so as to avoid the suggestion that she had not acted in line with the Nolan Principles. However, we are unwilling to rely solely on the Nolan Principles as set out in paragraph 1 (3) of the Code and the generalised need expressed in the Code for members to adhere to those principles in order to conclude that there has been a breach of the Code.

Having carried out the Investigation we further conclude, based on the evidence available to us and the balance of probability, that:

2. Aside from her membership of HSRA, the adjacency of Cllr Barton's home to the Red Court Estate and the significance of item 109/19 to the success or otherwise of a planning application for development of the Red Court Estate would appear on the face of it to give rise to a further conflict of interest. However, the Haslemere Town Council Code of Conduct, as worded, makes no explicit reference to, or provision for, declaring an interest based on adjacency except in very general terms in paragraph 5 (1).

Whilst this talks about avoiding participation in "*any decision where you could reasonably be seen as having an interest which compromises your honesty or objectivity*" and "*avoid[ing] any action which might reasonably lead others to conclude you were not acting selflessly or with integrity*" it does not define such interest elsewhere in the Code except in terms of Disclosable Pecuniary Interests and non-pecuniary interest.

Whilst the item being discussed *affected* her financial interest and well-being, it did not *relate* to it and so was not a Disclosable Pecuniary Interest. Nor is adjacency defined as a non-pecuniary interest in the Code. Yet, that said, "it is hard to argue that any reasonable member of the public would think it right that somebody should be able to participate in a decision which so clearly affects them and their property²".

For that reason, whilst we conclude that Cllr Barton should have declared an interest in order to comply with paragraph 5 (1), we are unable to conclude that she breached the Code by failing to declare that interest because of the deficiency of the Haslemere Town Council Code of Conduct. We think it unfair to derive a breach based on the Nolan Principles alone where the Council itself has failed adequately to translate those principles fully into its Code with sufficient clarity.

9. RECOMMENDATIONS

We therefore recommend that:

1. In respect of Cllr Barton's breach of paragraphs 5 (1), 5 (5), 6 (4) and 6 (5) of the Code of Conduct the Monitoring Officer either sends the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seeks local resolution in line with Section 7 of the Waverley Borough Council "Arrangements for dealing with Standards Allegations against Councillors and co-opted Members under the Localism Act 2011".

2. Local Government Lawyer, Paul Hoey, 19th February 2013, Disclosable pecuniary interests – what did the Government intend to capture?

2. **In respect of the adjacency of Cllr Barton’s home to the Red Court Estate the Monitoring Officer takes no further action.**

We further recommend that:

3. **Given that we have identified a clear gap in the Haslemere Town Council Code of Conduct, the Town Council carefully consider whether they should adopt the recently released Local Government Association Model Code (we understand that Waverley Borough Council has already done this). Even if they do not adopt the Model Code they should have regard to the recommendations of the Committee on Standards in Public Life about having more explicit rules around resolving conflicts of interest where members are affected by matters before the Council in line with the tests set out in the Model Code for “Non-Registerable Interests”.**

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APPENDIX 1 - DOCUMENTS AND SOURCES

In the course of my investigation I used a variety of source materials, many of which are listed below:

- (1) Waverley Borough Council website - <https://www.waverley.gov.uk/>
- (2) Haslemere Town Council website - <https://Haslemeretc.org/>
- (3) Haslemere Town Council Minutes, various, available on the HTC website
- (4) Neighbourhood Plan Working Party Minutes, various, supplied by Pippa Auger
- (5) Haslemere Town Council Members' Code of Conduct May 2019
http://Haslemeretc.org/wp-content/uploads/2020/06/2019_code_of_conduct.pdf
available on the HTC website
- (6) Haslemere Town Council Standing Orders available on HTC website
<https://Haslemeretc.org/wp-content/uploads/2021/02/2020-Standing-Orders.pdf>
- (7) Wikipedia entry for Haslemere <https://en.wikipedia.org/wiki/Haslemere>
- (8) Wikipedia entry for 2013 Surrey County Council elections
https://en.wikipedia.org/wiki/2013_Surrey_County_Council_election
- (9) Wikipedia entry for 2017 Surrey County Council elections
https://en.wikipedia.org/wiki/2017_Surrey_County_Council_election#Haslemere
- (10) Surrey News Nikki Barton elected in Haslemere by-election
- (11) Robin Taylor email to Melvin Kenyon 27.01.2021 regarding scope of Investigation
- (12) Waverley Borough Council "Arrangements for dealing with Standards Allegations against Councillors and co-opted Members under Localism Act 2011"
<https://modgov.waverley.gov.uk/documents/s40645/ArrangementsfordealingwithMembercomplaintsOct2016.pdf> available on Waverley Borough Council website
- (13) Email Tom Horwood (CEO, WBC) to MK 21st June 2021, conforming closure of independent investigation referred to in Section 7.1 above
- (14) Local Government Lawyer, Paul Hoey, 19th February 2013, Disclosable pecuniary interests – what did the Government intend to capture?
<https://localgovernmentlawyer.co.uk/planning/318-planning-features/13301-disclosable-pecuniary-interests--what-did-the-government-intend-to-capture>
- (15) Scotland Park website <https://scotlandpark.co.uk> and Scotland Park Briefing Statement
<https://scotlandpark.co.uk/wp-content/uploads/2020/09/200904-Members-Briefing-Note-FINAL-3.pdf>
- (16) Farnham Herald 23rd July 2021 Tensions fray as Red Court refused
<https://www.farnhamherald.com/article.cfm?id=140765&headline=Tensions%20fray%20as%20Red%20Court%20refused&SectionIs=news&searchyear=2021/>
- (17) Knight Frank marketing brochure
- (18) National Planning Policy Framework
<https://www.gov.uk/government/publications/national-planning-policy-framework--2/>
- (19) Waverley Borough Council Local Plan <https://www.waverley.gov.uk/Services/Planning-and-building/Planning-strategies-and-policies/Local-plan>
- (20) Waverley Borough Council LPP1
https://www.waverley.gov.uk/Portals/0/Documents/services/planning-and-building/planning-strategies-and-policies/local-plan/LPP1_July_2019_web.pdf?ver=M4COVK_SH7V54tLWEaTftA%3d%3d

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- (21) Report on the Examination of the Waverley Borough Local Plan Part 1
https://www.waverley.gov.uk/Portals/0/Documents/services/planning-and-building/planning-strategies-and-policies/local-plan/Waverley_LP_report_final.pdf?ver=blz7NAWotTa_zf3QQx9AsQ%3d%3d
- (22) Waverley Borough Council LPP2: Site Allocations and Development Management Policies Pre-Submission Document
https://www.waverley.gov.uk/Portals/0/Documents/services/planning-and-building/planning-strategies-and-policies/local-plan/Draft_Submission_Local_Plan_Part_2.pdf?ver=9NVIVP2SrJP-fco3tWpOVw%3d%3d
- (23) Haslemere Neighbourhood Plan <https://www.waverley.gov.uk/Services/Planning-and-building/Planning-strategies-and-policies/Neighbourhood-planning/Haslemere-Neighbourhood-Plan>
- (24) Haslemere Neighbourhood Development Plan – Examiner’s Report
<https://www.waverley.gov.uk/Services/Planning-and-building/Planning-strategies-and-policies/Neighbourhood-planning/Haslemere-Neighbourhood-Plan>
- (25) Training pack “Introduction to Code of Conduct” May 2019
- (26) Haslemere South Residents Association website (various)
<http://www.Haslemeresouth.com/>
- (27) Haslemere South Residents Association meeting minutes 22.10.18; 15.11.18; 29.12.18.
- (28) Local Government Association Model Councillor Code of Conduct 2020
<https://www.local.gov.uk/sites/default/files/documents/Local%20Government%20Association%20Model%20Councillor%20Code%20of%20Conduct%202020%20WEB.pdf>
- (29) Guidance on Local Government Association Model Councillor Code of Conduct
<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>
- (30) Haslemere Herald 28th June 2018 “Planning blueprint for new homes awaits new ruling”
<http://www.haslemereherald.com/article.cfm?id=127558&headline=Planning%20blueprint%20for%20new%20homes%20awaits%20new%20ruling&SectionIs=news&searchyear=2018>
- (31) Farnham Herald “Don’t roll over on 700 homes plea”
<https://www.farnhamherald.com/article.cfm?id=127754&headline=Don%E2%80%99t%20roll%20over%20on%20700%20homes%20plea&SectionIs=news&searchyear=2018>
- (32) HSRA Constitution (agreed 3rd September 2018) shared with us by Cllr Nikki Barton
- (33) Email Brian Cox to MK dated 21st May 2021 re: Knight Frank and details of Redwood purchase/lotting of Red Court Estate.
- (34) Note of points raised during Robin Taylor meeting with HTC Clerk 28.5.20
- (35) Cllr Barton Declarations of Pecuniary and Other Interests
- (36) Haslemere South Residents Association Twitter account
<https://twitter.com/HaslemereSouth?fbclid=IwAR0dRdCgX50bcFUqpCQEaNkYiBT7kR8PTAWy9roYcGBi2b83DOWORVb2hma>
- (37) Haslemere South Residents Association Facebook page
<https://www.facebook.com/HaslemereSouth/>
- (38) Emails between Jeremy Barton and Brian Cox dated 27th November, 29th November, 1st December, 2nd December (cc: Nikki Barton and others), 4th December 2018 re: potential pasture field purchase

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- (39) Email exchange between Brian Cox and Nikki and Jeremy Barton dated 26th November 2018 re: Red Court allotments
- (40) Email from Brian Cox to Jeremy Barton and Nikki Barton dated 4th December 2018 re: HSRA stand at Haslemere Christmas Fair 2018.
- (41) Cllr Barton “Haslemere First” Manifesto 2019
- (42) Companies House details of Redwood (South West) Limited <https://find-and-update.company-information.service.gov.uk/company/10951212/officers>
- (43) Email Jeremy Barton to Brian Cox dated 29th April 2019.
- (44) Letter from Richard Benson to Director of Law and Governance, Surrey County Council dated 7th December 2020 and email from Director of Law and Governance in reply dated 1st February 2021
- (45) Peter Leete and Partners Estate Agents website <http://www.pleete.co.uk/team.html>

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APPENDIX 1 (Continued) - CLLR BARTON BRIEFING PACK SUPPLIED TO MK

Part 1 – Correspondence with complainants

- (i) Map showing location of complainants and subject members in relation to development site at Red Court

Mr Benson

- (ii) Initial letter of complaint Mr Benson to Mayor John Robini dated 28.2.20
- (iii) Letter Mr Benson to Monitoring Officer dated 23.3.20
- (iv) Email from Mr Benson to MO with attachments dated 29.5.20
- (v) Letter from Mr Benson to MO with attachments dated 3.6.20
- (vi) Exchange of emails with MO re: allegations 19.6.20 to 6.7.20
- (vii) Exchange of emails with MO re: delay 6.7.20 to 17.7.20
- (viii) Exchange of emails with Deputy MO re: delay 7.8.20
- (ix) More correspondence re: delay 12.8.20
- (x) Email from Mr Benson re: further allegations re: subject members 15.8.20
- (xi) Email from MO to Mr Benson re: handling of informal investigations
- (xii) Email from Mr Benson re: process
- (xiii) Email from MO to Mr Benson 27.8.20
- (xiv) Further complaint from Mr Benson 4.9.20
- (xv) Email from Mr Benson 13.9.20
- (xvi) Exchange of emails between MO and Mr Benson 30.9.20 to 26.10.20
- (xvii) Email from MO to Mr Benson re: arrangements and next steps 30.10.20
- (xviii) Emails from Mr Benson to MO 11 & 14.11.20 re: investigation
- (xix) Email from MO to Mr Benson re: next steps and anonymity 18.11.20
- (xx) Further email exchange between MO and Mr Benson 18.11 – 9.12.20

Mr Cox

- (xxi) Initial letter of complaint 12.3.20 re: failure to declare interest
- (xxii) Email to MO 20.3.20 re: HSRA membership
- (xxiii) Email 20.5.20 setting out view re: resolution
- (xxiv) Email to MO 28.5.20 enclosing SCRA minutes 28.5.20
- (xxv) Email exchange between Mr Cox and Daniel Bainbridge 13.8.20 re: informal investigations
- (xxvi) Email to MO and Daniel Bainbridge 9.9.20 re: tweet from Cllr Ellis
- (xxvii) Email from MO to Mr Cox re: outcome of informal investigations 30.10.20
- (xxviii) Exchange of emails Mr Cox and MO 27 & 29.11.20

Part 2 - Correspondence with Cllr Nikki Barton

- (xxix) Email MO to NB 26.05.20 informing her that complaints had been received and inviting her to speak to him
- (xxx) Email NB to MO 26.05.20 agreeing to meet and asking for details of complainants and confirmation of confidentiality
- (xxxi) Email MO to NB 1.6.20 confirming details of Zoom call on 11th June
- (xxxii) Email NB to MO 5.6.20 asking to reschedule and asking about granting of anonymity

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- (xxxiii) MO to NB 5.6.20 response to above email
- (xxxiv) MO to NB 8.6.20 formal email about complaints
- (xxxv) NB to MO 8.6.20 response to MO emails on 05.06 and 08.06
- (xxxvi) MO to NB 9.6.20 response to 08.06 email
- (xxxvii) MO to NB 12.8.20 formal confirmation that a breach may have occurred

Part 3 - Transcript of interview with Cllr Barton

- (xxxviii) Transcript of meeting to discuss Haslemere Code of Conduct with Cllr Nikki Barton
18.6.20

