

Waverley Borough Council (Haslemere Town Council)

Complaints against Cllr Kirsten Ellis

CONFIDENTIAL

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 Kirsten Ellis

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 Kirsten Ellis, 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 Ellis] 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:

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1. Cllr Kirsten Ellis 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 on her “Declaration of Pecuniary and Other Interests” form in accordance with paragraph 5 (5 iv) of the Code of Conduct when she first completed it in May 2019 and had chosen instead a different form of words to describe her relationship with HSRA, which did not make that membership clear.

By failing adequately 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 as 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.

2. Aside from her membership of HSRA, the adjacency of Cllr Ellis’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

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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”.

For that reason, whilst we conclude that Cllr Ellis 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 Ellis’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 Ellis’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 twice 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.

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

2 OFFICIAL DETAILS OF SUBJECT MEMBER

Cllr Ellis was elected as an Independent Haslemere Town Councillor representing the Haslemere South Ward in the 2nd May 2019 local elections. The Council's website states that she is a member of the Planning Committee.

The website also says that Cllr Ellis "is a long-time Haslemere resident and looks forward to representing her ward of Haslemere South and the wider township as a Town Councillor. She has a strong interest in protecting the environment and preserving the charm and character of Haslemere's Arts and Crafts and National Trust heritage and as the Gateway to the South Downs and hopes to help encourage community-led sustainability initiatives and partnerships that reflect a 'Think Globally, Act Locally' ethos. She believes it is possible to combine pragmatic, necessary development and housing expansion with planning that does not sacrifice AONB in the town centre. She is keen to work with fellow Councillors to ensure the wishes and needs of the community are served and welcomes hearing from local residents."

Cllr Ellis told us that she lives in a house that is "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 Ellis is recorded as having been present at the 16th May meeting.

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.

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(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*

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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:

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- 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.
- 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".

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- 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).
- 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

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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.

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”.

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.

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- 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 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.

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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.”

The same article ended by saying, “Town councillor Kirsten Ellis – who spoke at the meeting against the application – later tweeted: “This was an important decision for the Haslemere community and we are grateful to Waverley councillors who supported ou[r] local democracy and the principle of brownfield first. It was the right decision, and one that will be greatly supported in Haslemere.””

4.3 RED COURT ESTATE

As already noted above, Cllr Ellis owns a house which 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 for part of the Red Court site. The area being offered for sale at that time (perhaps three or four 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

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Borough Council in a future Local Plan process.” The website also contains details of a Public Consultation which appears to have taken 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 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”.

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].*
- 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 [REDACTED] & Cllr Ellis), 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*

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resolution. The Minutes do not record that Cllr [REDACTED] and Cllr Ellis 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 [REDACTED] on [REDACTED] and Ellis on 12th July 2018).

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 [REDACTED] and Cllr Ellis 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 [REDACTED] and Cllr Ellis 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 [REDACTED] and Cllr Ellis 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.

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
1. (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.

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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 [REDACTED] and Councillor Kirsten Ellis, 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 [REDACTED] and Cllr Ellis 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, [REDACTED] and Cllr Ellis only mentioned that she had “been asked to advise and observe HSRA”, implying a lesser involvement than the one that she has had as a founder member.

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, Cllr Ellis is also a member if [sic] the Scotlands Close Residents Association (SCRA), which is promoting opposition to development of the Red Court Estate. Cllr Ellis does not declare her membership of SCRA on the Haslemere Town Council’s Declaration of Pecuniary and Other Interests form, nor is she 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. 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

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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 Ellis and Cllr [REDACTED] 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 [REDACTED] and Cllr Ellis 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 Ellis, her 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.

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 [REDACTED] and Cllr Ellis have breached Haslemere Town Council's Members' Code of Conduct;*
- 2. The Monitoring Officer takes relevant steps to suspend both Cllr [REDACTED] and Cllr Ellis 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" meeting held with Cllr Ellis (who was "virtually" accompanied by Borough Councillor Steve Williams), by Zoom on 26th June 2020 that was captured in a 22 page verbatim transcript.

We reviewed many pages of emails and related documentation which had been exchanged during the informal investigation. These are listed in Appendix 1. Many of them, in our opinion, proved not to be directly relevant to the core of the Investigation. These included, for example, discussion of the reasons for granting anonymity to Mr Benson for some months and Cllr Ellis's

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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 Ellis] 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 work started 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. 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

Many of the source materials we reviewed during the Investigation are listed in Appendix 1 below.

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:

- (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 (Advisor to Mr Cox);
- (iii) Richard Benson (Complainant);
- (iv) Lisa O’Sullivan (Town Clerk, Haslemere Town Council);

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- (v) Pippa Auger (Deputy Town Clerk, Haslemere Town Council);
- (vi) Daniel Bainbridge (Borough Solicitor and Deputy Monitoring Officer, Waverley Borough Council); and
- (vii) Cllr Kirsten Ellis.

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 Ellis (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).

Cllr Ellis made her own recording of our interview with her. In doing that she agreed to the recording being treated in the same way as we treated our recordings - it would be destroyed once the transcript had been agreed and would not, in any event, be used as evidence in any subsequent proceedings.

We sent the transcript of our conversation with Cllr Ellis to her on 4th June 2021. She acknowledged receipt by email on 11th June saying that she was under enormous work pressure to meet a deadline but “should have time to look at it in early July”. Prompted by us to sign off the transcript on 21st July she replied saying, “I have had and have a lot on my plate at the moment and I just haven't had a couple of hours free to sit down and dedicate to cross checking the transcript. Obviously I had already made all my full and complete responses to this matter. It would really help if there are specific extracts you wish me to confirm?”

We replied by saying that we expected that Cllr Ellis would be given the opportunity to comment on the Report so we imagined she could check any words from the transcript that we had attributed to her at that point. At time of writing Cllr Ellis has not signed off the transcript of our conversation with her and it remains as it did when we sent it to her for comment.

Section 7 of this report contains text drawn directly (i.e. with little editing by us) from the interview records, from the written submissions made by interviewees and 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.

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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, where we felt it appropriate, we reflected those comments in a Second Draft Report. We issued that 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 on 20th November. She said, “It is not possible for me to make a full response in the short time frame you have set given that I have been awaiting a response from the Waverley Borough Council on the official Freedom of Information Act (FOIA) request I first lodged on 17 July 2021, and followed up on 17 September 2021, and since requested under Ref WAV1405796. The information I requested relates directly to communications concerning the complainants, myself, WBC and HTC officers and councillors, and the investigation Under these circumstances an extension for me to give a full and carefully considered response is justified”.

We replied asking why she had not raised this matter earlier. We said that we knew nothing of the FOI request and 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

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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 Ellis 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 can see no reason to make any further changes and 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.

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 was being caused by some of those involved in the Investigation though we have no comment to make on the possible reasons for that.

After we agreed 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 Ellis’s (redacted) pack was 212 pages long and its contents are summarised 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 KIRSTEN ELLIS 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 Ellis was elected. He could not recall whether Cllr Ellis was present. When we spoke to her, she told us that she “absolutely was there”. She regarded it as a “big responsibility and always have wanted to make sure that I respect and adhere to everything that I need to respect and adhere to”.

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 ELLIS DECLARATION OF PECUNIARY AND OTHER INTERESTS

Soon after her election (the form appears to be undated) Cllr Ellis completed her “Declaration of Pecuniary and Other Interests”.

Under “Other Interests”, in the box headed “Bodies to which I have been appointed or nominated by the Council” she recorded “*Haslemere Vision*” and “*Haslemere Health Group*”.

Also under “Other Interests”, in the box headed “Bodies one of whose principal purposes include the influence of public opinion or policy (this includes political parties or trade unions and campaigning charities)” she wrote “*I have been asked to advise and observe Haslemere South*”.

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Residents Association and represent members – over 250 households in Haslemere South Ward”. At the foot of the page she added “* I had believed it to be 200 members – but was corrected – 250 is currently the community household support”.*

Cllr Ellis also declared a beneficial interest in her home (which is adjacent to the Red Court site) though the details of her property were, reasonably in our opinion, “withheld for sensitivity” as was her address (see also Section 8.3.1.).

7.2.3 PLANNING & HIGHWAYS MEETING 10th SEPTEMBER 2020

On 10th September 2020, at a Planning & Highways Meeting Cllr Ellis read the following statement (which is appended to the minutes of the meeting): *“I am declaring a non-pecuniary interest in that I live adjacent to the Red Court Site, and I am a member of the Haslemere South Residents Association. I am also a member of the National Trust. My declaration does not prohibit me from taking part in this discussion and vote, and fulfilling my duties as a Councillor and representing my constituents. This vote - either way - does not determine whether or not this proposed application is approved - but rather, its function is to reflect the wishes of Haslemere citizens so this can be recommended accurately to Waverley and be taken into account when they make their decision on this application - a decision as I as a parish councillor, have no say in. I am looking forward with an open mind to learning more about this application and hearing all the facts put before Council tonight and being discussed by my Fellow Councillors so that I can make an informed consideration before coming to a decision.”*

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 Ellis voted against the proposal. In a counter proposal of objecting to the application six councillors voted in favour (including Cllr Ellis), three against, with two abstentions.

On 18th September 2020 Cllr Ellis amended her “Declaration of Pecuniary and Other Interests” with the result that it read (sic), *“I am a member of have been asked to advise and observe Haslemere South Residents Association”*.

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. The article notes that “[various individuals and] Haslemere South Town Councillor Kirsten Ellis all contributed important statements in the meeting with reasons to reject the application”. 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 as follows:

“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

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where 65% of the community wanted it plus 89% did not want large scale development outside the boundary.

