

**Waverley Borough Council - Hearings Panel**

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

**Subject Member Statement**

**15<sup>th</sup> June 2022**

## CONTENTS

1. Introduction
2. Allegation
3. Parish Council's Code of Conduct
4. Relevant Personal Interest
5. Council Meeting 28<sup>th</sup> November 2019
6. Nature of Complaint
7. Relevant Considerations
8. Process Observations
9. Submission to Panel re. Breach
10. Submission to Panel re. Resolution

Appendix Chronology

## INTRODUCTION

1. This statement is made with respect to the specific allegation that I breached the Members' Code of Conduct<sup>1</sup> 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 28<sup>th</sup> 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.

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<sup>1</sup> 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 28<sup>th</sup> 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 21<sup>st</sup> March 2019 and 28<sup>th</sup> 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 21<sup>st</sup> March 2019 and would not think that my objectivity at another meeting on the Neighbourhood Plan (on 28<sup>th</sup> 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

2018<sup>2</sup> 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.<sup>3</sup>

38. The training materials used by the Borough Solicitor at a training session on 13<sup>th</sup> 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 interest<sup>4</sup>.
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.

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

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/240134/Openness\\_and\\_transparency\\_on\\_personal\\_interests.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/240134/Openness_and_transparency_on_personal_interests.pdf)

<sup>4</sup> <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 14<sup>th</sup> 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 21<sup>st</sup> March 2019 and 28<sup>th</sup> 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”<sup>5</sup> 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.”*

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<sup>5</sup> <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.*”<sup>6</sup>

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.*”<sup>5</sup>

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.”*<sup>5</sup>

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.

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<sup>6</sup> 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 28<sup>th</sup> November 2019 I received an email on 14<sup>th</sup> 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 21<sup>st</sup> 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 6<sup>th</sup> 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 28<sup>th</sup> 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 21<sup>st</sup> March 2019 meeting or the 28<sup>th</sup> 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 28<sup>th</sup> 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 21<sup>st</sup> 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 28<sup>th</sup> 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*"<sup>7</sup>, 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 28<sup>th</sup> 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 town<sup>8</sup>. 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.

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<sup>7</sup> [http://haslemeretc.org/wp-content/uploads/2020/06/2018\\_complaints\\_procedure.pdf](http://haslemeretc.org/wp-content/uploads/2020/06/2018_complaints_procedure.pdf)

<sup>8</sup> [http://haslemeretc.org/wp-content/uploads/2020/06/phase\\_2\\_consultation\\_results\\_jan\\_2016.pdf](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:

- 17<sup>th</sup> 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)
- 12<sup>th</sup> August 2020 from Mr. Benson to Mr. Bainbridge where he refers to *“my/our complaints”*
- 15<sup>th</sup> August 2020 from Mr. Benson to Mr. Horwood where he refers to *“my/our complaints”*
- 15<sup>th</sup> August 2020 from Mr. Benson to Mr. Horwood where he refers to another party’s solicitors sending a letter to the Monitoring Officer on 22<sup>nd</sup> 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
- 26<sup>th</sup> 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”*
- 14<sup>th</sup> 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 27<sup>th</sup> 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 29<sup>th</sup> 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".<sup>9</sup>*

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 27<sup>th</sup> 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]***

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<sup>9</sup> 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 20<sup>th</sup> 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 21<sup>st</sup> 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 13<sup>th</sup> 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")*<sup>10</sup>.

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.*

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<sup>10</sup> <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 9<sup>th</sup> 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 12<sup>th</sup> 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 4<sup>th</sup> 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 12<sup>th</sup> August 2020, 26<sup>th</sup> October 2020, 14<sup>th</sup> and 18<sup>th</sup> 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 17<sup>th</sup> August 2020;
  - Mr. Benson’s email to the Monitoring Officer dated 26<sup>th</sup> October 2020;

- Mr. Benson’s email to the Monitoring Officer dated 14<sup>th</sup> 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 18<sup>th</sup> 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 20<sup>th</sup> 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 7<sup>th</sup> 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 12<sup>th</sup> 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 26<sup>th</sup> October 2020 where he invokes an escalation to the local Member of Parliament; and
    - Mr. Benson’s email to the Monitoring Officer dated 14<sup>th</sup> 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 16<sup>th</sup> 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 28<sup>th</sup> 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 28<sup>th</sup> 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 28<sup>th</sup> 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 28<sup>th</sup> 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