Part 4 – Background information

- (xxxix) Minutes of Haslemere Town Council Meeting 28.11.19
- (xl) Summary of complaints as at 30.4.20
- (xli) Note of telephone conversations with complainants 21.5.20
- (xlii) Haslemere Town Council Members' Code of Conduct

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Waverley Borough Council - Hearings Panel

Re. Cllr Nikki Barton, Haslemere Town Council (“the Parish Council”)

Subject Member Statement

15th June 2022

CONTENTS

1. Introduction
2. Allegation
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4. Relevant Personal Interest
5. Council Meeting 28th November 2019
6. Nature of Complaint
7. Relevant Considerations
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Appendix Chronology

INTRODUCTION

1. This statement is made with respect to the specific allegation that I breached the Members' Code of Conduct¹ over two and a half years ago, by (a) not registering my membership of a local residents association as a non-pecuniary interest, (b) not declaring it at a meeting of Haslemere Town Council ("**the Parish Council**") on 28th November 2019, and (c) not withdrawing from the chamber for the deliberation and vote on a consultation draft of the Haslemere Neighbourhood Plan ("**the Allegation**").
2. This complaint is motivated by revenge and money. It is brought by a property development company ("**the Developer Complainant**") which is owned by a man resident in Somerset together with his associates.
 - Redwood (Southwest) Ltd owns land in Haslemere which it wants to develop.
 - The land is outside the urban zone for development.
 - The developer has tried to persuade local councillors to support the development plans.
 - This included offering me land next to my house if I publicly gave my support as a councillor to the development - effectively a 'bribe' in an email sent to my Council email address. This evidence was ignored by the Independent Investigator, being excluded from his deliberations and the final report.
 - My rejection of the developer's attempt to entice me in this way led directly to their complaint, initially made through their lawyers Clarke Willmott, then through their employed consultant promoter Mr. Cox and his close associate Mr. Benson ("**the Developer's Associate Complainant**"), a local resident at the time.
3. The malicious nature of the complaint is clear from the following facts:
 - The complainants have coordinated with each other. This is evidenced in multiple email exchanges with Waverley Borough Council.
 - The complainants have only complained about a meeting where the outcome did not suit their plans and not about a meeting a few months earlier where the outcome did suit them.
 - The complainants have accused me of being responsible for criminal damage and harm suffered by them without any evidence whatsoever. Their actions included associating me with an anonymous obscene poison pen Christmas card received by one of them and circulating it with their defamatory and baseless accusations all Parish Councillors and some Borough Councillors. The Monitoring Officer used these groundless claims to give two complainants anonymity on the grounds that if their identity was revealed to me, I would somehow be a threat to their 'well-being and safety'. No evidence to substantiate these claims was ever presented. I have never harmed anyone or caused any criminal damage, nor asked anyone else to do so.
 - The complainants have harassed the Monitoring Officer and his team and sent broadcast emails to large numbers.
 - The complainants have breached confidentiality of the investigation, including by writing about it in the local press in a malicious and defamatory way.

¹ The Haslemere Town Council Members' Code of Conduct – adopted May 2019 ("**the Code of Conduct**")

4. The relevant item at the November 2019 Council meeting was to consider the entirety of the town's Neighbourhood Plan, a policy document and plan, rather than make decisions on any site-specific planning proposal.
 - The draft Neighbourhood Plan was approved without a single Member voting against.
 - No single Councillor declared a personal interest, even though they all are affected by the Plan.

5. I had cast my vote in favour of an earlier draft of the town-wide Neighbourhood Plan in March 2019, objectively weighing up the critical need for the town to have a Plan in place in order to contribute important policy considerations, which local residents across the town wanted, for effective overall development locally. Also at this meeting, no councillors declared an interest and the vote was unanimous in support.
 - The draft Neighbourhood Plan was the result of multiple public consultations and expert advice. It had been proposed by Haslemere Vision, a non-political group chaired by respected professionals in the community, working in collaboration with a cross party working group of the Parish Council.
 - In its March 2019 version, the draft Neighbourhood Plan designated the urban zone for potential development as including part of the Red Court Estate and the Longdene House Estate, even though both were on protected countryside.
 - Although this was a policy compromise in terms of protection of greenfield spaces, in my objective opinion it was necessary in order to move to finalising the Neighbourhood Plan rather than there being no Plan at all.
 - My membership of a local residents association, many of whose members were against the March 2019 version, did not undermine my objectivity.

6. I cast my vote in favour of the final draft town-wide Neighbourhood Plan in November 2019, objectively weighing up the same need for the town to have a Plan and the various views of local residents and community organisations across the town, including Haslemere Vision, regarding the policies desired for effective overall development locally. As mentioned above, no councillors declared an interest, the vote was almost unanimous in support (17 for, 1 abstention).
 - In its November 2019 version, the final draft Neighbourhood Plan designated the urban zone for potential development as excluding any of the Red Court Estate as well as the AONB parts of the Longdene House Estate, given they were on protected countryside.
 - Haslemere Vision and the Parish Council working group, as well as the overwhelming majority of feedback from public consultations, supported the final draft Neighbourhood Plan, even though some concerns were expressed in the meeting on the process to finalise the Plan and synchronise with the Local Plan Part 2. Taking all these considerations into account, I cast my vote in favour.
 - In the same way as in March 2019, my membership of a local residents association did not come close to undermining my objectivity.

7. I have been both a County Councillor and a Parish Councillor for many years and understand the standards I must maintain. This complaint is not well-founded and its handling by the Monitoring Officer has been massively disproportionate, costly, time-consuming for me and others, prejudicial and unduly delayed.

8. At no point in time have I consciously or intentionally breached the Code of Conduct (or its later versions); rather at all times I have actively sought to comply fully with both the applicable Code of Conduct and the 7 Principles of Public Life (known as the Nolan Principles), as demonstrated by the record of my disclosures of interests in meetings over the years.
9. In the exercise of my judgement, as required under the Code of Conduct, at all times (including in respect of the Parish Council meeting of 28th November 2019) I carefully considered whether any personal interest that I have was likely to impair my objectivity or independence as a Councillor. At all times that consideration, as required under the Code of Conduct, included factoring into my own evaluation and judgement what an informed member of the public would think.
10. The Code of Conduct did not require me to substitute the judgement of anybody other than myself in this context.
11. This Statement sets out the requirements of the Code of Conduct, the nature of the Allegation, my relevant conduct, some observations with regard to matters of natural justice and due process and my submissions to the Panel regarding why the complaint and Allegation should be dismissed.
12. The Monitoring Officer confirmed that there was only one complaint, the Allegation, for me to answer and for consideration by the Hearings Panel. Anything else will be outside its remit and the Panel will have been misled. Accordingly, if the Hearings Panel considers any other allegations whatsoever against me, I reserve the right to supplement this statement and submit additional evidence and call witnesses. I do not expect this to occur, however, given statements made to me by the Monitoring Officer.
13. This case simply boils down to (a) not having registered my membership of a residents association as a non-pecuniary interest (para 5(5) of the Code of Conduct), something which I have never sought to hide and which has subsequently been registered and (b) not having exercised my judgement in precisely the same way as the Investigating Officer might have exercised it, regarding the risk of my objectivity being undermined.
14. If the property developer was not so determined to attack me and so determined to make tens of millions of pounds, this complaint would never have been brought.
15. This delayed and protracted case that has lasted over 2 and a half years is a scandalous waste of taxpayers' money. Hundreds of pages of spurious evidence have been examined (the initial briefing pack ran to 372 pages), external consultants have been paid for hundreds of hours to carry out hours of interviews (failing however to interview relevant people who were present and involved in the matters under investigation and were neither the complainants nor Council employees), and to write lengthy reports running into hundreds of pages, let alone the hundreds of hours of Waverley Borough Council officer time spent on pursuing this case of a minor, non-pecuniary breach of the Code against me. I consider this process a gross abuse and waste of public funds, running as it does into tens of thousands of pounds during a cost-of-living crisis.

16. Lastly, I would make a general introductory observation that the objective of local government codes of conduct is to help ensure the public have confidence in those entrusted with decision-making. That objective applies to this Hearings Panel. This confidence will be based on whether fairness, proportionality and consistency are seen in any decision.

- **Fairness** must be seen in the context of a malicious complaint coordinated by a property developer who could not buy my support, but who enjoys first-names terms and jovial relationships with other Councillors and Waverley Officers.
- **Proportionality** must apply for an allegation of failing to declare a non-pecuniary interest (generally viewed as a minor breach) over two and a half years ago at a Parish Council meeting against a background of my properly declaring interests in planning meetings — where the Code of Conduct itself was confusing and focuses on a Councillor’s individual judgement. Furthermore, the Local Government Ombudsman is clear that councillors are accountable to the electors of a parish. I am not accountable to a business that is not registered in the constituency. I am at a loss therefore to understand how a non-electoral in the guise of the owner and law firm representative of a Somerset registered property company has been afforded so much time and resources by the Councils’ Monitoring Officer for this minor consideration.
- **Consistency** must be seen when comparing how this case is handled with others handled by Waverley Borough Council and the Parish Council when local residents have complained about other Parish Councillors’ conduct and non-declarations.

ALLEGATION

17. The Allegation which is to be considered by the Panel is that I failed to comply with the Parish Council's Code of Conduct in that I failed to register a non-pecuniary interest and failed to declare it at a meeting of the Council on 28th November 2019, over two and a half years ago.
18. This Statement is therefore limited to comments in respect of that Allegation. Many other spurious and invented allegations were made by the Complainants which the Monitoring Officer has determined are not to be considered by the Panel.
19. In addition, the Investigating Officer's opinion with respect to the adjacency of my home to the Red Court Estate is not the subject of the meeting of the Hearings Panel.
20. Consequently, and consistent with the information I have been provided by the Monitoring Officer, if the Panel were to consider any allegation other than that I failed to declare a non-pecuniary interest at the relevant meeting, I will need to be provided with the details of such allegation and any submitted evidence so as to be able to respond (as well as adequate time to respond) in accordance with Paragraph 7.2 of Waverley Borough Council's *Arrangements for Dealing with Standards Allegations against Councillors and co-opted Members under the Localism Act 2011 – October 2016* ("**the Complaints Arrangements**"). Note that it is the October 2016 version of these arrangements that applies rather than the February 2022 version, although see later comments on the disparity between the two.
21. Furthermore, any evidence which is not directly relevant to the Allegation against me but which may have been submitted in materials made available to the Panel should not be taken into account nor made available to the public. Indeed, given the exceptional circumstances of the nature of the complaint and those who bring it, great care should be taken to ensure no unfairness, prejudice or indeed unlawfulness arises from making any materials available to the public.

PARISH COUNCIL'S CODE OF CONDUCT

The sections of the Code of Conduct relevant to the Allegation are set out below with the opinions of the Investigating Officer and my responses.

Section 5(1) of the Code: “As a Member of the Council you must avoid participating in any decision where you could reasonably be seen as having an interest which compromises your honesty or objectivity.”

Investigating Officer's opinion: Cllr Barton's membership of Haslemere South Residents Association was an interest which compromised her objectivity.

22. My response: The Investigating Officer has not properly assessed “reasonably seen”. It is within the range of reasonableness that simple membership of Haslemere South Residents Association (“HSRA”) would not be seen as an interest which would compromise my objectivity, especially given my track record of being objective in decision-making on the earlier draft Neighbourhood Plan at the March 2019 Council meeting.
23. There is no single answer to what is “reasonably” seen as a compromising interest for the purposes of the Code of Conduct. There is a range of what is reasonable. The usual question to ask, “Could no reasonable person see this type of membership as not undermining a councillor’s objectivity?”.
24. Certainly, I am sure many reasonable people would not consider my fellow Councillors Round and Odell’s pecuniary interest with respect to the settlement boundary at Longdene to be so significant as to undermine their objectivity at either the March 2019 meeting (where they proposed a resolution to approve the Neighbourhood Plan) or the November 2019 meeting (where they proposed an amendment to approve that same version of the Neighbourhood Plan). And when they considered their own views of what the ordinary member of the public would think (see below), I am sure that they concluded their objectivity was not undermined with respect to the vote on the Neighbourhood Plan where they did not declare any interest, as distinct from a site-specific discussion where they properly disclosed that pecuniary interest.
25. In exactly the same way, I am sure the personal interest of the Cranleigh Parish Councillor who proposed the Cranleigh Neighbourhood Plan to their parish council in 2019 would not have been seen by many reasonable people as compromising her objectivity. She had been elected to represent the public and to take decisions in the public interest, like any parish councillor. Her personal interest of membership of the leadership committee of the Cranleigh Civic Society which campaigned for the Neighbourhood Plan, and has as its stated aim to protect the town against unwanted development was not declared as an interest which would undermine her decision-making. Indeed, had she declared it, I am sure most members of the public would have thought it strange.
26. If a reasonable person could form a view that these very similar interests did not compromise a parish councillor’s objectivity, then the Investigating Officer is more likely than not mistaken in his conclusion and there was no breach of section 5(1) of the Code. It certainly is not a valid argument to say that the individuals who the Investigating Officer canvassed for views on this question were ordinary members of the public – they were in fact the developer of Red Court

Estate, the promoter consultant of the developer, the real estate agent of the developer, employees of Waverley Borough Council and employees of the Parish Council. It is hard to understand why the investigating Officer failed to speak to any 'ordinary' members of the Haslemere community in his investigations.