“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** indicate that Kirsten Ellis attended. She is referred to as “Research & Editor” and is minuted as 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 counsellors 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 counsellors are up for re-election 2 May.

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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.” We understand that Gregory Rood is Cllr Ellis’s partner.

The **Minutes of the HSRA Meeting on 15th November 2018** held at the Georgian Hotel, Haslemere suggest that Kirsten Ellis did not attend. 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. It also says that, following a vote by members, Kirsten Ellis is a member of the Executive Committee of the Association”.

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”.

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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 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 ... HSRA had, BC said, sponsored KE when she became an independent councillor. KE had stood in the May 2019 election because she was motivated to prevent the Red Court development”.

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. JL understood that KE was a member of this group. This had not been declared in November 2019 either. BC 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.

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Haslemere Town Council have reversed the previous town council's decision to support a change in the settlement boundary. Kirsten and [REDACTED] 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”.

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.

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 Ellis 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 CllrEllis 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 Ellis and the other councillor] took charge of reviewing the comments and formulating the ongoing policy.

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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 [REDACTED] and Ellis 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 "nimbys" and thought that was their prime concern. There may also be a degree of wanting to support their neighbours who are themselves "nimbys".

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. BC said that 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. KE (who was at that time not a councillor) had said that the scheme was about greed and making Redwood rich. 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 At the other end of the estate can be found Cllr Ellis who moved in two or three years ago and built an eco-friendly house [and] resides at [one end] of the estate on Scotland Lane.

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.

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 [the Chair] 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.

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.

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Haslemere Vision 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, 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.

KE was elected at the May election and she, along with Cllrs Barton, 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 KE and [REDACTED] 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.

[When commenting on the Draft Report Cllr Ellis said that we had “made no attempt to question or qualify this erroneous assumption. The NP at that time was neither completed nor approved. It was an emerging draft NP still making its way through the statutory process. There had been no policy change, as the original position remained as it always had been, namely protecting certain areas of land according to national policy guidelines and WBC’s own policy guidelines”. She continued, “ It is possible that MK simply accepted Mr Benson’s assertion as it seems from his subsequent lines of questioning that MK held a view that new settlement boundaries had already been established by the late 2018 draft NP, and that the new councillors that arrived in May 2019 (including myself) somehow conspired to deprive developers of something they had already secured. This is patently wrong. The issue of settlement boundaries was very much current. I reiterate that this draft NP document was yet then to be put out for public consultation. (Incidentally, it has only recently been put to referendum on 7 October 2021, when 87 percent of eligible Haslemere residents voted to accept it.) Therefore it cannot be said that any decision on development (settlement) boundaries was to have been or had been agreed as a matter of planning law at the 28 November 2019 meeting”. We are content to include Cllr Ellis’s own thoughts and assertions here in the Report.]

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 “.... KE was there at the very beginning of HRSA and was a member of the first Executive Committee”. [REDACTED] 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)

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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. ■ and KE had put in personal objections on ■ and 12th July respectively. This wasbefore KE became a councillor in May 2019. The informal group had gone dormant in the summer and then sprung up again in September when people started to question what was happening. In the autumn they wanted to do some initial work and to go round the site. KE knew that RB had met BC and asked him to ask BC if he would allow a member of HSRA to do some kind of survey. He instead provided her with his contact details by email rather than get involved himself and suggested she make contact. She never did that.

On 22nd October 2018, the HSRA minutes of a meeting at the Georgian Hotel record that Jeremy Barton was Chair, Howard Brown and Rea Simonsson led, respectively, on “Technical and Council Liaison” and “Media & Communications”, Gregory Rood (KE’s partner) was in charge of “Call to Actions” and Kirsten Ellis had the title “Research & Editor”. The minutes record that there were 72 attendees. The minutes record KE 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, he said.

RB said that KE wrote[in her Declaration of Interests] , “I have been asked to advise and observe Haslemere South Residents Association and represent members – over 250 households in Haslemere South ward”. She had amended that on 18th September 2020 to read that she was “a member of” HSRA. RB said that she was very clearly a member of the committee of HSRA. It was “total rubbish” that she was acting in the role of adviser and observer. It was outrageous to say that. She was a founder member. The minutes of the meetings proved that. He also had an email saying there was a constitution and listing the members [subsequently shared with MK]. 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.

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”.

RB then referred to the statement read out by KE dated 10th September 2020. In th[is] statement [she] had “finally come clean” and admitted [she was a] member of HSRA KE initially

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said she was an advisor and observer of HSRA meetings before adding, on 18th September 2020, that she was a member.

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.

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 Ellis had been elected to the Town Council in May 2019 and had joined the Neighbourhood Plan Working Party soon afterwards.

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”

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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 Ellis and Cllr [REDACTED]. 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. She knew that Cllr Ellis had spoken to Daniel Bainbridge at WBC about declarations of interest. He had been very open with her and LO had seen an email exchange between them. LO's reply had been along the lines of "Dan appears to have confirmed what I have already told you". 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 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.

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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”.

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 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.”

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“[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”.

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 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

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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. PA did recall that Cllr Ellis was concerned with the design of the survey and the framing of the questions for residents. This, rather than the settlement boundary, appeared to be her focus at that time.

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 WP. 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. PA 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

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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 Kirsten and [REDACTED] 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 Ellis 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.

There were some councillors present who had been on the Town Council prior to the election. Amongst those was Cllr [REDACTED] who had asked some specific questions about the matter of pecuniary and non-pecuniary interests and planning applications. DB could not recall whether Cllr Ellis was there. 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 [REDACTED]'s questions were about Red

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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. This was the same advice he had later given to Cllr Ellis in November 2019.

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.

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

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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.”

MK then referred to the email written by Cllr Ellis to RT on 28th May 2020. Paragraph 3 of that email reads: *“Prior to the meeting of Haslemere Town Council on 28 November 2019, I communicated with Democratic Services at Waverley Borough Council both orally and in writing to ascertain whether I had any pecuniary or non-pecuniary interest needing to be declared in relation to the vote and discussion tabled for that evening's meeting dealing with the Neighbourhood Plan and the proposal to review and vote on reverting the Settlement Boundary.”*

MK asked whether DB recalled speaking to KE about this matter. He said that he did; again clearly. He had found her very reasonable when he spoke to her. There were also two pertinent emails – from KE to DB on 25 November at 13:12 and a reply from DB to KE on the same day at 16:01.

DB recalled having the conversation with KE at his desk in the office. KE “had set out the content of our discussion pretty clearly in her email. She had wanted to discuss whether she had a non-pecuniary conflict of interest in respect of Red Court ahead of the meeting and we talked that through”.

It had really come back to the training session that they ran, though he could not recall whether he had referred back to that though he was sure he would have done. “I was very careful – we knew already that there was this issue in Haslemere with councillors and Red Court and so on – in that conversation with Cllr Ellis to not say “Yes you have an interest” or “No, you do not have an interest” but to give her a framework within which to make a decision, her own decision, about it.”

“She set out her summary and I clarified a couple of things. I think what I was doing in the clarification was reaffirming that – “a non-pecuniary interest will never give rise to an *automatic* need to exclude yourself from a meeting or other consideration of the matter. Instead a non-pecuniary interest *may* give rise to the need for you to carefully consider the test set out in paragraphs 6 (4) and 6 (5) of the Code of Conduct.” That was about membership of organisations.”

“Then I said, *“where you say the fact that I live less than half a mile from the proposed development site allocation whether inside or outside the settlement boundary is something common to multiple councillors and not something which creates a non-pecuniary interest (and that was me quoting her there). My advice here was that living close to a site that is proposed to be allocated or which is subject to a planning application could be a pecuniary interest - and I think I may have meant non-pecuniary there, actually – and could then give rise to the need to consider that same test. Clearly if you have as you have done undertaken that thought process and concluded that any non-pecuniary interest does not give rise the need to withdraw, because it does not in your view undermine your ability to make an open minded and objective decision, then*

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that is your conclusion and you will take care to ensure you tread the right line when making public statements, commenting on the allocation or application, and so on”.

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 and then so had he in his own discussion with Cllr Ellis. “If you haven’t got an interest that automatically excludes you then you need to tread that line carefully in terms of what you are saying at the meeting but before that, in what you say in public. That was the tenet of my conversation with Cllr Ellis.”

MK suggested that one could read KE’s email of 28th May 2020 and conclude that she was almost implying that DB had given her permission to do what she had done. DB replied, “She is. That’s how I take it. I emphatically did not. I sympathise with Cllr Ellis and with Cllr [REDACTED] 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.”

After his conversation with KE in late November 2019 he did not believe that he had spoken to her again until the informal meeting with her (after the complaint) that had taken place as part of the informal investigation which led on to MK’s own investigation.

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 Ellis by name. We noted that there appeared to be no posts between July 18th 2019 and August 28th 2020 though there were regular posts before and after those dates. A single post, referred to below, appeared to us to be typical of the posts that could be found on the Facebook page.

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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.

7.10 CLLR KIRSTEN ELLIS

7.10.1 DISCUSSION WITH CLLR ELLIS

When we spoke to Cllr Ellis we prepared a verbatim transcript of what she said. Relevant extracts from that are set out below. As already noted in Section 6.2 Cllr Ellis did not take the opportunity to review the transcript or pass any comments about it to us prior to the production of the Draft Report.

“I have lived in Haslemere for sixteen and a half years My partner and I built a passive house between Scotlands Close and Scotland Lane.... a house that is as energy efficient as possible ... you could call it an eco-house ... it’s in proximity, adjacent to the [Red Court Estate].” Cllr Ellis confirmed that “you could, as it were, go to the back fence and, assuming you could climb over it, climb into the Red Court estate”.