Section 5(5) of the Code: "Do be aware that the Council has decided that it is appropriate for you to register and disclose non-pecuniary interests that arise from your membership of [...] bodies one of whose principal purposes include the influence of public opinion or policy."

Investigating Officer's opinion: Cllr Barton's membership of HSRA was a registrable non-pecuniary interest because one of its principal purposes is the influence of public opinion or policy.

27. My response: The Investigating Officer has ignored the two steps of the test for disclosure:

(1) Is the Councillor a member of any organisation/body?

(2) Is there a relevant disclosable interest "that arise[s] from" that membership?

Even leaving this point to one side, the Investigating Officer has not properly assessed HSRA in the context of the Code and its intent.

28. The Code of Conduct's wording is not clear and its examples of political party, trade union and campaigning charity are misleading if a residents association was intended to be deemed to fall into the definition.

29. The Code of Conduct's wording has not been understood by all Councillors to include bodies such as Haslemere Society, the Civic Voice, the National Trust, the Woodland Trust, the Campaign for the Protection of Rural England (CPRE) or the Open Spaces Society, all of whose purposes include the influence of public opinion or policy, let alone residents associations like HSRA.

30. Indeed, a small number of Councillors have registered their membership of the National Trust as such. The National Trust is a body, one of whose principal purposes includes the influence of public opinion or policy, but it would not necessarily consider itself a "campaigning charity"; and no other Councillors have deemed it, or deemed the Haslemere Society (and its membership of Civic Voice and the Open Spaces Society), or the CPRE as such. Yet these are bodies whose stated purposes include advocacy, influence, speaking-out and engagement, i.e., the influence of public opinion or policy.

31. HSRA is a residents association whose constitution does not include a principal purpose to influence public opinion or policy, but rather the enhancement of local residents' and organisations' enjoyment of the district. It has much less of a purpose to influence public opinion or policy than the National Trust, the Woodland Trust, Haslemere Society, the Civic Voice, the Campaign for the Protection of Rural England (CPRE) or the Open Spaces Society. However, as a non-principal purpose, HSRA has engaged in various public debates alongside the Haslemere Society.

32. If a rectification is required in this regard (and I have rectified my own register in this respect in case it is required), it should have been made explicit.

Section 6(4) of the Code: “Do declare any other non-pecuniary interest(s) that you consider to have sufficient weight so as to undermine your ability to make an open-minded and objective decision.

Where this is the case, do exclude yourself from consideration of the item by withdrawing from the chamber for the duration of it being discussed.”

Section 6(4) of the Code: “In making a judgement about whether a non-pecuniary interest is of sufficient weight as to undermine your objectivity, you should consider what an ordinary member of the public, with knowledge of the relevant facts, would think.”

Investigating Officer’s opinion: Cllr Barton’s membership of HSRA was an interest that had sufficient weight so as to undermine her ability to be objective, regardless of what she thought herself because the Investigating Officer thought an informed ordinary member of the public would think so.

33. My response: The Investigating Officer ignores the plain meaning of the Code’s words: “that you consider”, “in making a judgement” and “you should consider”.
34. The Code of Conduct explicitly (and for good reason) depends upon the consideration by the Member of their own objectivity. That consideration includes reflection on what the Member thinks a member of the public might think. The Code relies upon all Councillors to carry out that consideration and that is precisely what I did prior to the relevant Council meetings of 21st March 2019 and 28 November 2019. The Code of Conduct does not substitute speculation as to what a member of the public thinks.
35. It is reasonable to assume that every other Councillor carried out an equivalent consideration and reflection themselves prior to the Council meetings of 21st March 2019 and 28th November 2019 too. Their reflections were no more or less reliable than mine. Nor were their conclusions any more or less reliable that their own objectivity was not undermined by their personal interests, which already included as a matter of public record living close to green spaces protected by the Neighbourhood Plan, having contracts with customers whose businesses were affected by the settlement boundary designation, and being members of bodies one of whose principal purposes is the influence of public opinion or policy relevant to policies in the Neighbourhood Plan (such as Haslemere Society, National Trust, residents associations or the CPRE).
36. In my own case, an informed member of the public would have been aware of how I had participated and voted at the meeting on the 21st March 2019 and would not think that my objectivity at another meeting on the Neighbourhood Plan (on 28th November 2019) would have been undermined by being a member of either HSRA or the Haslemere Society, both of which had participated in public consultations and expressed views on the Neighbourhood Plan on behalf of their membership groups. The investigating officer failed to interview any informed members of the public.
37. The Investigating Officer’s opinion that withdrawal from the chamber is necessary on any declaration of a non-pecuniary interest is simply false. The Code does not state this and custom and practice in parish councils across the land does not require this. The Good Councillors Guide

2018² does not require this, but rather focuses on withdrawal where there is a pecuniary interest. The same is true in the 2013 guidance published in 2013 by the Department for Communities and Local Government Openness and Transparency on Personal Interests.³

38. The training materials used by the Borough Solicitor at a training session on 13th May 2019 (which I attended and is described in paragraph 7.2.1 of the Investigation Report) include a powerpoint slide which explains that a non-pecuniary interest which does not undermine objectivity can be declared at a meeting by a Councillor who then continues to participate and vote. Custom and practice in Haslemere is that Parish Councillors frequently declare non-pecuniary interests and continue to participate and vote in meetings. Even, the improved revised 2021 code of conduct for the Haslemere Council does not automatically require withdrawal upon declaration of a non-pecuniary interest⁴.
39. Lastly, there must be no confusion between evaluating a personal interest on the one hand and being expected to participate in Council decision-making on matters on which Councillors may have campaigned, such as the protection of the countryside; this is explicitly confirmed as acceptable in section 8(1) the Code of Conduct:
- 8(1): "Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life, you should not be prohibited from participating in a decision in your political role as a Member."*
40. The Investigating Officer's opinion is based on both a misinterpretation of the Code of Conduct (i.e. that it is his view of what a member of public might think – especially without any objective contemporaneous evidence – that determines a breach) and a misapplication of the Code of Conduct to the facts.
41. It is clearly the case that the Code of Conduct was uncertain and lacked precision, with the consequence that the Investigating Officer has recommended it be upgraded. As the Investigating Officer has implied, fairness would not be served to apply the defective Code of Conduct as though it had been written differently.

² <http://haslemeretc.org/wp-content/uploads/2020/06/6. the good councillors guide 2018.pdf>

³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/240134/Openness_and_transparency_on_personal_interests.pdf

⁴ <https://haslemeretc.org/wp-content/uploads/2022/01/2022-Members-Code-of-Conduct.pdf>

RELEVANT PERSONAL INTEREST

This section describes the nature of the personal interest that is the subject of the Allegation being considered by the Panel.

42. For avoidance of any doubt, I have NOT been accused of failing to declare a pecuniary personal interest, as confirmed by the Monitoring Officer (and indeed the Clerk to the Parish Council in an email to me of 14th November 2019). Nor is it the non-pecuniary personal interest of living close to parts of Haslemere's Areas of Great Landscape Value, Areas of Outstanding Natural Beauty, Green Spaces, Settlement Boundary or the Red Court Estate. This second point is consistent with the fact that Councillors who have personal interests in land situated close to Haslemere's Areas of Great Landscape Value, Areas of Outstanding Natural Beauty, Green Spaces, Settlement Boundary and/or the Red Court Estate (and that means every Councillor) did not consider such personal interests to warrant disclosure or withdrawal at the Council meetings of 21st March 2019 and 28th November 2019.
43. The relevant personal interest for the purposes of this Hearing Panel is the personal interest of being a member of Haslemere South Residents Association.
44. Since moving to Haslemere 16 years ago I have been struck by the strength of its community, evidenced by groups such as the Haslemere Society, Haslemere Vision, Transition Town, Active Travel Group, Haslemere Chamber of Commerce and so on. However, when compared to other similar sized towns with a strong community spirit, there are fewer residents associations than one might expect. Residents associations serve to bring residents of a local area together for joint activities (in HSRA's case; some examples include litter picks, community barbeques, shopping for elderly neighbours, weekly food bank collections and Easter Egg hunts), and provide a place for discussion of local issues of relevance for that area. Sometimes (but not in the case of any residents associations in Haslemere) they become political groups and some councils in Waverley include councillors who represent residents associations.
45. I identified the clear benefits of residents associations during my two terms as Haslemere's Surrey County Councillor, where I was part of the Residents Association and Independent group. I included the vision to establish such an association in my manifesto in 2017 and was delighted when, in 2018 some local residents wanted to form a new residents association, which would work closely with other organisations in the town and serve a wide range of needs in the south of the town. This became HSRA and I quickly joined with other new members.
46. I have never hidden my membership of HSRA and would say that it is generally known in the community that I am a member, including through my own website, HaslemereFirst.com.
47. HSRA's purpose is set out in its constitution as follows:

"The Association is established for the public benefit in the area (the "Area of Benefit") comprising the residential, recreational and rural places extending to the southern and eastern side of Haslemere, including in particular:

- *the following residential roads: Park Road (excluding the three houses the north end of Park Road abutting Hill Road), Old Haslemere Road, Chiltern Close, Scotlands Close, Scotland Lane, Denbigh Road, Haste Hill, Blackdown Lane, Tennyson’s Ridge, Chase Lane, together with such other roads or areas in the Haslemere South neighbourhood as the members may decide from time to time;*
- *the War Memorial Recreation Ground; and*
- *the rural places in the Area of Benefit, including those which are Areas of Outstanding Natural Beauty or Areas of Great Landscape Value, as well as public footpaths and byways,*

for the following purposes (the “Purposes”):

- *To promote high standards of development, conservation, planning, traffic management, safety in or affecting the Area of Benefit;*
- *to enhance and protect the community interests of those resident in the Area of Benefit;*
- *to enhance and protect the community interests of those community, educational and sport and leisure organisations and associations utilising or enjoying the Area of Benefit; and*
- *to represent the views of its members on local neighbourhood and environment matters generally.”*

48. HSRA is a not-for-profit unincorporated association, which means that, although it is not currently registered as a charity, all its assets go to a similar charity if it is wound up.

49. HSRA is not political, is not related to the council or to any political party. It clearly exists in the public interest and subscribes to certain important values such as protecting the environment of the local area, but it is not a political body even if at times it will publicly express the views of its members as local residents.

50. In many respects it is less driven to influence public opinion or policy than the Haslemere Society which “exists to protect and enhance Haslemere, nearby villages and the surrounding countryside”⁵ and was founded as part of the Commons Preservation Society, of which it is still a member (now known as the Opens Spaces Society) and whose purposes are stated as:

- *“We **campaign** for stronger protection and opportunities for everyone to enjoy commons, greens and paths.*
- *We **defend** open spaces against loss and pressures from development.*
- *We **assist** local communities so that they can safeguard their green spaces for future generations to enjoy.*
- ***Fighting** for village greens, commons and footpaths for everyone to enjoy.”*

⁵ <http://www.haslemeresociety.org/>

51. On its website, the Haslemere Society describes its achievements as including: “*influencing the 2012 parking proposals*” and “*saving The Georgian Hotel from development 1997-1999*” and explicitly states that “*Haslemere Society has a substantial membership whose influence is widely respected*” and that “*You can help to shape Haslemere's future by joining the Society.*”⁶

52. In this context, Haslemere Society is a member of Civic Voice, which “*works to make the places where everyone lives more attractive, enjoyable and distinctive*”. Civic Voice describes itself as an “*influential national voice*” which is active “*lobbying in Whitehall and Westminster, campaigning with local volunteers, speaking out in the media, undertaking research, building partnerships and promoting civic pride.*”⁵

53. In addition, the Haslemere Society is affiliated to the Campaign for Protection of Rural England (CPRE). CPRE sought to influence public opinion with respect to the Local Plan Part 2, including the Developer Complainant’s proposed development site. The CPRE website states the following:

*“With a local CPRE group in every county in England, we’re advocating nationwide for the kind of countryside we all want: one with sustainable, healthy communities and available to more people than ever, including those who haven’t benefited before. We stand for a countryside that enriches all of our lives, regenerating our wellbeing, and that we in turn regenerate, protect and celebrate.”*⁵

54. In 2018 when I joined HSRA and again in 2019 when I was re-elected to the Parish Council, I did not register my membership on the register of disclosable interests. Quite simply, I would not have considered it fell into a relevant category, either as a charity (it is not registered as a charity) or as a body that influences public opinion (it is not established to do that and is nothing like the political parties or campaigning charities given as examples on the register or in LGA guidance).

55. I note that Councillor Nicholson has included the National Trust and the Woodland Trust on his register of interests as bodies that influence public opinion. The National Trust states the following on its website:

“The National Trust “Help[s] look after the places where people live, by:

- finding new solutions for managing local green space*
- celebrating local heritage and equipping communities to care for it*
- engaging in shaping good housing and infrastructure development”*

56. Perhaps this is sufficient to warrant membership of the National Trust being a registrable interest as membership of a body one of whose primary purposes is the influence of public opinion or policy, but it is not clear. In the same way, it is not clear that simple membership of HSRA, whose purposes would probably include the same ones as these of the National Trust, requires registration as a disclosable interest for the purposes that registration is intended.

⁶ Emphasis added.

57. However, other Councillors have registered the National Trust as a charity membership (as have I). This inconsistency shows the lack of clarity as to the categories on the register.
58. This demonstrates how unfair and inappropriate it would be to conclude either that my failure to register my membership of HSRA as a body with a primary purpose to influence public opinion, was a breach of the Code of Conduct or (if it was a breach) that it was anything other than an inadvertent technical breach of no significance. Note that in an abundance of caution I added my membership of HSRA and other local societies to my register of interests some 18 months ago.
59. HSRA, along with the Haslemere Society, Haslemere Vision, among other resident-focused groups, as well as national organisations such as CPRE, engaged in consultations on the Neighbourhood Plan, including with respect to policies with respect to Green Spaces and the Settlement Boundary. These were instances of seeking to influence public opinion or policy, whether or not it was a primary purpose of those organisations, as discussed above.
60. As a Councillor for Haslemere South ward I am responsible for representing the views of the electorate and this includes listening to the views of local residents and their associations, including Haslemere South Residents Association, Half Moon Estate Residents Association, Scotland's Close Residents Association, among others. These are one source of input for me as a Councillor and my membership of one of these associations is consistent with my desire to remain in touch with my constituency.
61. The Investigating Officer seems to take the view that mere membership of an organisation automatically undermines objectivity. This is not a logical point of view and the wording of the Code is that the disclosable interest "*arises from*" the membership, rather than being the existence of membership on its own.
- 62. The nature of my interest in being a member of HSRA is not so significant as to undermine my objectivity and would not be perceived so by an ordinary member of the public.**
63. The non-disclosure of my interest in being a member of HSRA, is so insignificant that it had no impact on the decisions of the Council to approve either the March 2019 draft Neighbourhood Plan or the November 2019 draft Neighbourhood Plan. I voted in support of both the earlier and the revised draft each time. The first was approved unanimously and the second was approved by 17 votes in favour and 1 abstention.
64. In conclusion, the Panel is invited to disregard the Investigating Officer's analysis of the significance of the personal interest in membership of HSRA and dismiss his conclusions.

COUNCIL MEETING 28TH NOVEMBER 2019

65. In advance of the meeting of 28th November 2019 I received an email on 14th November from the Town Clerk suggesting that I consider whether I had any personal interests to declare at the meeting. The Clerk advised me that the location of my house did not amount to a declarable pecuniary interest.
66. As usual, in preparation for the meeting, I carefully considered all of my personal interests with a view to evaluating whether or not any of them should be disclosed under the Code of Conduct. As in the case of the meeting of the Council on 21st March 2019, when the draft Neighbourhood Plan was to be discussed and approved, I concluded that there was no interest that would undermine my objectivity in the matter.
67. It should be noted that the meeting was a discussion of the town-wide Neighbourhood Plan with no item on the agenda for a decision in relation to any specific site, green space or policy. To borrow the words of Councillor Dear (as reported in a newspaper article on 6th July 2018 in relation to the Local Plan), the Neighbourhood Plan was also “*a statement of possibilities with no account of detail.*” It was a discussion of a plan that had been over six years in development involving over 80 community volunteers and professional experts, a series of community-wide public consultations, including the Regulation 14 Consultation and partnerships with the Parish Council, Waverley Borough Council and other key organisations. The joint, cross-party working party of the Haslemere Vision and the Parish Council were recommending approval.
68. At the November 2019 meeting itself, a statement by the Chair of Haslemere Vision, Lesley Banfield, made on behalf of Haslemere Vision was made in support of the revised Neighbourhood Plan, stating:

“Haslemere Vision set up six and a half years ago to undertake the consultation and drafting of the Neighbourhood Plan on behalf of Haslemere Town Council. Over 80 highly skilled and committed community members contributed thousands of hours to help shape the document.

Haslemere Vision has ascertained through extensive consultation with the community that the rural nature, protected environments and setting of the town is a very important issue for residents. And when asked where future development should be located, the confirmed: 65% wanted to build as many houses as possible within settlements rather than on greenfield land.

Recommendation *Haslemere Vision recommends that the settlement boundary included in the Draft Neighbourhood Plan (Appendix 3 to the Full Council Meeting Agenda 28th November 2019) is approved. This is because this boundary reflects the boundary that Haslemere Vision included in earlier drafts of the Neighbourhood Plan. This boundary is created by the designated areas that surround the town (AONB, AGLV, Green Belt.*

69. In March 2019, the Parish Council voted to approve a Neighbourhood Plan in which the draft settlement boundary had been redrawn by Waverley Borough Council (in 2018) to incorporate several key sites including the AGLV/AONB sites at Longdene and the Red Court Estate.

Members of the public requested and were refused sight of how this shift of boundary happened at Waverley Borough Council. The inclusion of key protected landscapes within the settlement boundary was contrary to the recommendation by Haslemere Vision, which was also supported by Natural England, CRPE and the Surrey Hills AONB. However, this Neighbourhood Plan (which contradicted established public opinion in some respects) was approved in March 2019. Note that I voted in support of this plan.

70. After the election, in May 2019, a new joint Haslemere Vision & Parish Council cross-party working group (Chaired by Councillor Weldon) reconsidered the draft Neighbourhood Plan from a number of perspectives and ensuring it reflected the community's wishes. A new draft which included various modifications, including the restored original settlement boundary (i.e., the boundary which pre-dated the Waverley Borough Council's proposed 2018 boundary) was voted through by the Parish Council in November 2019. I also voted in support of this revised plan.
71. Given the discussion was in respect of the whole town's policies and development plan, no declarations of interest were made, including by Councillors Round and Odell who had previously declared pecuniary interests within the context of Council Committee discussions of site-specific matters in connection with the proposed Settlement Boundary (for example, the Council's Planning Committee meeting of 21st June 2018).
72. Councillor Odell seconded an amendment motion that the prior version of the Neighbourhood Plan (i.e. as approved in March 2019) should be approved for consultation rather than the proposed version. In the light of Councillor Odell's then 12 years of exemplary experience as a Parish Councillor and 3 years as Mayor, presiding over Council meetings and compliance with the Code of Conduct and standing orders, her decision not to declare the above-mentioned personal interest (see paragraph 71) in either the 21st March 2019 meeting or the 28th November 2019 meeting evidences the reasonableness of such a decision, as well as what was expected of Councillors in this specific context. This is further evidenced by the decision of Councillor Round not to declare the above-mentioned personal interest (see paragraph 71) with respect to either the March 2019 meeting, where as Mayor he proposed the approval of the draft Neighbourhood Plan, or the 28th November 2019 meeting.
73. The meeting was to discuss and approve the Neighbourhood Plan. The Plan both affects and relates to the environment, benefits and protections of where every single Councillor has a personal interest in terms of their land and personal or business activities. This is the same category of matter as the approval of the precept by the Parish Council, which also affects every Councillor resident in the town and with respect to which the LGA guidance says Councillors are not expected to recuse themselves or should benefit from dispensation because it is a "*decision affecting the generality of the public in the area of your council, rather than you as an individual*".
74. As noted above, whether or not I voted to approve the Neighbourhood Plan at the meetings in March and November 2019 was irrelevant to the outcome of the votes which were both unanimous or virtually unanimous.

NATURE OF THE COMPLAINT

75. The complainants who make the Allegation are not seeking to ensure confidence in the integrity of the Parish Council's decisions. If they were, then they would have complained about my lack of declaration of my personal interests at the 21st March 2019 meeting as well. However, the decision at that meeting was favourable to their financial interests, unlike the decision at the meeting of the 28th November 2019 in respect of which they make their complaint.
76. The developer Redwood (Southwest) Ltd represented by its law firm Clarke Willmott and by its employed consultant promoter Mr. Cox (together "**the Developer Complainant**") made the Allegation in March 2020. The Developer Complainant acted in concert with two other complainants, one of whom withdrew their complaint so as to remain anonymous. The other complainant is Mr. Benson ("**the Developer's Associate Complainant**") who accompanied Mr. Cox and supported him on various tours of the Red Court site for local residents to promote the development. For some unexplained reason, Mr. Jason Leete, of Peter Leete and Partners Estate Agency (and one of the original directors of Redwood (Southwest) Ltd registered at Companies House in September 2017) was also interviewed with the Developer Complainant by the Independent Investigator. Mr. Leete's self-interested evidence against me was included in the final report and even given credibility as though he was an independent professional.
77. Although the Local Government Ombudsman defines a complaint as "*any expression of dissatisfaction, however made, about the standard of service, actions or lack of action by the Council or its staff, which affects the individual resident or group of residents*"⁷, the Developer Complainant is not a resident, and nor is its law firm. The motivation of the complainants in making their Allegation is manifestly to further their interests in the financial prize of successfully developing the Red Court Estate to the tune of tens, if not hundreds, of millions of pounds.
78. The purpose of this complaint is self-evidently to exert malicious pressure on me as an individual, to harm my reputation and to seek to challenge the proper functioning of the Council's decision-making. The link between the complainants' desire to secure planning permission for their housing development and the Allegation is confirmed by the fact that the developer's representatives even referred to this ongoing and confidential investigation in open hearing of the Planning Inspectorate's Appeal Hearing on the Developer Complainant's planning application for the Red Court Estate housing estate. The complainants had, by making the Allegation, sought to challenge the valid approval by the Parish Council of the consultation draft of the Neighbourhood Plan at the meeting of 28th November 2019, in which the Red Court Estate was outside the Settlement Boundary.
79. That approval was itself supported by the recommendations of Haslemere Vision and the Parish Council working group as well as by public surveys on the Neighbourhood Plan and public surveys on the protection of greenfield spaces surrounding the town⁸. The Neighbourhood Plan was ratified by public referendum in 2021- further rendering the pursuit of this case against me a total waste of public funds.

⁷ http://haslemeretc.org/wp-content/uploads/2020/06/2018_complaints_procedure.pdf

⁸ http://haslemeretc.org/wp-content/uploads/2020/06/phase_2_consultation_results_jan_2016.pdf

80. The way in which the complainants coordinated together at a moment, several months after the relevant events further indicates the bad faith in which the Allegation has been made. The complainants were scraping the barrel to try and attack the democratic process. The Parish Council, supported by the community and validated by a subsequent referendum, was in the end supporting a Local Plan Part 2 and a Neighbourhood Plan that retained and protected the original Settlement Boundary of the town, one which the Developer Complainant had lobbied hard to move.

81. The coordination between the complainants is evidenced by the following emails:

- 17th July 2020 from Mr. Benson to the Monitoring Officer where he says, *“all the complainants would like you to advise us what your ‘next steps’ are – due today”* (apparently copied to other parties – either other complainants with whom he was coordinating, or to third parties in breach of confidentiality)
- 12th August 2020 from Mr. Benson to Mr. Bainbridge where he refers to *“my/our complaints”*
- 15th August 2020 from Mr. Benson to Mr. Horwood where he refers to *“my/our complaints”*
- 15th August 2020 from Mr. Benson to Mr. Horwood where he refers to another party’s solicitors sending a letter to the Monitoring Officer on 22nd July 2020 which, by process of elimination, could only have been sent by solicitors acting for the Developer Complainant with whom Mr. Benson was clearly coordinating
- 26th October 2020 from Mr. Benson to the Monitoring Officer stating, *“I have spoken to the other two complainants”* and asking why the Monitoring Officer does *“not accept the evidence that I and the other two complainants have provided”*
- 14th November 2020 from Mr. Benson to the Monitoring Officer stating, *“It is the view of the complainants that your initial decision was manifestly unreasonable and illogical”*, clearly acting in coordination.

82. The complaint is also motivated by a vindictiveness towards me, because I rejected the Developer Complainant’s offer of land in exchange for my vote and public support of their Red Court Estate housing development.

83. Prior to my becoming aware of any development plans on the Red Court Estate, I was in contact with the real estate agents Knight Frank with a view to purchasing one plot of land on the estate, a field adjacent to my home. Following initial positive indications from Knight Frank that an offer in the region of £200,000 would be accepted by the seller, we made an offer to buy the land and engaged with Knight Frank in September 2018 and proceeded to take steps to arrange mortgage borrowing with Scottish Widows Bank to do so.

84. The seller turned out to be the Developer Complainant (I had not known the identity of the seller while dealing with Knight Frank) and they engaged in detailed negotiations with me and my husband in connection with the sale of the land.

85. The Developer Complainant involved the new owners of Red Court House in the negotiations, because apparently they had also expressed an interest in the same plot or part of it.

86. On 27th November 2018 the Developer Complainant made their proposal to sell the land to us in the following terms, addressed to me at my Haslemere Town Council email:

"1. Redwood to agree to sell the field (subject to 50% overage) to yourselves in the sum of £200k.

*5. Nikki [Councillor Barton] and [Mr. Barton] to support our proposals and make public their support, ideally withdrawing their earlier objection to DS18 or, if that is not possible, countering it with a representation of support in principle. **[Complainant's emphasis]***

Obviously all the above is likely to need refining into a legal agreement, but I am happy to agree matters on a handshake (vis-a-vis halting any works in the field etc) until such time the agreement is drawn up and approved by all parties."

87. On 29th November 2018 the Developer Complainant reiterated their proposal in the following terms, repeatedly enticing me to accept the land in exchange for giving my support publicly as a Councillor to the housing scheme being proposed by the Developer Complainant and subsequently supported by the Developer's Associate Complainant. The Developer Complainant wrote as follows to me at my Haslemere Town Council email address:

*"I am very happy for you to draft and table a legal agreement relating to this proposal if you are happy to do so. **Please understand, however, your public support for our proposals is a prerequisite of any agreement** though, given the exemplar (and generous) scheme we are proposing, I would hope such support would be forthcoming in any event".⁹*

88. The Developer Complainant added the following disingenuous comment after making my support a condition in their offer: *"I would sincerely hope that any declaration of support is heartfelt rather than felt to be obligatory"*.