Asked why she decided to stand as a councillor, Cllr Ellis replied, “I’ve lived in this community, as I said, for sixteen years, more than sixteen years, and I thought maybe I could contribute ... I care about my community ... I want to see positive change I got the third highest number of votes in my Haslemere South area and I regarded it as a big responsibility”.

We then asked Cllr Ellis about a Facebook posting attributed to her from three or four weeks before her election. It read “*I’m opposed to the development of a housing estate on DS15 [Red Court]. These greenspaces and #woodland have transformed into mass housing, our neighbourhood’s leafy charm and #wildlife will be obliterated*”.

We asked if that was a “driving issue” for her. She replied, “Yes, it is I would say that I am, very interested in....as Haslemere resident, I love the town and I love the environment that makes it special. I’m interested in environmental protections generally, nationally, globally it’s a passionate interest of mine and one that the more I understand about it, and the more I understand about the importance of, you know, on all levels, small communities, larger communities, how this feeds into national policies, the more I learn, the more interested I

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become, certainly Haslemere has a number of Areas of Outstanding Natural Beauty and I'm concerned about all of them."

We asked Cllr Ellis whether she had been "sponsored by" Haslemere South Residents Association and she replied, "No, I'm not "sponsored by", no, I'm "a member of" but I'm not.... I live within Haslemere South, I live within the community, I live within the neighbourhood, I am not sponsored by them I'm a member [of HSRA].

Cllr Ellis then told us that she recalled, soon after her election, a training session conducted by Robin Taylor and Daniel Bainbridge about the Code of Conduct in the Haslemere Town Council Chamber. She continued, "Yes, I was there, I was absolutely. I mean as a new councillor, you know, I of course wanted to, I've always wanted to, I regard it as a big responsibility, and always have wanted to make sure that I respect and adhere to everything that I need to respect and adhere to". Regarding whether she had asked any questions she said, "You don't always have the hinterland to know what questions to ask until something comes up and then you're like "Oh if I'd have known that, I would have asked that question" but of course, you don't know what you don't know."

Asked about her interaction with Daniel Bainbridge in the run-up to the HTC Meeting on 28th November 2019 she replied, "I had to ask myself, "what would a whether there was a non-pecuniary interest of sufficient weight so as to undermine my ability to make an open minded and objective decision considering what an ordinary member of the public with knowledge of the relevant facts would think so the crucial thing is, you know, bringing an open mind to the meeting, any meeting, at any time as a Councillor, a willingness to listen, and listen to anything, any evidence, any discussions, be objective and fair, and fully amenable to persuasion if those facts were you know, persuasion, absorbing the detail of what was under discussion. Essentially, democratic discourse. And I feel that is always my mindset".

"I was asked to consider, whether or not I might have a non-pecuniary conflict of interest. And, so..... as I outlined in my reply to Mr Robin Taylor, on 28th May in advance of the meeting, I was asked by HTC's Clerk to consider whether I have a non-pecuniary conflict of interest in the matter regarding the Red Court site allocation DS15, formally DS18 in the Waverley draft Local Plan in the light of paragraphs, 6.4 and 6.5 of the Members Code of Conduct. So I thought, "oh well, goodness, I don't think I do. I'd better find out everything I need to know about whether I might, and then find out what I've got to do if that's the case. So, I thought, "right, well, I'd remembered the visit that was made to the Haslemere Town Council, and I thought, well they had said, "Call us any time you have any questions, we'll be happy to answer", so I thought, I'd better ring Democratic Services. I checked that with the Town Clerk and she said "yes, that's a good idea". I asked her advice first, and she said, "Well, you've got to apply the test, you've got to ask yourself, you know, rationally, you've got to apply the test whether or not, what an ordinary, well informed, member of the public might think".

Cllr Ellis continued, "And, I thought, OK, she gave me that advice, but I still had questions, because I still wasn't certain because it all seemed a bit vague to me on certain elements and I wanted more clarification. You know, it seemed a bit, I'm sort of gnostic is the word that pops into my head but it wasn't entirely clear to me and I regard myself as a reasonably intelligent, fairly quick person but it still wasn't....I still had questions and I wanted really clear guidance. I basically

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wanted to be told “yes you do, no you don’t” and fine, I will take the advice and I’ll....whatever I’m told I’ll do it because I’m a very law abiding kind of person basically. And I like to do the right thing. So, I called Democratic Services and was referred to, erm I can’t remember if I may have spoken to Robin Taylor, I don’t remember, but I know I spoke to somebody else as well. I did speak to Daniel Bainbridge and he, you know, basically took me through the, erm, the formal definition of what test, I think to the best of his ability took me through, the long form definition of what test I had to apply. So I thought about it and I thought well, it’s quite likely that I would have a non-pecuniary interest to declare if this were a planning application about Red Court itself, that I can see because I live adjacent to....you know, the meadows are adjacent to my property and therefore, I would need to declare that. That’s a no brainer. However, and, also, but I have no pecuniary interest to declare. However, when it came to the meeting on the 28th November, this was a meeting about a Neighbourhood Plan, so in many ways..... it was a meeting about the Neighbourhood Plan and the settlement boundary, and about the evolution of the Neighbourhood Plan and the revision of the Neighbourhood Plan process that had taken part over prior months and what was being put before the Full Council as a result of discussions that have been had on the Neighbourhood Plan Working Party that we felt that it had been put to the Working Party that the Full Council needed to weigh in on. And I thought, well this is a Haslemere wide vote, this is actually not specific, and I see no reason to declare a non-pecuniary interest, and I asked and I thought and I wondered and I couldn’t see that I needed to declare”.

“And that, you know, we can go onto picking this apart in more detail if you like but I, as a new councillor, it was probably my third or fourth or.....something like that maybe my fourth Full Council meeting at the most. I looked to other Councillors also to see how they respond, what do they do? No one declared any interest at that meeting that I can recall, and again, I thought well and I knew that there Councillors who had previously..... it wasn’t that I was sitting there thinking, I, I well no, I was interested to see did anyone... what’s going to be instructive for me to know if anyone else declares an interest. No-one did, so I kind of, oh well I’ve made the right.... You know, I am correct, this is logical.”

We then asked Cllr Ellis about the evolution of the Neighbourhood Plan. She replied, “[A]s an incoming Councillor, in terms of areas where I could contribute, areas of interest, areas where my input could be helpful, I suppose, I was invited to be on the Neighbourhood Plan Working Party that had members of all parties on it. This was sort of just prior to the summer of 2019. I thought, well I’ve got good editing skills, if the writing could be improved or certainly I can look through, you know, I’m a few levels above a copy editor. You know, this has got to be prepared to go out to public consultation as a task, it’s something which is happening within...it’s very important for the community of Haslemere and I hadn’t actually, you know, I’d read the summary and I thought, “well, OK, it looks alright, it seems OK, pretty general summary” I thought, “Right, OK, fine”. I hadn’t read the whole thing. I hadn’t read the whole policy statements, I hadn’t at all because quite frankly, I felt like I had far more.....I was pretty busy and I had other things going on and I wasn’t volunteering for that actually, at all. So, one of my Councillor colleagues, Terry, was the one who volunteered to kind of go through it line by line”.

“And we left it to Terry who took on the responsibility as part of the incoming group who were tasked with this responsibility of seeing the Neighbourhood Plan draft prepared for the public consultation and made ready to be published in that form. And so, summer went on and at the

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end of summer, he came back and we had a meeting and he said, “Actually, I have got serious reservations, very serious reservations about this document and in fact I don’t know that I can be part of the Working Party because I feel so strongly about this. There are things that really don’t rest well with me”. So, there was a kind of, shock horror, “Oh Terry, what do you mean? What are you talking about exactly?” So, I thought I’d better have a look. I’d better have a look at this plan, and I guess others at the meeting, you know, we all felt a bit shocked by Terry’s reaction and.....”

Asked why they were shocked she replied, “Well Terry said that he was so unhappy with it that he wanted to leave the Working Party. And so we asked him to explain why and to set out why and he did and we discussed it and I mean I honestly can’t remember all the nitty gritty but what it boiled down to for me is, I thought, right I am going to sit down with this Neighbourhood Plan, I am going to read it carefully and then I am going to say, “do I understand what Terry is going on about it?” And so, I set about some time and I did. Sometime, I don’t know, September, something like that. September, October, I can’t remember, something like that. And, reading through it, also with a view to looking carefully at the Policy and the language and what was being proposed there and then as part of that process, I wanted to.....because references were made to the public consultation that had been held before my time, I thought “well I’d better understand what this public consultation was”. I mean, believe me, this was unbelievably tedious as far as I was concerned. So, I thought, OK I’ll go back and I’ll have a look at all those documents and see what they say”.

“When they’re talking about 65% of Haslemere saying they want this, what are they referring to? What are those original questions? And what are they actually talking about? I need to see the underpinnings of where this is coming from. So, the process of doing that, threw up the fact that in the consultation that was done, the references were made to what Haslemere residents did and didn’t want were actually made and referenced to Haslemere’s original boundary. So it became ... the fact that the Waverley proposed boundary which included Red Court and Longdene, as Areas of Outstanding Natural Beauty and Areas of Greater Landscape Value in them, was not the map that had been referenced by the public when they were being asked for their comments. So this was simply it would be dishonest to put them together and say that the consultation responses and this map should be teamed up because you would have to be completely honest about what was what. Sorry, you have to be honest about the fact that, the maps you can’t present two data points that don’t match up. So, you’ve got to say what your consultation is in response to and if you’re talking about a map, then at least say that the map relates to the original map rather than the new map because that would be dishonest. That’s what that was about. And, when we had that conversation and it was accepted that that is what had happened, it was agreed that, no, the Full Council had to know that information and they had to make a decision on whether or not how they wanted to handle it. That is what happened”.