89. Given this outrageous attempt to entice me to compromise my objectivity as a Councillor I dropped all engagement in the discussions with the Developer Complainant, who then sent a series of emails to my town council email, copied to the Town Clerk extremely angry that I was not replying or engaging.

90. The Developer Complainant has tried to cover up this reason for the breaking off of these discussions, by pointing to their desire to put allotments on the land as a reason for my not proceeding with the purchase. Nothing could be further from the truth or logic! If I was worried about allotments, the simple solution would have been to buy the land on offer. Indeed, the Developer Complainant's reason for proposing the allotments was probably to try to sweeten the enticement – i.e., if I publicly supported the Developer Complainant's housing scheme, not only could I buy the land but I would also not have allotments near my house. This is evidenced by the Developer Complainant's introduction to his written offer of 27th November 2018 as follows:

*"In exchange [sic] for dropping the current proposal to provide allotments on the field opposite the rec., we propose:" **[Complainant's emphasis]***

⁹ Emphasis added.

91. In fact, the allotments question is a red herring and is of no concern to the enjoyment of my own house. On the other hand, if allotments were to be placed on the plot, the negative impact would rather be on the enjoyment and setting of the private dwellings at Red Court House and the Red Court Lodge, directly overlooking the land. As the Developer Complainant has written, the view from my own house is shielded by *“significant vegetation and tree cover”*.

92. In an email to me of 20th May 2020, the Developer Complainant re-wrote history as regards their offer to sell us the land suggesting they had turned down our proposals rather than the other way round. They wrote as follows:

“Your property directly adjoins our landholding and you/Jeremy have made a number of overtures to us to sell you an adjoining field, which we have turned down. I trust that this does not and will not prejudice your dealings with us when making decisions at councillor level?”

93. It is hypocritical in the extreme for the Developer Complainant and the Developer’s Associate Complainant to voice concerns and submit complaints together about my respect for the Principles of Public Life (**“the Nolan Principles”**) after the Developer Complainant’s attempts to entice me with the material personal benefit of owning a large plot of land... if only I ignored at least three of the seven fundamental Nolan Principles of Selflessness, Integrity and Objectivity and committed my public support to their development.

94. It is ironic that in spite of all their unsuccessful efforts to entice me, on 21st March 2019, exercising my independent and wholly objective judgement I voted in favour of a Neighbourhood Plan with a Settlement Boundary which included their site within the zone for development.

95. The vexatious and malicious nature of this complaint is such that it should have been immediately dismissed by the Monitoring Officer as set out by the Complaints Arrangements, which state:

“Section 4: [...] The following types of complaint will not be considered as ‘valid complaints’ under this procedure:

[...]

(h) Complaints which refer to alleged incidents which happened so long ago that there would be little benefit in taking action now;

(i) Complaints containing trivial allegations, or which appear to be simply vexatious, malicious, politically motivated or tit-for-tat;”

96. Indeed, the current version of the Complaints Arrangements (February 2022) says that a complaint that relates to events more than three months before would not be considered valid.

97. The malicious nature of the complaint is evidenced further by the harassing emails sent by the Developer Complainant and the Developer’s Associate Complainant (see below), as well as by the latter’s letters to the Haslemere Herald maligning my good reputation and breaching the confidentiality of this investigation and procedure.

98. The Developer's Associate Complainant's letter to the Haslemere Herald published on 13th May 2021 was timed to coincide with the day that I was standing for election to be Mayor, so as to have maximum negative impact on me and my reputation. It included the following statement in breach of confidentiality and with no other purpose than to malign:

"The Waverley legal department have spent 10 months (March to December 2020) investigating Councillor [...] Barton's alleged conflicts of interest, the graveyard of politicians."

99. The Hearings Panel will be familiar with the Waverley Borough Council's *Policy for dealing with unreasonably persistent complaints and unreasonable complainant behaviour – March 2015 ("the Unreasonable Complaints Policy")*¹⁰.

100. Note that this policy applies to all complaints against Council employees and Members, whereas the procedures for handling complaints are set out in two separate policies depending on whether a complaint is made against an employee or a Councillor. Specifically, unlike the policy for the procedures for complaints against employees which expressly states complaints against Members are out of scope, this policy has no such exclusion. This is perfectly understandable since the Council will have equal concerns about protecting its Members from unreasonable complaints as protecting its employees from them. To suggest otherwise would undermine the fairness and natural justice of the handling of complaints against Members by Waverley Borough Council and its Officers.

101. The Unreasonable Complaints Policy states as follows:

"the Council does not expect its staff or Members to tolerate unacceptable behaviour by complainants"

"4. The following types of behaviour may result in a complainant being regarded as either unreasonable or unreasonably persistent. [...]"

- *Refusing to accept that certain issues are outside the scope of the Council's complaints procedure.*
- *Insisting on the complaint being dealt with in ways which are incompatible with the Council's complaints procedure or with good practice.*
- *Making unjustified complaints about staff who are trying to deal with the issues, and seeking to have them replaced.*
- *Changing the basis of the complaint as the investigation proceeds, including denying or changing statements that have been made at an earlier stage.*
- *Introducing trivial or irrelevant new information at a later stage.*
- *Raising many detailed but unimportant questions, and insisting that these are all answered.*
- *Adopting a 'scatter-gun' approach by raising concerns with different staff across the Council or by pursuing parallel complaints on the same issue with other organisations.*

¹⁰ <https://modgov.waverley.gov.uk/documents/s22399/Annexe%201%20Complaints%20Handling.dotx> -

- *Making excessive demands on the time and resources of staff or Members while their complaint is being investigated by, for example, making lengthy telephone calls, emailing or sending detailed letters to numerous council staff and expecting immediate responses.*
- *Submitting repeat complaints with minor additions or variations, and insisting these are ‘new’ complaints.*
- *Refusing to accept the Council’s decision, repeatedly arguing points with no new evidence.*
- *Using bullying, physical or psychological threats against staff or Members.*

This list is not exhaustive, and there may be other factors that would justify taking action under this policy.”

102. The list of examples above reflects guidance published by the Local Government Ombudsman, as confirmed in the papers of the Waverley Borough Council Executive meeting of 9th June 2015.

103. The Local Government Association says the following in its introduction to the Model Councillor Code of Conduct 2020:

“Importantly, we should be able to undertake our role as a councillor without being intimidated, abused, bullied or threatened by anyone, including the general public.”

104. In a series of emails between the Developer Complainant Mr. Cox and the Developer’s Associate Complainant Mr. Benson, several of the above-mentioned features of an unreasonable complainant are blatantly in evidence. To give just a sample of cases:

- *“Making unjustified complaints about staff who are trying to deal with the issues, and seeking to have them replaced”*: See Mr. Benson’s email to the Borough Solicitor regarding his personal views and criticisms of the Monitoring Officer’s performance, dated 12th August 2020.
- *“Submitting repeat complaints with minor additions or variations, and insisting these are ‘new’ complaints”*: See Mr. Benson’s email to the Monitoring Officer making a new complaint against me without any evidence and related to a supposed leak of information (to somebody of whose existence I had no knowledge, let alone met), dated 4th September 2020.
- *“Adopting a ‘scatter-gun’ approach by raising concerns with different staff across the Council or by pursuing parallel complaints on the same issue with other organisations”*: See the various emails from Mr. Benson to the Monitoring Officer (dated 12th August 2020, 26th October 2020, 14th and 18th November 2020) referring to his pursuing parallel complaints with the Prime Minister, the Local Member of Parliament and a Supreme Court Judge.
- *“Refusing to accept the Council’s decision, repeatedly arguing points with no new evidence”*: See:
 - Mr. Benson’s email to the Chief Executive of Waverley Borough Council dated 17th August 2020;
 - Mr. Benson’s email to the Monitoring Officer dated 26th October 2020;

- Mr. Benson’s email to the Monitoring Officer dated 14th November 2020 where he calls the Monitoring Officer’s initial decision “*manifestly unreasonable and illogical*” and insists that he re-consider it immediately; and
 - Mr. Benson’s email to the Monitoring Officer dated 18th November 2020.
- “Using bullying, physical or psychological threats against staff or Members”: See:
 - Mr. Cox’s repeated and widely distributed emails implying I was responsible for criminal activities and the posting of an obscene Christmas card, without any evidence whatsoever (for example an email time-stamped 15:49 on 20th May 2020 sent to all Parish Councillors with unfounded and serious allegations against myself and others);
 - Mr. Benson’s email to the Monitoring Officer dated 7th August 2020 where he threatens to go to an investigative journalist three days later “*if you won’t take action [regarding the investigation]*” and accuses the Monitoring Officer of treating the complainants “*with contempt*”;
 - Mr. Benson’s email to the Chief Executive of Waverley Borough Council dated 12th August 2020 where he threatens an investigative journalist or the prime minister’s intervention regarding “*dirty tricks*” and “*local politicians [i.e Waverley Borough Council Members] hell bent on blocking a fair and transparent process*” of the investigation;
 - Mr. Benson’s email to the Monitoring Officer dated 26th October 2020 where he invokes an escalation to the local Member of Parliament; and
 - Mr. Benson’s email to the Monitoring Officer dated 14th November 2020 where he threatens to get his MP involved if the Monitoring Officer does not re-consider his initial decision over a weekend (i.e., by Monday 16th November).

RELEVANT CONSIDERATIONS

In its consideration of the Allegation, the Hearings Panel is invited to take into consideration the following points.

105. Elapse of time: it is now over two and a half years since the meeting of 28th November 2019. During that time the Neighbourhood Plan approved in draft form by the Council at that meeting has been approved by public referendum.
106. My intent has always been honest and I have acted in good faith at all times with respect to making declarations of personal interests.
107. I have exercised objective judgement in relation to the Neighbourhood Plan decision-making as shown by my vote to support the March 2019 draft as well as the November 2019 draft.
108. On numerous occasions I have declared my personal interests, whether pecuniary or non-pecuniary with respect to agenda items and discussions, not only at the Council and its Committees, but also at meetings of HSRA.
109. I have never sought to hide any personal interest and adopted a prudent approach with respect to making disclosures, conducting myself with no lesser degree of integrity than any of my fellow Parish Councillors.
110. In this context, the proposition that I inadvertently failed to register my membership of HSRA, which has been a matter of public record for some time (and if it was a disclosable non-pecuniary interest) is no more serious (and arguably much less serious) than Councillor Dear's failure to register his pecuniary interest in being a director of Halbury Estates Ltd – something he belatedly did in November 2021 (only following public criticism) years after being elected a Parish and Borough Councillor with the justifying annotation that it "*has been a matter of public record*" for a long period of time.
111. I have specifically rejected the possibility to put my personal interests ahead of my public duties as a Parish Councillor. This is evidenced by my rejection of an offer of land by the Developer Complainant in exchange for my public support as a Councillor for their proposed development scheme on the Red Court Estate (and by clear implication pre-determination in any decision-making as a Councillor related to it).
112. The meeting of 28th November 2019 was not a planning meeting or a meeting with respect to approving any specific planning application or site allocation. The purpose of the meeting was to discuss and approve a town-wide Neighbourhood Plan.
113. Even with respect to the location of the Settlement Boundary within the draft Plan, the Neighbourhood Plan was never going to be definitive as regards any specific site – firstly, it was a policy document not a site allocation document, secondly, as shown by the later successful appeal by the Developer Complainant of its planning application, it was not something that could actually stop development outside the Settlement Boundary.
114. I have attended training on the Code of Conduct since the meeting of 28th November 2019.

115. I have rectified the alleged non-disclosure on the Council's register of interests (10th & 18th September 2020).
116. I have continued to declare my personal interests at relevant Council planning committee meetings where the Red Court Estate is under discussion.
117. The complainants have made their allegations in a malicious, coordinated and public fashion; the Hearings Panel should, in upholding the Nolan Principles, be wary of giving credence to such behaviour or be tolerant of complainants who abuse the Complaints Arrangements in disrespect for the Unreasonable Complaints Policy and also breach the process's confidentiality.
118. The Hearings Panel should take account of the fact that publicity is itself a sanction and already my reputation has suffered because the complainants have made written and oral comments, including by publishing open letters in the newspaper, which are intended to defame my character and professional reputation.

PROCESS OBSERVATIONS

The following points are made with respect to the process leading up to this Hearings Panel.

119. It is clearly the case that this investigation and the handling of the complaint have been woefully inadequate resulting in prejudice, delay and psychological injury to myself.
120. Nature of complaint – The vexatious and malicious nature of the coordinated complaint has been ignored in a fundamental breach of due process, fairness and natural justice as well as Waverley Borough Council’s policy to protect its Members as referenced in the Unreasonable Complaints Policy.
121. Nature of investigation – The so-called “informal” investigation was not informal; rather my “informal” interview was conducted by, not one, but three Officers (the Monitoring Officer, the Borough Solicitor and the Complaints Officer), including the Monitoring Officer asking whether the note-taker in the interview had any questions to put to me! Furthermore, the transcript of this “informal” interview became part of the formal investigation without any explanation or warning. The Monitoring Officer and his deputy were at great pains to explain to me that those conversations did not form part of a formal investigation. I consider that information to be inadmissible.
122. No resolution attempt – Although the Complaints Arrangements provide for the Monitoring Officer to pursue a resolution of an allegation without proceeding either to a formal investigation or to a Hearings Panel, the only proactive step taken by the Monitoring Officer to explore such a resolution was made days before the deadline for me to respond to the Final Investigation Report in advance of the meeting of the Hearings Panel. In other words, at no point in time prior to that have I been asked by the Monitoring Officer whether I would be prepared to consider a local resolution; at no point in time have there been any ‘without prejudice’ discussions. This despite a recommendation by external investigator, Stuart Caundle, that an informal resolution should be found.
123. Investigation Report – the way in which the investigation has been conducted and the Investigation Report has been prepared shows a total lack of due process and fairness, which this Hearings Panel should take into account.
- The report is obviously unbalanced. The Investigating Officer has interviewed only people who support the complainants – Mr. Leete for example, who was a company director of the Developer Complainant and their property adviser – and employees of the Parish Council and Waverley Borough Council (see paragraph 6.2 of the Investigation Report) but has not interviewed anyone who might provide evidence in support of me. The report therefore remains biased and unbalanced.
 - For my first ‘informal’ interview I prepared a series of key relevant documents as evidence. While, on the one hand, the transcript of this meeting was used in evidence against me (unfairly as mentioned above) by the Independent Investigator, on the other hand as far as I can detect, the Monitoring Officer failed to share the documentary evidence I had provided with the Investigator. My legal advisor emailed the Monitoring Officer to request this, and I

also emailed the Monitoring Officer in April 2021, but I cannot understand how my evidence seems not to have been shared with the investigator or taken into consideration.

- The Investigating Officer has relied on mere inference from the apparently detailed recollection of Mr. Bainbridge about a training session held two years previously (see paragraph 7.2.1 of the Investigation Report). A Data Subject Access Request shows that there are no contemporaneous notes or minutes of that meeting to support the prejudicial comments of Mr. Bainbridge and his recollection should not be relied upon in any adverse way to me as subject Member in this investigation.
- Similarly, at the end of the second paragraph of Paragraph 8.3.1.3, the Investigating Officer states, “*we do not know if Ms. O’Sullivan’s recollection is correct*” and yet presents it in that paragraph as evidence against me. The Investigating Officer has conflated opinion with evidence.
- The Investigating Officer interviewed Mr. Leete jointly with the Developer Complainant and yet:
 - The Investigating Officer does not distinguish who alleged what.
 - Mr. Leete was not a complainant, and I am shocked that as a result the confidentiality of the matter was compromised in such a manner.
 - Mr. Leete has a direct personal and pecuniary interest in the potential development – he was a shareholder and director in the Developer Complainant’s development company and continues to play an active role in promoting the Scotland Park scheme – and cannot be an innocent bystander providing impartial advice to the Developer Complainant. Indeed, it is to his benefit to embellish the Developer Complainant’s complaint.
- The Investigating Officer was provided with written correspondence evidencing the Developer Complainant’s attempts to secure my public support for their housing scheme as a Councillor by offering me land on the Red Court Estate. This is a key piece of evidence as to the bona fides of the complainants and their Allegation, which the Investigating Officer has intentionally chosen to ignore and exclude. Neither has the Investigating Officer mentioned the fact that after failing to secure my public support through the offer of land, the Developer Complainant proceeded to submit their complaints. Excluding the juxtaposition of those two facts means that the Investigation Report cannot be relied upon as it ignores documentary evidence that casts significant doubt on the complaint being anything other than malicious and a device to further the financial interests of the developer.

124. The process has caused injury to my health both through the way it has been handled and its inordinate length – we are here over two and a half years after the relevant events. My mental health has suffered as a result of the Monitoring Officer wrongfully withholding the names of my accusers and only releasing two of them after intervention by the Independent Person. Asserting that I could have inflicted harm, or been the cause for harm to be inflicted, on any of the unnamed complainants, being the Monitoring Officer’s justification for not releasing the identities of my accusers, was in itself distressing for a mother of three children with no record of having harmed anyone or caused others to harm anyone, let alone attacked anyone or their property.

125. It is simply unacceptable for the Monitoring Officer to:

- a) give weight (in his decision to provide anonymity) to uncorroborated allegations by the Developer's Associate Complainant that I was in some way responsible for potentially criminal actions by unknown individuals; and
- b) include in the investigation evidence unsubstantiated allegations by the Developer's Complainant that I was in some way responsible for potentially criminal actions by unknown individuals,

while simultaneously giving no weight to, and excluding from the Investigating Officer's scope (or alternatively acquiescing in the Investigating Officer excluding from his scope), the incontrovertible evidence of the Developer Complainant twice making a written offer of a land deal if, in my role as a Councillor and public servant, I supported his multi-million pound development scheme (effectively, an attempt to bribe me). The Monitoring Officer cannot have it both ways; at least, not if fairness and natural justice are to be respected.

126. The process has been disproportionate as a way of handling an allegation of non-disclosure of membership of a residents association (or any of the other allegations made and subsequently dismissed). The cost of hundreds of hours of expensive investigation (including paying 3 external investigators/persons) will doubtless be of concern to local taxpayers at a time when the cost-of-living crisis places local authority spending under particular scrutiny.

127. The process has been conducted under arrangements from October 2016 which are demonstrably inadequate, based on their comparison with the arrangements adopted by Waverley Borough Council in February 2022. This means that there has been significant risk to the fairness and natural justice of the process in this case. Of particular note, among others, are:

- the 2022 arrangements for dismissing an unreasonable complaint or for the Monitoring Officer to bring a matter to conclusion without depending upon a local resolution with which a complainant has to agree – something which has prevented this investigation from being resolved up until now; and
- the 2022 arrangements for involving the Independent Person before deciding to grant anonymity to a complainant (noting that the Independent Person in this case advised that anonymity was not warranted other than for a very short period).

128. To conclude, I have no faith that this investigation process has been carried out in a fair and proportionate manner.

SUBMISSION TO PANEL RE. BREACH

Based on a proper analysis of the Code of Conduct, my compliance with the Code and the nature of the complaint, the Hearings Panel should, in my submission, reach the following conclusions:

129. The Developer Complainant and the Developer's Associate Complainant have made the Allegation in bad faith and with malicious intent and therefore it should be dismissed.
130. Therefore, the Monitoring Officer should not have pursued an investigation of the allegations made by the Developer Complainant and the Developer's Associate Complainant.
131. In any event, based on a proper reading of the provisions of the Code of Conduct:
 - I have complied with its terms with respect to declaring a personal non-pecuniary interest at the meeting of 28th November 2019, since there was no reasonable threat to my objectivity by virtue simply of my membership of HSRA (or indeed by virtue of living on Scotland Lane).
 - Even if there had been a personal interest to declare, it was not automatic for me to withdraw from the chamber unless in my own judgement it was appropriate to do so.
 - The Code of Conduct was so unclear that there is no breach with respect to the registering of my membership of HSRA on the Register of Interests.
 - The process by which the Allegation has been investigated was defective and therefore Waverley Borough Council should make a public apology to me.

SUBMISSION TO PANEL RE. RESOLUTION

132. Pursuant to the last paragraph of Para 8 of the Complaints Arrangements, it is not within the Hearings Panel's authority to determine any specific resolution of this matter other than to inform the Parish Council whether or not the Panel makes a finding of a breach of the Code of Conduct.

133. I would suggest that, in the event that the Panel makes a finding that there has been a breach (whether technical or otherwise) of the Code of Conduct, it should direct the Parish Council as follows:

- Any Councillor who has been involved in the events related to the Allegation or who has been aware of the details of the investigation or who has been cited in the evidence before the Hearings Panel or who has any other conflict of interest must not participate in any discussion or decision of the Parish Council, consistent with the Nolan Principles and the current Code of Conduct of the Parish Council.
- Pursuant to the Complaints Arrangements, I shall have the right to make submissions to the Parish Council in advance of it convening and making any decision.
- Any action by the Parish Council following any finding of a breach of the Code of Conduct by the Hearings Panel must only be from within the list of actions which Waverley Borough Council can take with respect to a Borough Councillor under paragraph 8 the Complaints Arrangements. The list is as follows:
 - *8.1 publish its findings in respect of the member's conduct;*
 - *8.2 report its findings to Council or to the Town or Parish Council for information;*
 - *8.3 recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;*
 - *8.4 recommend to the Leader of the Council that the member be removed from the Executive, or removed from particular Portfolio responsibilities;*
 - *8.5 instruct the Monitoring Officer to arrange training for the member;*
 - *8.6 remove the Member from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;*
 - *8.7 withdraw, facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or*
 - *8.8 exclude, the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.*
- Any action by the Parish Council must be fair, proportionate and consistent with other actions taken with respect to ensuring Parish Councillors comply with the Code of Conduct. Examples include:
 - An allegation of disrespect: required to attend training, no apology required
 - An allegation of non-registration of pecuniary interest: required to register, no apology required
- Any action by the Parish Council should be consistent with its customs and practice in terms of registration and declaration by Parish Councillors of their personal interests, whether

pecuniary or non-pecuniary in bodies one of whose principal purposes is the influence of public opinion. This extends to consistency with how the Parish Council views the following non-registrations and non-declarations at meetings of the Council on 21st March 2019 or 28th November 2019, whether intentional or not:

- Non-registration of a Councillor's pecuniary interest as a director of a company
- Non-registration and non-declaration of Councillors' personal interests arising from being members of the National Trust and the Haslemere Society, both bodies whose principal purposes include the influence of public opinion or policy
- Non-registration and non-declaration of a Councillor's personal interest arising from being a member of the Campaign for the Protection of Rural England (CPRE), a body whose principal purposes include the influence of public opinion or policy
- Non-declaration of Councillors' personal interests in land which is situated adjacent to green space protected by the Neighbourhood Plan.
- Non-declaration of Councillors' pecuniary interests affected by the changes in the Settlement Boundary in the Neighbourhood Plan.

APPENDIX - CHRONOLOGY

Sept 2013	Haslemere Vision established. Cllr Barton is a founding member.
April 2016	Cllr Barton's election manifesto mentions the intent to establish a residents association.
April 2018	Cllr Barton contacts Knight Frank to express interest in the purchase of smallest field on Red Court Estate being sold in 3 lots- the Main house, separate lot 16 acres, one smaller field.
September 2018	Cllr Barton becomes a member of Haslemere South Residents Association ("HSRA").
15 November 2018	Cllr Barton declares interest as a Councillor in attendance at a members meeting of HSRA for site-specific discussion.
27 November 2018	Offer of land by Developer Complainant to Cllr Barton in consideration for her public support as a Councillor for the Developer Complainant's planning application.
29 November 2018	Repeated offer of land by Developer Complainant on condition Cllr Barton provides her public support for the housing scheme. <i>[NOTE: Cllr Barton cut off negotiations immediately due to this egregious proposal to an elected Councillor.]</i>
21 June 2018	Multiple Councillors (including Cllr Barton) declare interests at Planning Committee meeting of the Parish Council for site-specific discussion.
12 July 2018	Multiple Councillors (including Cllr Barton) declare interests at Parish Council meeting for site-specific discussion.
21 March 2019	Cllr Barton votes in favour of Neighbourhood Plan (which included a new settlement boundary such that some of the Developer Complainant's housing site fell within the urban zone); no Councillor declares an interest. Unanimous approval
28 November 2019	Cllr Barton votes in favour of Neighbourhood Plan (which included the original deemed settlement boundary such that none of the Developer Complainant's housing site fell within the urban zone); no Councillor declares an interest. 17 votes for, 1 abstention
28 Feb/12 March 2020	Developer Complainant (represented by Clarke Wilmot Lawyers, Bristol) and associates submit virtually simultaneous and coordinated complaints concerning Cllr Barton to the Monitoring Officer.
10 September 2020	Multiple Councillors (including Cllr Barton) declare interests at Planning Committee meeting of the Parish Council for site-specific discussion.
10 Sept 2020	Cllr Barton amends her register of interests to include membership of HSRA (neither a registered charity nor a political group), National Trust, Royal Horticultural Society, Surrey Wildlife Trust, Royal Society of Arts.
November 2021	Notification of referral to Hearings Panel

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Annexe 5 – Statement provided by the Independent Person

It appears to me that from the onset of this process [Councillor Barton] wanted a more ‘formal’ approach within the informal investigation period. Even my own contact with [Councillor Barton] presented more “formally” that I would have expected.

It is also necessary to take into consideration the likely views of the complainants. I am aware that this process has taken a significant period of time. The process seems to have diverted away from the original complaints that were relevant to breaching the Code and spiralled into other areas. This has been far from ideal! Therefore it seems likely to me that the complainants will wish to see their complaints finalised formally with this hearing.

As a decision has been made for a hearing, I trust that the focus will return to the detail of the actual breaches of the Code found during the formal investigation process.

I make the point that due to the extended process of these complaints, coupled with my limited intervention, that I struggle to remember all detail. Due to GDPR regulations I do not keep documents after I have read them and therefore much information will be new to me during the hearing.

It appears that both councillors were not accepting any wrong doing making the earlier option of an informal resolution impossible.

Vivienne Cameron
Independent Person

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Investigation into a complaint against The Monitoring Officer of Waverley Borough Council by Cllr Barton of Haslemere Town Council.

Introduction

I have been asked to investigate a complaint made by Cllr Nikki Barton concerning the actions of the Monitoring Officer of Waverley Borough Council (WBC) as well as other officers, in considering three Code of Conduct complaints against Cllr Barton.

The complaint made by Cllr Barton was transposed into Terms of Reference for this investigation by WBC which establish the parameters for the investigation.

In carrying out this investigation, I have considered the document bundle provided to me by WBC and emails sent to me by Cllr Barton.

I have also asked questions in writing of the Monitoring Officer, the Independent Person and Cllr Barton.

The Arrangements for dealing with Code of Conduct complaints appear in WBC's constitution.