“I’m not saying that [Terry] personally drove the settlement boundary to top of the agenda. No. I’d have to go....it was.....I’m saying that I looked through and found the references to the public consultations and realised that the map that they were referring to was not the 2018 map. So I discussed that with Councillor Barton, I discussed it with Councillor Weldon, I then wrote the draft reporting my take on that, what I had seen and then I sent that to Terry and Nicky had their input on that, this was a document that the three of us presented to the Working Party, saying “Look

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this is a situation, what do you want to do about it?” So the three of us in a joint document took that issue forward. And this is not saying by the way that this is not saying you must do this, you must do that. I mean, this is saying don't put something out there to the public that is actually not honest”.

[The comments on the Draft Report that we received from Mr Cox said that the foregoing paragraph was “irrefutable evidence that Cllr Ellis [was] party to the first proposals to change the settlement boundary and promoted [her] advice to the NP Working Party in a “joint document””. We include this comment for the purpose of balance.]

“[The resetting of the Plan] was through scrutiny, it was through scrutinising it, does this document have full integrity, are the policies in line with the Government's national guidelines? Are the protections there that should be there? Are the policies right? And in some ways being glorified proof-reader and copy writer about does this document have full integrity to go out to the public? Has it been checked? Yes, we came in, new Councillors came in and they're looking at this for the first time and it was all completely fresh. And so this was scrutiny and I felt in my role, as a Councillor, I'm not there to impose my will on other Councillors. I'm there to say “look I've looked at this, here's what I've found, are we going to do anything about this? What is the right thing to do?” That's my role and that's the extent of it.”

“If the residents of Haslemere had said, “Look we love the idea of...”, I think it was 65% and 89% are the figures in my head which are they said they didn't want to have, didn't want to see development, didn't want large developments outside the settlement boundary on their green spaces. OK, that's quite straightforward. If they'd said actually we really love the idea we'd love to have those big developments or we'd love to have whatever particular type of development they'd like to see or the statistics had come in very positive, then that's fine, that's democracy. Then under localism and under the whole process that the Neighbourhood Plan's meant to be in then you say “well look, our neighbourhood feels x, y, z,” so we should respect that. As Councillors, we should respect what the locals want. We've gone through this whole process after all; it's been quite laborious. It's a whole process but the point of the process is to respect and reflect the majority view of the town. So, that's it.”

We then asked about the Council meeting on 28th November and said, “It might be said, and people have said it, that you live adjacent to the site, the settlement boundary, irrespective of the reasons why the settlement boundary has been moved, the settlement boundary in that version that went to the Town Council on that, I assume it was an evening, had got the settlement boundary that meant that if it went through, the plan would exclude building on a site that is right next to where you live A reasonable person might say that Kirsten is conflicted there because they might say there is an opportunity for building potentially on the Red Court site and she lives right next to the Red Court site so why is she voting?”

Cllr Ellis replied, “I think that's a frame that's being argued or imposed or allegations are made against me using that frame, but I think that it's a false frame. Because I applied the logic of the test to myself and I did not think that there was a reason for me to declare a non-pecuniary interest because this was a meeting about the Haslemere wide Neighbourhood Plan, a sort of holistic, I would say actually moral decision by the Council about what precisely they were going to be presenting to the public. They had a decision to make as a Full Council as to how they

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wanted to present themselves. There would nothing wrong with them, if they wished, as a Full Council to say look, “we want to keep the Waverley suggested boundary, but we must refer in our document to the fact that when the public were consulted, they were not making reference to this boundary map”. I didn’t suggest that but logically, you could say that would be an honest you know as long as there’s no confusion, you’re not trying to do anything dishonest that could be misinterpreted by the public, then that would be, you know, this was something that all Councillors could take a decision on.”

She continued, “ Well actually, at that meeting, what surprised me, in some ways what happened was at the very outset, it was announced that....and I have to tell you and I’m telling you this in all honesty, I went along to this meeting and again, my hearing aids were on the blink and I remember this quite well and I commented on it at the time to other Councillors and it’s not part and parcel of any of this, I’m just saying, anecdotally, and conversationally I suppose, I was sitting right at the end and I couldn’t quite hear what the Mayor was saying because he’s got quite a soft voice. But what happened at the very beginning, at the outset of that meeting, was, I was expecting a full debate, with this disclosure of the fact that the data points didn’t match up but what happened was, Haslemere Vision and the Mayor announced that the, oh I have to look at the wording of this in the minutes which I’ve got in front of me, but essentially there’d been a ... a decision was being made about what they had proposed to do on this. They’d talked about it and I didn’t quite hear that, so I think I may got up and started talking about the data points but it was actually irrelevant by that point because they’d already made the decision.”

“The important thing was that the Full Council could understand that they could....if they were going to put out the document as it had been in March 2019, they would have to understand that if they were just to say, “no, this should go out as it was or with minor modifications or whatever”, the main point was, as was explained to as was fully thrashed out and discussed within the Working Party and then that broadened outand of course the Mayor was aware of it was that, this was a critical mistake. It’s not about trying to impose one settlement boundary or the other, but if you’re going to present the settlement boundary in relation to the public consultation then you have to be very clear about which settlement boundary people were voting on.”

We then asked, “Can you see how somebody, I think you called them the reasonable person in the street a few minutes ago, might view that in relation to where you live?” Cllr Ellis replied, “I can see what the property developer and the property developer’s agent and the property developer’s lawyers and the property developer’s agent’s friend might think but I’m not saying that they, I consider them to necessarily be without major vested interests. I don’t believe that any ordinary person with a grasp of the facts has complained about my vote in relation to this other than people who I think deductively would have quite a major vested interest. There were several Councillors present at that meeting who have declared pecuniary interests in the past in relation to business relationships, relationships with developers regarding another site that is affected by that settlement boundary, and I’m talking about Longdene, and they did not declare any interest. So, by the same logic, they would then be open to that kind of Code of Conduct attack and they chose not to declare any interest and I all Councillors this was a holistic..... I went to that meeting, thinking this is the point which the Full Council has to get the measure of and decide what is the right thing to do”.

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[When commenting on the Draft Report Cllr Ellis felt it important that we explicitly recognise that Mr Benson “is associated with the Red Court developers” and elsewhere described both complainants as “proxies for the developers” and “the developer’s surrogates”. By contrast, when commenting himself on the Draft Report, Mr Benson said, “[t]hroughout Cllr Ellis[’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.”) We are content to include both comments in the interests of balance.]

She went on, “I went into that meeting thinking well, this is going to be an interesting conversation, I’m expecting it to be had. What *do* members of the Council think about the fact that there were these two... the two things do not compute and actually, the public if they were aware of that they would actually be pretty damned upset about it. No one likes to think that.....why should the public be misrepresented in their own vote that way? That’s how I went to the meeting, I want to hear what people have to say about it. By my voting on that issue, I’m voting on a Haslemere wide point of principle actually. About what’s right and what’s wrong about what you should present and what you shouldn’t present and how you should present it to the public. And, you know, under the same logic, those Councillors who.....I mean all Councillors are affected by the Neighbourhood Plan, all councillors you know I live no closer to the actual settlement boundary than other Councillors. As I said, other Councillors present who didn’t declare a pecuniary interest and have, and are known to have, pecuniary interests tied to developments that are affected by that settlement boundary did not declare any interest. So, I would say, using the test and the logic, I would, unless there is something really critical here that I have failed to grasp, I would have to make the same decision.”

We asked Cllr Ellis why she had declared an interest and her membership of HSRA at the Planning and Highways Committee on 10th September 2020 and made it clear [in a formal statement] that “there was no question of predetermination because you would listen to the arguments put by both sides” but had not declared an interest on 28th November 2019.

She replied, “I didn’t consider that I had any need to declare a non-pecuniary interest at the meeting of the 28th November just like all other Councillors who did not declare an interest. You know, I was, believe me, I was watching other Councillors because I was still a Councillor learning about what’s appropriate, so I very much looked to, you know, experienced Councillors, former mayors, and everyone else in that room, as to what is expected and required, responsible, ethical behaviour here. So no one declared an interest.... Clearly, because I live adjacent to Red Court, I live adjacent, the entrance way is 400 or 500 metres up the road and membership of HSRA and HSRA has stated its interest in protecting Haslemere’s green spaces and in the case of Red Court it has been fairly forensic in examining the policies affecting this development and so for those two reasons, I declared a non-pecuniary interest as I should have and did. But I saw no I didn’t read the Code of Conduct, the Haslemere Code of Conduct as indicating that I needed to withdraw from that and that.... withdrawing from the meeting isn’t automatic and I did check and I did read through it, I did follow due diligence.”

She continued, “I have to say that if you’ve had occasion to look at the plans for Red Court in the current plans my property would be adjacent to, if the plans were to go ahead, and then it would be adjacent to a sort of wildlife meadow, there would be no houses coming right up against me. In terms of my own personal kind of self-interest, I have a very heavily insulated

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house, triple glazed, the plans don't actually..... it's not like according to [indistinct] that I would be looking right into [indistinct] sightline. I don't have any, erm, I don't have any.....I'm not affected. However, as a in terms of representing my community, you know, I have often been stopped in the street by people thanking me for actually representing them as a Councillor. There is the sense for me of having a responsibility of not actually riding out, not actually withdrawing myself. If I have the opportunity to participate democratically, then I feel that I ought to be representing their concerns and their views. And I don't mean, I mean the community, I mean the Haslemere residents, I mean the majority."