The Terms of Reference have distilled the complaint into a set of twelve questions, as follows;

That the Monitoring Officer:-

1. Failed to identify and act on the unreasonable and malicious intent of the complainants and their complaints.
2. Failed to take account of the unsubstantiated and defamatory allegations and insinuations made in open correspondence by one of the complainants.
3. Failed to identify and act on the vexatious and political intent of one of the anonymous complainants.
4. Failed to identify the coordinated and repetitive nature of the complaints.
5. Allowed the complaints to be pursued on behalf of a property company through its lawyers and representatives.
6. Allowed two complainants to retain anonymity with no valid reason, contrary to the views espoused by the Independent Person.
7. Conducted a meeting which was characterised in advance as being an informal conversation; in an onerous, inquisitorial and unfair fashion.
8. Extended this first informal investigation beyond any reasonable timeframe (7-8 months).
9. Communicated the complaints in a reckless way or demonstrating bias and providing insufficient and unconvincing explanations for doing so.
10. Introduced new complaints without notice in the middle of a meeting on other complaints.
11. Failed to take appropriate steps to ensure the confidentiality of the complaints and the conduct of the investigation, resulting in damage to the councillor's reputation.

12. Failed to engage with any informal resolution to the complaints prior to referral to formal investigation, contrary to the views of the Independent person; and notwithstanding Waverley Borough Council having engaged with some or all of the complainants on informal resolution options.

I have also been asked to consider whether there is any evidence of more general concerns that: 'WBC's handling of complaints and investigations related to my conduct as a Member of Haslemere Town Council has been unfair, prejudicial and abusive and has caused serious damage to my health and wellbeing. Furthermore, WBC has, through its handling of these complaints and investigations, been complicit in the malicious and commercial ambitions of the complainants. As such WBC and its officers have failed to honour WBC's own standards, as well as those of due process and natural justice. I am concerned that there may even have been malfeasance in public service'.

Approach

In addressing these questions, I will follow instructions in the Terms of Reference about the scope of the investigation and limitations on the investigation. I should make it clear that in considering the actions and decisions of the Monitoring Officer, it is not for me to substitute my own opinions for his. I will consider whether the actions and decisions were reasonable given the circumstances that prevailed and the information available at the time.

In considering the complaints made against Cllr Barton, The Monitoring Officer was obliged to comply with the requirements of the Arrangements for dealing with Code of Conduct complaints, which have been adopted by WBC; and in doing so to act in a manner which is rational and reasonable. The complaint uses terms such as 'due process' and 'natural justice'. As this is not litigation, I will not take a narrow legalistic approach to such terms but will interpret them broadly to align with the duties I have outlined here. Before seeking to answer the questions put to me, I will summarise what is required of the Monitoring Officer. Any views I form on the correctness of those actions will take into account where in the process the action took place and what the Monitoring Officer could reasonably have known at that stage.

The initial action of the Monitoring Officer, upon receiving a complaint is to consider whether it is 'valid' in accordance with criteria set out in the Arrangements. If the complaint is determined to be valid, the Monitoring Officer must then consider how best to take the complaint forward. In so doing, he may investigate informally and/or commission a formal investigation. The Monitoring Officer should inform the Councillor complained about of his decision within 30 days. The informal stage should include consideration of whether an informal resolution to the complaint is possible and if it is not, the Monitoring Officer will determine whether the complaint or any part of it should be dismissed or formally investigated. If a decision to formally investigate is made, this will be commissioned externally.

In the following paragraphs I will provide my answers to the questions put to me and explain my reasons for reaching those conclusions. Although facts are relevant to all the questions, my conclusions will require judgements to be made and these are based on my experience as a Monitoring Officer and senior manager.

Findings and Rationale

The heads of complaint are as follows:- That The Monitoring Officer;

1. Failed to identify and act on the unreasonable and malicious intent of the complainants and their complaints.

The Terms of Reference make clear that I am not to investigate the complainants and their motives for making the complaints against Cllr Barton. Indeed, it seems to me that this would be impracticable in any event, given the nature of this investigation. That said, I believe that their motives are not relevant to the Monitoring Officer's considerations, for reasons I will explain.

At the first stage, when a decision has to be made as to whether the complaint is valid, there are criteria that the Monitoring Officer should consider, including whether the complaint contains trivial allegations, or which appear to be simply vexatious, malicious, politically motivated or tit-for-tat. In my view the word 'simply' is important. Whatever the motivation of a complainant, the process should not, in my view, act to strike out what might be a relevant complaint in relation to breaches of the code.

If it appeared to the Monitoring Officer that one of these factors was the sole or principal reason for the complaint, it would be proper for him to decide not to take the complaint further. From the information available to the Monitoring Officer at the time the complaint was made, it seems to me that there was no such indication. Indeed, the complaints expressed in the complaint letters largely referenced conduct that is governed by the Haslemere Town Council code of conduct. This is how it appears to me from the documents, and it is how the Monitoring Officer explains his decision at that stage. Whether those complaints were true is not something that can be judged at that stage. I therefore conclude that the Monitoring Officer's decision in this regard was understandable and reasonable.

2. Failed to take account of the unsubstantiated and defamatory allegations and insinuations made in open correspondence by one of the complainants.

The points I have made in response to question 1 are relevant to this element of the complaint and should be considered as part of the response. There are additional points I wish to make in relation to this question.

At the time he considered whether to decide if the complaints were valid, it was inevitable that they were unsubstantiated. Their substance, or otherwise, could not be known until some form of investigation was made. As I have already observed above, I believe there was sufficient within the complaint letters to warrant further examination. In similar vein, whether an allegation is defamatory wouldn't be apparent until an investigation had taken place and in any event, defamation is an issue for the civil courts and outside the authority of the Monitoring Officer.

I take the term 'open correspondence' to mean that it was not sent 'without prejudice'. If it is simply a reference to correspondence that the sender shared with others, then

this is dealt with as part of question 11. The concept of without prejudice correspondence applies only to correspondence sent as part of or in contemplation of litigation and would not be relevant in the context of a conduct complaint.

3. Failed to identify and act on the vexatious and political intent of one of the anonymous complainants.

The points I have made in response to question 1 are also relevant to this element of the complaint and should be considered as part of the response. There is an additional point I wish to make in relation to this question. Beyond his decision whether to regard the complaint as valid and whether to undertake some form of investigation, the Monitoring Officer can take no action, even if he has concluded that a complaint is vexatious or politically motivated. If it appears during a subsequent investigation that a complaint is politically motivated or vexatious and without merit, then this will be reflected in the investigation's conclusions.

4. Failed to identify the coordinated and repetitive nature of the complaints.

It is clear from the face of the complaint letters that many of the issues raised are the same or very similar. Whilst I cannot know whether this resulted from coordination between complainants, I do not think it is relevant, even if that were the case. A complaint either has merit, or it does not. A greater number of people raising an issue makes it neither stronger nor weaker as a result. Any experienced investigator will appreciate this and will have encountered this issue. It is clear from the responses I have received from the Monitoring Officer, that he was fully aware of this and I see no indication in the documentation that his judgement was affected by the fact that similar or identical issues were raised more than once.

5. Allowed complaints to be pursued on behalf of a property company through its lawyers and representatives.

It is plainly true that one of the complaints was submitted by a firm of solicitors on behalf of their client, who is the proposed developer of the site at Red Court. There is, however, no reason why such a complaint should not be considered. The Arrangements of WBC make no requirement as to the sorts of people or organisations who might make a complaint. Were that to be desirable, the legislation {The Localism Act} would have said so. I have never heard of a set of arrangements that sought to restrict who could make a complaint and it seems to me that this is entirely right. If a complainant has a commercial interest in a matter that is relevant to a complaint, this can be considered in addressing the initial credibility of a complaint or in assessing the quality of evidence during an investigation.

6. Allowed two complainants to retain anonymity with no valid reason, contrary to the views espoused by the Independent Person.

In this or any other complaints process, both complainants and those complained about will have reasonable expectations and these can sometimes come into conflict. This is the case with regard to the anonymity of some complainants in this complaint. There will be occasions where complainants are concerned that disclosure of their identity may lead to victimisation by someone about whom they have complained, or

others. Such fears can discourage people from pursuing what might be legitimate complaints and should not be taken lightly. Equally, a person about whom a complaint is made will naturally wish to know the identity of someone who has made a complaint against them; and more importantly, must not be disadvantaged in their ability to defend themselves. Balancing these two expectations is often difficult.

The Arrangements provide for a situation where the identity of the complainant may be kept from the councillors complained about in exceptional circumstances. When explaining to Cllr Barton that he would not at this stage disclose the identity of two complainants, the Monitoring Officer made it clear that this was during the informal stage of the process and would be kept under review.

My response to this question should be read in conjunction with my response to question 8. In fact, it would be useful to read that response first.

The time taken to conclude the informal stage of the process, was significantly longer than any of the parties had expected and in my view that is an entirely reasonable opinion. This length of time has had an impact on the effect the decision about anonymity had on Cllr Barton.

At the outset, the Monitoring Officer received representations from two complainants to the effect that due to past experience of harassment, including online, they were fearful for their wellbeing if their identities became known to Cllr Barton and subsequently to others concerned with development in Haslemere South. At the time, the Monitoring Officer didn't know and couldn't have known the veracity of those fears but regarded them as of concern. He recognised that anonymity should not be granted other than in exceptional circumstances in order to ensure a reasonable and fair approach to Cllr Barton and that for the same reason, any anonymity should be kept under review. He explained this to Cllr Barton.

In striking a balance, the Monitoring Officer concluded that any disadvantage to Cllr Barton would be sufficiently limited so as not to outweigh the fears of the complainants. In the circumstances, and given the nature of those concerns, it seems to me that he acted reasonably at the time. The decision was initially limited to the informal phase of the process and was not anticipated to have been in effect for a significant period without review.

At the outset, it would not have been in the Monitoring Officer's contemplation that the informal stage might last as long as it did. In the end, the formal stage of the process; and with it the reconsideration of the anonymity decision, did not take place until December. I have no difficulty in accepting that during this period of time, the level of stress experienced by Cllr Barton, would have been considerable and that not knowing the identity of some complainants contributed to that.

With the benefit of hindsight, I think that an earlier review of the decision might have been carried out. I think that it would be harsh to criticise the Monitoring Officer for not having done so, as at any point earlier in the process he would not have appreciated how long it would take to complete the informal stage. This is referenced in my response to question 8.

7. Conducted a meeting which was characterised in advance as being an informal conversation, in an onerous, inquisitorial and unfair fashion. (This is taken to refer to the meeting on 18th June 2020).

In looking at this question, I have had the opportunity to see the recording of the zoom meeting and to read the transcript, in addition to seeing the exchange of emails that led up to the meeting. Cllr Barton was invited to the meeting by an email from the Monitoring Officer on 26th May 2020. This email said that an informal investigation was going to be undertaken and invited Cllr Barton to a meeting to discuss the complaint in more detail and for her to provide a response to the allegations. Cllr Barton responded on the same day, asking if she could be accompanied by a professional representative. In so doing, it seems to me that some degree of formality would have been anticipated.

In any event, I must consider whether the meeting was conducted in a manner that was onerous, inquisitorial and unfair. To some degree, the meeting was bound to be inquisitorial as its purpose was to seek information and a response from Cllr Barton, as well as to share information about the complaints. I accept that the whole process will have been stressful for Cllr Barton and she articulated this during the meeting. To a degree therefore it is inevitable that the meeting felt onerous. What I must ask myself is whether the manner in which the meeting was conducted was unduly inquisitorial and onerous.

For reasons I will explain, I do not think that this was the case. In my explanation, I will address the issue of fairness. I am clear that the overall tone and nature of the meeting was business like and respectful on all sides. It was inquisitorial, but that was inevitable given the nature of the meeting. I believe that the email inviting Cllr Barton to the meeting was a fair representation of what took place.

An issue that clearly caused Cllr Barton anxiety was the reference in an email to her 'refusal' to declare an interest, rather than her 'failure' to declare an interest. She had raised this promptly after receipt of the email and received a prompt correction and apology. Whilst it might have been more accurate to describe the change as a mistake rather than a typo, I think it was made clear that the allegation had not been changed and that this was simply an error. This was raised again at the meeting where the fact that it was a mistake was reiterated and an apology given. Whilst accepting that in the circumstances, Cllr Barton may have been distressed by this, I also accept that administrative mistakes will occasionally happen and all the Monitoring Officer and his staff can do is to correct it promptly and apologise, which they did.

As was perhaps inevitable, the discussion led to information being discussed that Cllr Barton was not previously aware of. In order to avoid Cllr Barton being disadvantaged by this, it seems to me that the Monitoring Officer took pains to offer the opportunity for a break in the meeting so that Cllr Barton could consult with her representative, or for the meeting to be reconvened on another occasion, if she wanted.

I do not make light of the degree of stress that Cllr Barton may have experienced through this process, and specifically at this meeting; but the Monitoring Officer is duty bound to handle complaints received and can only do so in the most reasonable way, which is consistent with those duties. I believe that he handled the meeting in the most

business like and fair manner that was reasonably possible, given the nature of the meeting.

8. Extended the first informal investigation beyond any reasonable timeframe (7-8 months).

For reasons I will explain, I believe that the informal stage of the process took significantly longer than Cllr Barton might reasonably have expected. There are a range of causes for this and to identify them, I will look at the process chronologically.