We then proceeded to discuss Cllr Ellis's "Declaration of Pecuniary and Other Interests", of which there were two versions and asked about her membership of HSRA and how it had been represented on the Declaration. We asked " Were you a founder member, were you at the sort-of kick-off meeting at the Bartons' house?". Cllr Ellis replied, "I, I, don't know which, of those meetings, I don't know.....I'm not a founder member, no. I attended some early meetings, yes. I'm not quite sure which would be considered the...you know, you're referring to a particular meeting, I'm not sure of the date but I was at early meetings but I'm not a founder."

The conversation then proceeded as follows:

"MK – OK. I'm just wondering, if I compare this to the later document where you say you were a member, I'm just wondering why you didn't say you were a member in May 2019.

KE – Yeah. I, I, I, I,

MK – And why you chose those words.

KE – I know, I'm laughing because I mean, you know, when I was a new Councillor, I think I remember, you know, trying to use the right language, I think I can't remember whether I asked Lisa or Pippa, and I remember asking saying, well I'm a member of.....erm, what should I write here? And because, it's sort of not the kind of language I would normally use. I'm an adviser, observer, I think that was a kind of off the cuff response, "well maybe you could say something like that". So I just thought, "Oh that sounds OK, I'll put that down". But actually, it's really nothing particularly more to say about it

MK – But you were a member.....

KE – Yes, I was a member, I was a member.....

MK – But you didn't... you didn't

KE – I was a member and then later, I was asked, well, you know, wouldn't that be more appropriate to say.....yes, it would be. It was a conversation.....yeah, nothing yeah, I didn't think too much about it but I think that wording was suggested to me and I thought "Well that sounds OK, so I'll put that down".

MK – Yeah, I mean I have seen minutes that say you were on the committee actually in.....

KE – Well, I was a committee member for some of the earlier meetings. Not a founder member, but on the committee and when I became a Councillor, I stepped down from that.

MK – From the committee?

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KE – Yeah and I don't, you know, that's accurate.

MK – But you still went to meetings and were still a member and were still listening to what they were saying and trying to represent them?

KE – I haven't been to, I haven't been to, you know, obviously we've had lockdown, and HSRA send out you know, to all their members, send out occasional updates, occasional emails, I'm on that list, I'm on the mailing list, but other than that, no.

MK – Well I don't know if there have been any meetings but you receive their mailings because you are on their membership list.

KE – I am.

MK – And I read somewhere earlier that said, very early on, it said "Don't share this with anybody who's not on the list". Or words to that effect.

KE – I couldn't speak to that. I don't know. I don't know who wrote that email or what.

MK – What did you do in those early days? I mean, I don't quite understand what, oh I've written it down, you are Research and Editor. What did that involve?

KE – Research and Editor. Well I am, well I have written a biography and I can edit but how does research and edit come up? What's that about?

MK – Apparently, on the minutes somewhere, you were responsible as a member of the executive, formal or informal, at that time for research and editor it said. I don't know what that is.

KE - Well, I don't know whose term that is. I don't know where that's come from but it doesn't really matter to me.

MK – Well you can't read it Kirsten but it's.....there it's got attendees, and this is 22nd October 2018. Attendees, Jerry Barton, Howard Brown, Raya Simonsson, Gregory Rood and Kirsten Ellis and each one of those has got Raya's got media and communications manager and you've got research and editor.

KE – I mean my interest is, so my interest was as I said, from my understanding, HSRA was, in relation to Red Court, was concerned about any development on it being in line with government policy. OK, so about government policy about that kind of land and about Haslemere's environment as a whole and with Red Court in particular, it was concerned with the desire to see that decisions made around it were in keeping with rightful policy and so in terms of in terms of yeah.

MK – I've looked at the website, I can't remember what website's Haslemere South website and it's very detailed, I don't know if you've written any of the copy for it, [KE shakes her head] it's very detailed, it's very environmentally focussed, it talks about things like woodlarks and dormice and wonderful things like that, nightjars, whatever, but.....

KE – I'm not involved with it, I'm not involved with it. I haven't looked at it for quite a long time.

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MK – But I think it's fair to say, and I speak as the reasonable man in the street, that it is very strongly opposed to Red Court. In fact, Red Court is the centrepiece of that organisation. And so, what I'm thinking about here, Kirsten, is that you made that decision not to declare an interest on the 28th November.

KE – Along with all the other, at least three other Councillors who had pecuniary interests who didn't declare an interest.

MK – But you are a member of and at one point you were a committee member of an organisation that is very strongly opposed to development on the Red Court site.

KE – That's why, but I'm not, I'm not a committee member, I haven't been a committee member, I'm not involved. I have been a committee member but I'm not a committee member.

MK – You're not now, no.

KE – I haven't been a committee member since I became a Councillor.

MK – Yes.

KE – So yes, my membership and community no my membership of HSRA was something I thought I should declare for the vote on Red Court which I did."

Cllr Ellis then said, "I think the idea that I am somehow influenced by HSRA or that I wouldn't make my own decisions, is a construct. It's a construct by the people making these allegations. My beliefs about the environment, my beliefs about the importance of properly considering it, my respect for government policy, my respect for seeing that, actually, due process is done on following national guidelines and Waverley's and our Town Council's own pledges have nothing to do with my being a member of HSRA which I would not describe as a sort of in any way it's not part of my life day to day or week to week. I am....I think that this is being....I don't agree with allegations, so I reject them".

"I would say that in response to these allegations of breaches of the Code of Conduct of these allegations that have been made, when it comes to caring about the environment and caring about national policies, caring about things....the urgings of our own MP, Jeremy Hunt, who last October, appealed to DEFRA to protect our Surrey Hills area and protect our Areas of Greater Landscape Value, which Red Court is one. And actually, urge that more protection had to be given under government guidelines. And clarified. I care about those things, I am predisposed to care about those things. I'm predisposed to care about our local democracy, and I'm predisposed to represent, stand up for, speak for, the majority of the views that have been democratically expressed through public consultations by Haslemere residents. But I'm not predetermined. I'm not predetermined. You know, I reject these allegations. I feel I have in all ways striven to hold myself to high standards and be ethical in my approach, in my consideration and my due diligence and I am quite detail oriented, hence the scrutiny on the Neighbourhood Plan."

"As I see it, if this community, really wanted to see, you know, if they wanted the inverse and they wanted that, well I wouldn't be trying to impose my will on a community that didn't want me to speak for them. I am in this instance only speaking for the majority, the majority that's been expressed in Haslemere, and actually, what national policy says, wants us to do, our own Council

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says it wants us to do. I understand, I'm a pragmatic person, I understand that sometimes difficult decisions have to be made, all I ask is that they are made rightly and ethically. And if the community has voted for me, I take that responsibility to heart. Quite frankly this has been a nightmare, it's been very stressful and I feel I have suffered. This has been stressful and it's been extremely upsetting and especially as I feel that I have come out of my..... it has not been easy for me as quite a shy person to actually feel like I have a responsibility to speak for my community and so in many ways I wish.....I'd much prefer to just be in my own little bubble and not have to bother. So, it has been my sense of responsibility that has motivated me, and I do think that's important. My sense of responsibility to my community is what I mean".

7.10.2 WRITTEN SUBMISSION BY CLLR ELLIS

On 25th June, just prior to her conversation with the Monitoring Officer (see 7.10.3) Cllr Ellis made a written submission to him as an "aide to our meeting". When we spoke to her she told us that her "thirteen page formal response crystallised everything out last June when [she] was told about these complaints".

Early in her submission, Cllr Ellis said, "I have acted both in the spirit and the letter of the Local Government Association guidelines which state that as a local councillor, residents will expect me to know and work with representatives of local organisations, interest groups and business, and to represent their views at council meetings".

Further relevant parts of that submission are set out below with (her) paragraph numbers.

Declaration of Interest statements

17. I attach: (1) a copy of my Declaration of Interest statement ("DOIS") in its current form; and (2) a copy of my DOIS in its original form.
18. You will note that my DOIS contains details of the property which I own in Scotland Lane. The specific address is included in my DOIS in its original form and this has been redacted for sensitivity by HTC's Town clerk in accordance with the Code (adopted May 2019).
19. To explain this: some months after completing my DOIS, and having not realised until then that the declarations were published online and that my private address would be visible online, I asked HTC's Clerk to remove my private address from the HTC website. This was not an intention to retract my declaration of the fact that I owned a property in Haslemere, simply a matter of safeguarding my privacy because of my personal circumstances. I emailed the Town Clerk about this on 24 October 2019 and she said she would remove the address, which she then did.
20. You will also note that my DOIS records my relationship with Haslemere South Resident's Association ("HSRA").

The discussion of the neighbourhood plan

21. It is important to appreciate the nature of the discussion concerning the NP at the Meeting.
22. The NP fell to be considered under agenda item 9:

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“Cllr Weldon has submitted 2 amended documents, (Neighbourhood Plan and Summary) for consideration by Full Council. Council to consider whether these amended documents will then be taken forward to the next stage of the Neighbourhood Plan process, that of public consultation.”

23. It should be noted that the documents which were being considered at the Meeting were not documents dealing with Red Court on an individual or specific basis. Rather, they were versions of the NP which concern a much broader area. Similarly, the representations and matters for discussion were all addressing the NP as a whole, rather than Red Court individually or specifically.
24. This is reflected in the Minutes which materially record:

“105/19 REPRESENTATIONS BY EXTERNAL BODIES

Lesley Banfield - Chair of Haslemere Vision made the following statement:

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). The boundary defined in the March 2019 Neighbourhood Plan approved by Haslemere Town Council includes areas within AONB, AGLV and Green Belt, some of these relate to sites which Waverley Borough Council were proposing to allocate for housing in their Local Plan part 2. However, Waverley have not yet consulted on these sites and, with the passage of time, there is now uncertainty as to whether they will be allocated or not. To include AONB, AGLV and Green Belt within the settlement boundary would give a “green light” to developers.

Further, to proceed with the March 2019 Neighbourhood Plan may jeopardize the adoption of the plan as it may fail to gain 50% or more of the community vote at referendum. This would risk the immense contribution of the community in helping to shape future development in the town.

The draft Neighbourhood Plan may well be considered ‘material evidence’ in the interim before WBC prepare and adopt Local Plan part 2 and will have equivalent legal status to the Local Plan if it is adopted. The Neighbourhood Plan will, therefore, influence Haslemere Town Council’s and Waverley Borough Council’s decisions on any forthcoming planning applications in the locality. The views of the residents of Haslemere need to be clearly expressed in the Neighbourhood Plan and to Waverley Borough Council whilst it is considering Local Plan Part 2 ...

109/19 NEIGHBOURHOOD PLAN

Cllr Robini proposed that the amended Neighbourhood Plan document and Summary (Appendices 3 and 4) is adopted by the Council to go forward for public consultation. This proposal was seconded by Cllr Barton.

Cllr Dear counter-proposed that the original Neighbourhood Plan document that was passed by Council at its March meeting be put forward to public consultation. He stated that the

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amended document as circulated with the Agenda had not been widely enough consulted on and that organisations such as Chamber of Trade and Haslemere Society should have their say. This proposal was seconded by Cllr Odell.

There was a significant amount of discussion on the subject.

It was noted that there currently is no formal settlement boundary in Haslemere, in the document passed in March the settlement boundary set as per Waverley's draft LPP2 which lead to the encroachment of vital green spaces. It was hoped that the adoption of the amended version would help protect these green spaces. It was however stated that the original document already provided protection for AONB, AGLV etc.

In previous consultations, the public had been consulted on the informal settlement boundary, not the one in the March version of the Neighbourhood Plan. 65% of respondents did not wish to see development outside the current informal boundary.

Cllr Weldon commented that regardless of the issues with the Settlement Boundary, the original document was poorly worded and that his work had tidied it up.

It was stated that the original document took 6.5 years to create, and should be the one to go forward to public consultation, however it was also noted that Haslemere Vision were in favour of the new amended document.

There was discussion over whether the adoption of the amended document would cause further delay to the process and it was noted that whilst there is no Neighbourhood Plan it leaves town wide open for development and loss of CIL funding.

RESOLVED: That the amended plan at Appendix 3 to the Agenda be adopted and put forward for public consultation."

25. This was an almost unanimous vote, with I believe, one abstention. It was supported by a statement from Mayor John Robini and with a statement by the incoming Chair of Haslemere Vision, Mrs Lesley Banfield.

Advice from Daniel Bainbridge

26. As I outlined in my in reply to Mr Robin Taylor on 28 May, in advance of Meeting, I was asked by HTC's Clerk to consider whether: "I have a non-pecuniary conflict of interest in the matter regarding the Red Court site allocation (DS 15, formerly DS 18) in Waverley's draft Local Plan) in the light of clauses 6(4) and 6(5) of the Members' Code of Conduct."
27. This was a matter to which I gave particular thought and as part of this, I sought advice from Daniel Bainbridge, the Borough Solicitor and Deputy Monitoring Officer. I received this advice by telephone and email. I attach the email correspondence.

Response to the complaints

28. [I]t is clear that my ownership of a property in Scotland Lane is properly recorded in the DOIS.
29. Secondly, the complaint appears to be in error of fact on a number of grounds:
- (a) My property is approximately 250 m from the entrance to Red Court.
 - (b) My property in Scotland Lane is not for sale and I do not intend to put it up for sale.
 - (c) I am not aware of any evidence that the development of Red Court will deter potential buyers of my property (even if it were to be for sale) or that I would otherwise incur financial loss if Red Court was developed. If you have evidence to this effect, please share it with me as this is a serious matter.
30. Thirdly, in advance of the Meeting I gave particular thought to whether I had an interest which would require me to withdraw from the discussion of the NP at the Meeting. This is clearly evidenced by my correspondence with Mr Bainbridge. I confirm that I reviewed the Code in advance of the Meeting and with the benefit of Mr Bainbridge's advice. On reviewing the Code and considering my ownership of a property in Scotland Lane, I concluded:
- (a) Having regard to paragraph 5(1) of the Code, I did not consider that my ownership of a property in Scotland Lane was a matter which could reasonably be seen as an interest which compromised my honesty or objectivity.
 - (b) Having regard to paragraph 6(3) of the Code, I did not consider that my ownership of a property in Scotland Lane was an interest in the NP which required me to withdraw. In this respect, it is important to note the actual nature of the discussion: see above at paragraphs 21 - 25. The discussion related the NMP as a whole, not Red Court individually or specifically. Importantly, contrary to the approach which the complaint appears to adopt, the Meeting was not an adjudication of the merits of the Red Court development and no application for planning permission in respect of Red Court was being considered by HTC. Moreover, it is trite that whilst the provisions of the NP would need to be considered in the determination of any application for planning permission in respect of Red Court (which would be for WBC not HTC in any event), the NP would not have the final say on whether planning permission would be granted.
 - (c) Having regard to paragraph 6(4) and (5) of the Code, I did not consider that my ownership of a property on Scotland Lane was a non-pecuniary interest of sufficient weight so as to undermine my ability to make an open-minded and objective decision, considering what an ordinary member of the public with knowledge of the relevant facts would think.
 - (d) I note that paragraph 6(3) is dealing with pecuniary interests and paragraphs 6(4) and (5) are dealing with non-pecuniary interests. However, I considered all of these provisions as a matter of caution.
31. Having considered Mr Bainbridge's advice and the Code as set out above, I was able to conclude that I could approach HTC's discussions and votes with an open mind and a

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willingness to weigh up evidence objectively and fairly. I remained fully amenable to persuasion, to hear various views and to vote accordingly on that basis.

32. Given this, I consider that I behaved entirely properly at the Meeting and that I complied with the Code fully. In particular, I do not consider there to be any basis on which it can be said that I failed to disclose a pecuniary or non-pecuniary interest.

My relationship with HSRA

38. First, the complainants allege correctly that I am a member of HSRA (a community association formed of some 270 households) but completely incorrectly that it was “founded in 2018 to oppose the inclusion of Red Court within the settlement boundary.”
39. In common with other residents’ associations, HSRA concerns itself with a variety of matters important to the local community. While the HSRA is concerned in particular to preserve the beautiful natural landscapes and habitats of South Haslemere, its concerns extend beyond this to general amenities and infrastructure as well as more recently providing support to residents during COVID-19.
40. The complainants seek to show that a causal nexus exists between HSRA and the settlement boundary. Such a causal nexus does not exist, not even tenuously. The HSRA is concerned about large-scale housing development proposed on local AONB/AGLV land at Red Court, and the risks that would pose to the local environment, with the loss of mature and native trees, woodland and grassy meadow habitat of many endangered red list species of wildlife and birds.
41. I am not, in any case, a proxy for HSRA, nor for any other HSRA’s member’s views. I am an Independent councillor and I have a mind of my own.
42. Secondly, my relationship with HSRA is also properly declared in the DOIS.
43. Thirdly, I confirm that I considered my relationship with HSRA in advance of the Meeting and by reference to paragraphs 6(4) and (5) of the Code in particular. This is evidenced by my correspondence with Mr Bainbridge. I confirm that having considered my relationship in light of the Code and Mr Bainbridge’s advice, I concluded that I did not have a non-pecuniary interest of sufficient weight such as to undermine my ability to make an open-minded and objective decision, having regard to what an ordinary member of the public, with the knowledge of the relevant facts, would think.
44. Fourthly, in respect of HSRA I note that there is an important distinction between a predisposition and predetermination (see also paragraph 8(3) of the Code). I reject the notion that I had predetermined any matter in light of the Meeting.
45. Contrary to the complainants’ allegation, it is perfectly possible for me to hold opinions, to listen and hear what issues are of pressing importance to my constituents and to represent those who voted for me, whilst also coming to each Council discussion and vote with an open mind that is not pre-determined or closed, and for me to be capable of making an objective decision on the basis of the facts being presented and evaluated.
46. Accordingly, I consider that I acted entirely in accordance with the Code in respect of my relationship with HSRA.

My “personal objection”

48. Again, the complaints appear to be made on the basis that the Meeting was considering an application for development of Red Court or the development of Red Court specifically. This was not the case and I refer you to paragraphs 21 - 25, above.
49. With respect to Haslemere’s settlement boundary, as one would expect in a small town, I live close to the boundary as I would also expect do a number of, if not most of the town’s Councillors. The fact that I live proximate to any particular or specific proposed development site allocation (whether inside or outside the settlement boundary) is therefore something common to multiple Councillors and not something which is peculiar to me.
50. I have always advocated for the preservation of Haslemere’s protected landscapes, its habitats for endangered wildlife and birds, its mature woodlands and meadows – vital landscapes which once eradicated or tarmacked over, would represent a major loss to local ecology and biodiversity. I am not against development, quite the opposite. Indeed, as part of the learning curve of becoming a parish councillor I have become very interested in planning and development. I believe that housing developments and other 'build back better' projects, if, with the right architectural planning and engineering standards (energy efficient, zero carbon) can increase the well-being of our communities – as long as they don't come at the cost of destroying the biodiversity and green spaces that improve the well-being of our communities, and follow the for Haslemere’s landscapes, my request is simply that such landscapes are not unduly or disproportionately targeted for development ahead of brownfield, and that policies are written to provide the robust assurances recommended by the NPPF.