The first stage was between late February/early March, when the complaints were received and 26th May, when Cllr Barton was invited to a meeting to discuss the complaints. The Monitoring Officer would be expected to take a certain period of time to read and understand a complaint before sending the invitation to the councillor. Accepting that there were numerous complainants each with a range of complaints, in my judgement it would be reasonable to have expected the invitation to be sent by the end of the 30 day period in the Arrangements. Both the Chief Executive and Monitoring Officer have explained to me that in March a decision was made by the senior management team to divert all necessary resources to addressing the Covid pandemic and to accept that other duties may need to be temporarily put to one side. It should be noted that other public services also suspended non-pandemic services, such as the Local Government Ombudsman. It has been put to me, and I accept, that this is substantially responsible for the delay during this stage. This reason has been acknowledged by the Monitoring Officer and Chief Executive and an apology given. I do not think that there is more they could have done in relation to the delay during this stage.

Following the Monitoring Officer's interview with Cllr Barton on 18th June, there is a period of approximately 7 weeks before the Monitoring Officer is in a position to confirm the initial outcome of his informal investigation on 12th August. Whilst accepting that there was significant documentation for the Monitoring Officer to consider, it seems to me that the diverting of his attention to support the Council's efforts regarding the pandemic has resulted in this stage taking longer than Cllr Barton should reasonably expect.

The Arrangements adopted by WBC provide for the councillor complained about to consult the Independent Person and for the Monitoring Officer to consult them before an informal investigation can be commissioned. Following the Monitoring Officer notifying Cllr Barton of his initial decision on 12th August, this process then took until 30th October.

This again seems like a significant amount of time for these steps to be taken, but it appears to me from looking at the documentation, that this can be explained. Given the nature of the two elements to this stage, the Independent Person's consultation with the councillor, must clearly take place before the Monitoring Officer can consult them about the formal investigation. Through various means, including availability of diary appointments and personal circumstances, the independent Person and Cllr Barton were not able to speak until 15th October. This delay was not helpful, but no blame can attach to either of the parties, it was simply a result of circumstances. It

cannot, in my view, be considered the responsibility of the Monitoring Officer that the delay occurred.

Following the discussion on 15th October, the Independent Person was able to consult with the Monitoring Officer on 27th October, which was perfectly timely. Three days after that, on 30th October, the Monitoring Officer wrote to Cllr Barton to confirm his conclusion that an allegation of failing to declare a non-pecuniary interest would be formally investigated by an independent investigator. This was also perfectly timely.

The next stage in the process involved correspondence with the two complainants who had been granted anonymity during the informal stage. This process took from 30th October until the week commencing 7th December to resolve. The outcome was that the complaint of one would no longer proceed, as they did not agree to their identity being disclosed. The period of approximately 6 weeks that this stage lasted is plainly longer than one would normally expect. Given that two complainants had been afforded anonymity, it was necessary to review that decision before a final decision to start a formal investigation could be made. This is a requirement of WBC's Arrangements.

It is evident from the documentation that there was considerable correspondence between the Monitoring Officer and the two anonymous complainants during this time. Much of it, from the complainants, was rather argumentative. At the end of those exchanges, one complainant was prepared to have his identity disclosed, and the other was not. The Monitoring Officer has said that during the email exchanges, he was conscious of the time being taken and had to consider whether on balance, he should impose an arbitrary cut-off date and require the complainants to respond on the question of anonymity, or to pursue the correspondence to a conclusion. He chose the latter course. There is no easy answer to this dilemma in my view. Anonymity having been granted to start with, a decision to withdraw it should not be taken lightly. Against that, the process had already taken longer than one would have expected and both Cllr Barton and the complainants had a reasonable expectation that it would be taken forward without further delay. There is no right or wrong answer to this, but I think that the decision made by the Monitoring Officer was one that he was reasonably entitled to make.

Within approximately two weeks of the decision about anonymity, an independent investigator had been identified and instructed, and Cllr Barton informed of that fact. In my view, this was perfectly timely.

In summary, the informal investigation stage took longer than would reasonably be expected. I have endeavoured above to analyse why this was the case.

9. Communicated the complaints in a reckless way or demonstrating bias and providing insufficient and unconvincing explanations for doing so.

Cllr Barton's clarification of this part of the complaint is as follows;

The complaints were communicated to me in a reckless way in that they were communicated in a way that the MO knew, or should have known, both risked an inaccurate representation of the alleged breach and risked the failure in natural justice and fair process that did in fact arise, in particular by not communicating the complete

set of complaints at the outset, but adding complaints throughout the process, including in the middle of an interview. To be precise:

- *Email dated 26th May 2020 contained a summary of the complaints (including “failed to disclose”).*
- *Email dated 8th June 2020 referred to the primary complaint inaccurately as “refused to disclose”.*
- *Email dated 8th June 2020 added additional complaints, even though the complainants had raised the essence of those complaints prior to 26th May 2020.*
- *Interview on 18th June 2020 included an additional complaint (breach of confidentiality).*

The above clarification identifies three elements to this part of the complaint which are set out below.

The first element is that the summary of the complaints contained in the MO's email of 26th May was insufficient and failed to fully represent the complaints in a way that Cllr Barton could respond to.

I should first observe that the complaints investigated by the MO are defined by him by reference to the original complaint letters. The exact text of those letters will not necessarily form the Monitoring Officer's own terms of reference for his investigation, as they contain a good deal of extraneous material. In my view, the summary of the complaints in the Monitoring Officer's email of 26th May gave an accurate summary of the complaints and more particularly reflected what he then went on to investigate.

The second element is that the Monitoring Officer's email of 8th June added additional complaints not referred to in his previous email of 26th May. I agree that in his email of 8th June the Monitoring Officer referred to concerns that Cllr Barton may have breached general obligations in the Haslemere Town Council code of conduct and that these had not been referred to in his email of 26th May. Given that this email was sent ten days prior to Cllr Barton's zoom meeting with the Monitoring Officer, I do not think this placed her at a disadvantage. I would also observe that the zoom meeting was a preliminary meeting carried out at an early stage in the process. It did not therefore represent the only opportunity that Cllr Barton had to provide responses to the complaints. Indeed, the concerns set out in the email of 8th June were not taken forward to the formal investigation stage.

The third element is that the use of the word 'refused' instead of the word 'failed' in the Monitoring Officer's email of 8th June represented a significant change to the allegation against Cllr Barton and demonstrated bias against her. It is clear that the wrong word appeared in the email of 8th June and that the allegation was that Cllr Barton had 'failed' to disclose. My first observation is that when Cllr Barton promptly challenged this change in wording, it was promptly corrected and an apology given. The explanation offered was that the use of the word 'refused' was a typographical error. Given that the erroneous word was corrected immediately and with an apology and that the apology was repeated at the zoom meeting, I see no reason to believe that the use of the word 'refused' was intentional. It seems clear to me that it was used

mistakenly. Perhaps it would have been better to have described it simply as an error rather than a typographical error, but I do not think that is a significant point.

10. Introduced new complaints without notice in the middle of a meeting on other complaints.

Cllr Barton has confirmed that this is the meeting that took place via Zoom on 18th June 2020, which I have had the opportunity to view on a recording, as well as to consider the transcript. This element of the complaint, in my view, forms part of my consideration as to whether the meeting was conducted in a fair manner and afforded Cllr Barton the opportunity to properly explain her response to the complaints. Having considered the content of the meeting, I do not see that new heads of complaint were introduced in an unfair manner.

At the beginning of the meeting, when he summarised the issues, the Monitoring Officer expanded on one of the concerns and referred to the disclosure of confidential information to the HSRA. This was picked up immediately by Cllr Barton's adviser who suggested that he and Cllr Barton might discuss this off line. The Monitoring Officer responded that he was happy for the meeting to be suspended or for Cllr Barton to provide responses to some issues at a later date. Whilst it would have been preferable for this issue to have been identified earlier, I do not believe Cllr Barton was prejudiced. She was accompanied by an adviser, and the Monitoring Officer was clear that she could provide a response to any issue at a later date. When added to the fact that this was a meeting at an early stage in the process, I do not believe this resulted in Cllr Barton being treated unfairly.

11. Failed to take appropriate steps to ensure the confidentiality of the complaints and the conduct of an investigation, resulting in damage to the Councillor's reputation.

It is important, firstly to identify the nature of this complaint. Cllr Barton does not put forward evidence that any employee of the Council has disclosed confidential information. I see no evidence that anything of this nature has taken place.

I take it that this part of the complaint alleges that confidential information has been disclosed by others and that the Monitoring Officer should have prevented this from happening, but failed to do so. The Monitoring Officer instructed those involved in the complaints to treat the complaints with confidentiality. Other than council employees and Cllr Barton, the only parties who initially would have known about the complaints would be the complainants themselves. I accept that at a fairly early stage, knowledge of these complaints became known beyond the groups of people referred to above.

Whilst it is beyond the remit of this investigation to look into the actions of the complainants, it is a reasonable assumption that one or more of the complainants may have shared the fact of their complaint with one or more members of the public. It is entirely possible that such person or persons may have further shared the information. Whilst this is undesirable; it is entirely beyond the legal or practical control of the Monitoring Officer to prevent such occurrences. I accept that the sharing of this

information will have caused distress to Cllr Barton, but the Monitoring Officer cannot be responsible for actions entirely outside his control.

12. Failed to engage with any informal resolution to the complaints prior to referring to formal investigation, contrary to the views of the Independent Person and notwithstanding WBC having engaged with some or all of the complainants on informal resolution options.

It is important firstly to distinguish between the Monitoring Officer considering informal resolution and implementing an informal resolution. For reasons I will explain, I conclude that he considered the appropriateness of informal resolution throughout the process, but concluded that it was not possible to implement such a resolution. It is also important to say that an informal resolution is one which both the complainant and the Councillor will agree to. Any other sort of resolution is either a decision by the Monitoring Officer or the conclusion of a hearing.

Cllr Barton is concerned that the complainants were engaged in seeking an informal resolution. This was part of the WBC standard code of conduct complaints form. On that form a complainant is asked to indicate whether they believe an informal resolution to their complaint is possible and what that might involve. This is, in my experience, entirely normal and helps the Monitoring Officer at the outset to consider whether an informal resolution is likely. There is nothing improper about this, it is a practical measure and is an entirely normal part of a council's arrangements.

It was the responses of the complainants that are in part responsible for the Monitoring Officer's conclusion that an informal resolution was not feasible. More than one of the complainants suggested some quite draconian measures in response to the question about informal resolution. This included actions such as Cllr Barton resigning and agreeing not to stand for election for five years. These are not measures that the Monitoring Officer could possibly have engaged with and certainly not put to Cllr Barton. The Monitoring Officer has said that this made it appear most unlikely that an informal resolution was possible. I agree with this.

As the informal process proceeded, the Monitoring Officer states that he kept the prospect of informal resolution under review. As it appeared to him that the complainants were not altering their position and Cllr Barton did not accept any part of their complaints; there was no real prospect of informal resolution. I have to say that I agree entirely with this conclusion.

Cllr Barton has suggested that the Monitoring Officer should have reconsidered the prospect of informal resolution once he set aside all parts of the complaint apart from that relating to non-pecuniary interests. By this stage it was clear, however, that no such resolution was possible. Cllr Barton, as she was perfectly entitled to do, did not accept the allegation. The complainants were then engaged with the Monitoring Officer in arguing that the formal investigation should include all their allegations. Against this background, it is entirely understandable that the Monitoring Officer proceeded to instruct an investigator.

Having sought clarity from the Independent Person, she confirms that she would have preferred an informal solution, but accepts that for the reasons I have set out, one

seemed very unlikely. She accepted, therefore, that the Monitoring Officer's decision in this regard was the correct one.

Final considerations

There are additional points included in the letter of complaint, namely that 'WBC's handling of complaints and investigations related to my conduct as a Member of Haslemere Town Council has been unfair, prejudicial and abusive and has caused serious damage to my health and wellbeing. Furthermore, WBC has, through its handling of these complaints and investigations, been complicit in the malicious and commercial ambitions of the complainants. As such, WBC and its officers have failed to honour WBC's own standards, as well as those of due process and natural justice. I am concerned that there may even have been malfeasance in public service'.

There are two elements to this part of the complaint; a general complaint about the fairness of the procedure used to investigate Cllr Barton and its impact, and that Waverley Borough Council has been complicit in the complainant's commercial ambitions and committed 'malfeasance in public service'.

I consider that the general complaint about fairness is properly addressed already within my responses to the twelve enumerated complaints and requires no further response. It is not possible for me to independently judge the effect of the process on Cllr Barton's wellbeing, although I accept that it must have and did have an effect. Unfortunately it is inevitable that anyone subject to such a process will find it very difficult. All that those running the process can do to ameliorate this is to run it correctly. As I have already observed above, I think the process has taken longer than one would expect and I have no doubt this would have added to the impact on Cllr Barton.

The suggestion that the Council has been complicit in the malicious and commercial ambitions of the complainants is a serious one. It is impossible for me to know whether there has been any knock on effect from the complaints made against Cllr Barton that have helped one or more complainant. Whether that is the case or not isn't in my view something that the Monitoring Officer can control. I think the question is whether any employee of Waverley Borough Council acted improperly in order to bring about such an effect. There is nothing in any of the documents or other information I have seen that even suggest that this may have been the case. I conclude, therefore, that this allegation cannot be supported.

With regard to the final point, I will observe that Malfeasance is a serious criminal offence involving intentional wrongdoing which can only be dealt with by the Police and cannot be addressed by this investigation. I will say, however, that I have seen and read nothing during this investigation that has caused me concern in this regard.

Stuart Caundle
Appointed Independent Investigator
21 June 2021