7.10.3 TRANSCRIPT OF ROBIN TAYLOR CONVERSATION WITH CLLR ELLIS

On 26th June, the day after sending her submission to Robin Taylor, Cllr Ellis (supported by Borough Councillor Steve Williams) met informally with Mr 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 transcribed verbatim and we have set out some of what Cllr Ellis said during that meeting below (with page numbers for reference).

Asked (p.7) by Mr Taylor to comment on the allegations made by the Complainants, Cllr Ellis said, “I didn’t feel I had either of those interests [pecuniary or non-pecuniary] to declare in this discussion [the 28th November Meeting]. So, from the outset that was my baseline position ... or assumption. I didn’t feel that I had one, not that [I] was pre-occupied by having one or not. I was asked prior to that discussion by the Town Clerk to consider whether I might have one, so clearly, that was something that was being suggested to me by her or from somewhere, that I should consider this. So, I just took the steps to take guidance. I contacted Democratic Services at Waverley, as you know, my intention and my conduct was to find out “Oh do I need is there something here I may have missed? I will ask the source and take their advice and act on that and do the due diligence with regard to the tests for both interests. So, I took the advice and as you remember, there was some back and forth - there was, I think, a couple of phone calls - maybe it

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was just one, I can't remember, Daniel, but we discussed it and as you will remember, the emphasis was laid on the individual to ask themselves whether or not they consider they have this pecuniary/non pecuniary interests. Well, with regards to having a financial pecuniary interest, I absolutely felt that no this was not material. Yes, I have a property adjacent to land subject to a proposed housing development, yes, but that was not actually the issue at hand, here, in relation to this Haslemere-wide Neighbourhood Plan discussion. I understand that pecuniary interests are often linked to whether or not you have an intention to sell, whether it is an issue in the immediate future for you - well it's not for me. I would argue that I simply don't have one anyway, in relationship to this Haslemere-wide settlement boundary discussion. I live 250 metres from the entrance to the Red Court site; the Red Court site was not specifically the subject of this Haslemere Plan Settlement Boundary Haslemere wide discussion and vote. And so, with regard to that vote and discussion, I was - along with just about every other councillor in Haslemere, living within about 500 yards of that settlement boundary that we're discussing. So, I think when it comes to talking about councillors owning property that could be material - material is probably not the correct term, sorry - relevant to the discussion, I fell within a group of councillors who were all, who all share proximity with the settlement boundary. That's the financial pecuniary interest subject."

Asked (p.8) to comment on non-pecuniary interest, Cllr Ellis said, "[I] think that it needs to be said that my concern here is actually not in regard to a specific site. It is in regards to wishing to protect habitats, green spaces within Haslemere – soin relation to sites that come up in relation to the settlement boundary, I have an interest in them in a general sense if we go back to the questions you asked me about failing to declare a non-pecuniary, the main allegation here appears to be that I am a founder member of the Haslemere South Residents Association formed in 2018 to oppose the inclusion of Red Court within the settlement boundary and I am an objecting person opposed to the development. So, I would say that the complainants allege incorrectly that I am a member of the community association and that the charge or allegation that that was an association that was formed to have any impact on Red Court in relation to the settlement boundary is not true. It's an organisation which is, of course, very interested in its neighbourhood's green spaces, as you may have be aware, its habitat of Haslemere. It's not correct to show that it [has] any overriding interest in the settlement boundary in itself. With myself or HSRA".

Cllr Ellis continued, "I think that the point – the key point about the non-pecuniary issue – seemed to me, and based on the advice Daniel gave and advice I had also received, was that it is absolutely imperative to approach Council discussions and votes with an open mind and to bring to those discussions the ability to be amenable, influenced, to take in the consideration of other views and facts. It is well acknowledged that you could hold a predisposition or a sort of sense of generally where you want to take the discussion or where you may want to vote to go, but in that discussion and vote facts may come up and counter arguments that could come up, that may make you decide in the discussion what you had brought to the meeting, but the most important thing you bring is the open mind. So, I examined my this issue to see if I had a predisposition and I absolutely believe it is possible for me to hold views, to listen, to hear what is [of] pressing importance to others and to vote with an open mind that isn't closed and isn't predetermined. And I'm an objector!

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Prompted to speak about whether she had “unduly manipulated other councillors and groups to secure a change in the settlement boundary, Cllr Ellis said (p.10), “[T]here is no-one on our Council in Haslemere, I’m sure in Waverley, that hasn’t had an opinion, but that doesn’t mean they don’t bring themselves into discussions and that is a different issue.”

Cllr Ellis continued, “[A]lthough Neighbourhood Associations have clearly become much more of a force in local politics in Surrey and elsewhere I am not a HSRA candidate. I am an Independent candidate – I stand by statements I’ve made about environmental concerns in Haslemere, but I am not a proxy for any other – for HSRA or any specific member’s views.”

Asked to say more about HSRA (p.11), Cllr Ellis replied, “[It] is comprised of some 270 households, so therefore, it is a substantial voting block within Haslemere, and it is a residents’ association that has concerned itself with neighbourhood matters. It does have a common interest in preserving its local ANOB greenspaces land - it cares there is a common interest there in preserving wildlife habitats and biodiversity. The residents feel very strongly about wishing to protect [what is] beautiful and special about Haslemere and they've come together with that, as well as their other residents’ neighbourhood concerns. Yes, I think as was pointed out earlier it w[ould] be false to create a nexus between to create a link and say it was founded to oppose there was any issue of a settlement boundary in the founding of the association would just be wrong You know, when I became a member of it, I never heard of that – that never came up.”

Mr Taylor then asked Cllr Ellis whether, in the light of views she had expressed in the past, she was able to give an objective and open-minded position during the Council’s discussions of the revised Neighbourhood Plan in November and in meetings of the Neighbourhood Plan working party prior to that. She replied (p11), “.... there are many things that need to be addressed here in the Neighbourhood Plan but what’s important to me on that is that I am an advocate for responding to the Public Consultation that went out on the Neighbourhood Plan in 2016 and which a great majority of people in Haslemere had their views clearly reflected in the data of that plan that it very much matters to them. And what I am seeking to do or what the Neighbourhood Plan is wanting to be [is] to robustly reflect those community views”.

Mr Taylor then asked Cllr Ellis (p.12) to talk about the nature of her relationship with HSRA. She replied, “I am not a committee member [T]hey are my neighbours I live in a street I am aware of what their concerns are I read the Newsletters, I am always happy to take phone calls, I am always happy to be stopped in the street, and always happy to hear what they say or what they think”. Cllr Ellis then confirmed that she was a member of the Scotlands Close Residents Association.

Questioned (p.13) about the impact her involvement with the HSRA and the SCRA had had on the way that she approached the Council’s consideration of the Neighbourhood Plan, including the discussions at the Neighbourhood Plan Working Party and Haslemere Vision, Cllr Ellis replied, “I carry my independence into any discussion and votes with the Haslemere Town Council and the Neighbourhood Plan. The HSRA are primarily the people who elected me to become a Haslemere Town Councillor - so they are essentially the Haslemere South constituency. So, I think I would say again that it is very important for me to listen to what their views are and to carry those through the democratic process. That is essentially my job in this to make sure that they are represented, and they are a group of individuals who are as disparate in their beliefs and possibly

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their political affiliations - I don't know. And in terms of being a local councillor, they voted for me to represent them for Haslemere South so I do my best to hear what they have to say and to factor that into issues that I know are important to them. At the moment we are all very concerned about water and the drought in Haslemere and infrastructure as well as travel, everywhere, obviously.

Cllr Ellis then confirmed that she had stepped down as an HSRA Committee member when she became a councillor. Asked by Cllr Williams whether he saw membership of a local residents' association as a disclosable non-pecuniary interest, Mr Taylor said, "we would usually see [it] as a non-pecuniary interest [there is] nothing wrong with either having pecuniary or non-pecuniary interests, the question is whether those interests exist and whether or not, if they do exist, [they] are in conflict with your role as a councillor in any particular decision you get involved with...."

Asked why (p.16) she had withheld the details of her address and interest in land for reasons of sensitivity, Cllr Ellis said, ""When I initially became a councillor - and obviously the Declaration of Interest form is something you do as a matter of the first priority - I hadn't particularly thought about the fact that it would be posted online. I had thought new councillor ... it would be available for scrutiny, of course, it makes obvious sense it would be available for public view, but I wasn't factoring that into my thought process. When I realised that my street address would become public, I didn't want that, I didn't want that made public and [so I did it] for my privacy, yes, my privacy."

Mr Taylor then asked (p.17) what her response was to the allegation that she had unduly manipulated other councillors and groups to secure a change in the settlement boundary, Cllr Ellis replied, "I think it is just a groundless allegation – it's very clear to me that debate is the essence in democracy, and I think it is factually incorrect and it's groundless". She continued, I think we are back to causal nexuses between the HSRA and the settlement boundary again. I really want to say that I came to the Neighbourhood Plan Working Party, I did not bring any ... it was not in my mind that there was a settlement boundary issue ... [That] emerged out of looking at the Public Consultation data from 2016 – it emerged as part of the scrutiny prior to releasing the Neighbourhood Plan for its public consultation [I]t was in the process of that scrutiny that the two data points didn't match in essence, had the map of the settlement boundary that was in the Neighbourhood Plan been put forward to the public and matched with the data from the 2016 Public Consultation, it would have been an erroneous match So, the perception that somehow ... I had gone into that process with the intention of emerging from it with a changed settlement boundary is just wrong".

Mr Taylor then asked Cllr Ellis about her objection to DS18 Red Court, Scotland Lane on 12th July 2018, Cllr Ellis replied (p.20), "that's prior to my becoming a councillor I didn't even know about the Neighbourhood Plan at that moment, I certainly didn't know about a settlement boundary."

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 Kirsten Ellis 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 Ellis 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

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.

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- 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 Ellis’s property adjoins 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. However, we believe that Example 2 above is relevant (see below).

8.3 EVALUATION OF EVIDENCE

We now turn to the core allegation that Cllr Ellis 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 interest by Cllr Ellis. Section 7, and in particular Sections 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), of which Cllr Ellis is a member, in the evidence that we reviewed. However, we discounted those at an early stage and have not presented them in the Report, because we concluded that SCRA is a fairly traditional Residents Association which appeared to have little more than a passing involvement in, or influence on, the matters under consideration.

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 Ellis 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

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Working Party who were by then leading the Neighbourhood Plan process for HTC with members of Haslemere Vision advising. Cllr Ellis was a member of the Working Party.

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

In her written submission to the Monitoring Officer of 25th June 2020 (Section 7.10.2) Cllr Ellis appeared to some extent to be characterising HSRA as a relatively “vanilla” (our description) residents association whose concerns included a desire to preserve the “beautiful natural landscapes and habitats of South Haslemere” and “general amenities and infrastructure as well as more recently providing support to residents during COVID-19”.

We have read the HSRA Constitution that was made available to us during the Investigation and note that it does not indicate a focus on Red Court, indeed it is very generic in nature. However, it is not the Constitution that is at issue here.

When we spoke to her Cllr Ellis offered a somewhat different view saying, amongst other things that “in the case of Red Court [HSRA] has been fairly forensic in examining the policies affecting this development”. At the same time, it appeared to us that she was trying to present in general terms the concerns that HSRA members had to “protect [what is] beautiful and special about Haslemere” rather than suggest that their concerns were specific to Red Court.

Mr Cox, Mr Leete and Mr Benson presented a very different story. To give one example, Mr Benson, who told us he had been there at the start of HSRA before quickly 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 Section 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 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 co-ordinating 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 (Cllr Ellis’s partner), 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.”

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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”. We note that Cllr Ellis appears to have attended that meeting in her capacity as “Research & Editor” and (either then or later) committee member.

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”. It also says that, following a vote by members, Kirsten Ellis is a member of the Executive Committee of the Association”. 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 will discuss in 8.3.2 below, 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.

Cllr Ellis denied that there was a “causal nexus” between HSRA and the settlement boundary both in her submission to the Monitoring Officer on 25th June 2020 and when she spoke to him the following day. It is worth comparing the HSRA webpage entitled “Details on the N[eighbourhood] Plan”, which does not appear to have been updated since it was published soon after the 28th November 2019 meeting, with Cllr Ellis’s statements about the lack of a “causal nexus”. Avoiding any discussion of the semantics of what a “causal nexus” is, it seems to us that there is a strong and clear link between the two.

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 – creating a “causal nexus”, perhaps. Whilst the tone of that 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

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that, for a period, a statement made by Cllr Ellis 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 on the page 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 paragraph 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 it also had a clear and demonstrable interest in the settlement boundary.

8.3.1.2 Cllr Ellis’s membership of Haslemere South Residents Association

Cllr Ellis confirmed (perhaps most formally at the Planning & Highways Meeting on 10th September 2020) that she was a member of HSRA. She did not dispute that she had been a Committee Member from an early stage, though she said she had resigned from the Committee after her election to the Council.

Cllr Ellis 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”.

We therefore find it puzzling that, presumably days after the training, Cllr Ellis presented her membership of HSRA on the Declaration of Interests form in the way she did: “I have been asked to advise and observe Haslemere South Residents Association and represent members – over 250 households* in Haslemere South Ward”.

When we asked her on why she had presented her involvement in that way, we found her explanation (presented verbatim in Section 7.10.1) somewhat unconvincing. We felt that it was almost as if she were suggesting that the Town Clerk and the Deputy Clerk somehow had a hand in the choice of words. At the very least, we consider that a member of the public would have regarded her choice of words as leaving them unclear as to whether she was a member of HSRA or not. Cllr Ellis was a member of HSRA and had for some months before her election been a committee member. She is also a professional author whose emails to us display a precision in the use of words and a clear understanding of their meaning so we did not believe that her choice of words could be described as casual or, in some way, “sloppy”.

8.3.1.3 Discussions with the Borough Solicitor and the Town Clerk

We concluded after we spoke to the Town Clerk (though she did not say as much to us) that she had thought there was a need for Cllr Ellis 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 forthright – 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, the Town Clerk 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 Ellis 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 Cllr Ellis and declarations of interest (Section 7.8). He told us that, when she approached him not long before the 28th November meeting, he had given Cllr Ellis the same advice as he had given at the training session in May 2019. “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 [your] decision-making and that [you] 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 told us, “I was very careful – we knew already that there was this issue in Haslemere with councillors and Red Court and so on – in that conversation with Cllr Ellis to not say “Yes you have an interest” or “No, you do not have an interest” but to give her a framework within which to make a decision, her own decision, about it.”

In summary he said, “I have no concerns about the advice I have given to [Cllr Ellis] at any stage whether that be at the training session, or later on the phone or by email”.

8.3.1.4 Cllr Ellis’s comments

Cllr Ellis talked to us in great detail (Section 7.10.1) about her interactions with the Town Clerk and, especially, with Mr Bainbridge and her considerations as to whether she might have a non-pecuniary conflict of interest. She also spoke to the Monitoring Officer about it during her informal conversation (7.10.3). For the most part that is not repeated here.

She told us that the Town Clerk had said, “you’ve got to apply the test, you’ve got to ask yourself rationally, you’ve got to apply the test whether or not, what an ordinary, well informed, member of the public might think”. So, she knew the substance of the test.

After she had spoken to Mr Bainbridge, she said, “I thought about it and I thought it’s quite likely that I would have a non-pecuniary interest to declare if this were a planning application about Red Court itself because I live adjacent to.... the meadows are adjacent to my property and therefore, I would need to declare that. That’s a no brainer. However, when it came to

the meeting on the 28th November, this was a meeting about the Neighbourhood Plan and the settlement boundary And I thought, well this is a Haslemere wide vote, this is actually not specific, and I see no reason to declare a non-pecuniary interest, and I asked and I thought and I wondered and I couldn't see that I needed to declare". She also told us that she had taken her lead from other councillors.

When she spoke to Mr Taylor she said, "I would say that the complainants allege incorrectly that I am a member of the community association and that the charge or allegation that that was an association that was formed to have any impact on Red Court in relation to the settlement boundary is not true. It's an organisation which is, of course, very interested in its neighbourhood's green spaces, as you may be aware, its habitat of Haslemere. It's not correct to show that it [has] any overriding interest in the settlement boundary in itself. With myself or HSRA".

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. Nor do we conclude that HSRA had, at that time, a simple, generalised interest in preserving the green spaces and habitat of Haslemere alongside other, perhaps more mundane, concerns. Having said that we have no doubt that Cllr Ellis's own commitment to environmental issues is heartfelt.

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 are not in Section 8.3.2 below) by the distinction that Cllr Ellis 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 believe that there is a strong connection between the Haslemere settlement boundary and development at Red Court, of which the latter had a high profile not least because of the actions of HSRA itself. We consider the two to be closely intertwined.

We conclude that Cllr Ellis, as a member of HSRA and, for several months, a committee member, and a member of the Neighbourhood Plan Working Party knew of the importance of the settlement boundary to the chances of development on Red Court by the time of the November 28th 2019 Town Council meeting.

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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 do not understand why Cllr Ellis chose to complete her “Declaration of Pecuniary and Other Interests” in the way that she did in respect of HSRA in May 2019. She had recently attended a training session on the Code of Conduct and, as a professional writer and author she undoubtedly knew the power of words and the need, where appropriate, for precision. The form asks the member to name “Bodies one of whose principal purposes include the influence of public opinion or policy”. We were not persuaded by her explanation of why she chose to use the words she did and did not instead simply say that she was a “member” of HSRA. She had done this earlier in the form when she named Haslemere Vision and Haslemere Health Group as “Bodies to which I have been appointed or nominated by the Council”. It seems to us that the words she chose could have left a member of the public uncertain as to whether she was a member of HSRA or not. Her amendment to the form, which she apparently made on 18th September 2020, might have been intended to dispel that potential uncertainty and to align the form with her declaration at the 10th September 2020 meeting.

We accept that it is quite possible that Cllr Ellis in some way took a lead from what other, more experienced, councillors did at the 28th November meeting but, at the same time, she was responsible for her own declarations of interest and had taken advice from the Borough Solicitor and the Town Clerk who had advised her on the things she should consider before deciding what to do. She was clear that she did give the matter careful consideration before arriving at the decision not to declare.

Cllr Ellis drew a distinction between the meeting to discuss the Neighbourhood Plan (28th November 2019) and the meeting to discuss a planning application (10th September 2020) when she *did* declare an interest. We do not doubt that she thought carefully about the matter and considered the advice she had received 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, 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” applies here or, to quote a 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 Kirsten Ellis 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 on her “Declaration of Pecuniary and Other Interests” form in accordance with paragraph 5 (5 iv) of the Code of Conduct when she first completed it in May 2019, and had chosen instead a different form of words to describe her relationship with HSRA, which did not make her membership clear.

By failing adequately 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 ELLIS’S HOME TO THE RED COURT SITE

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

Details of that home, had she not agreed with the Town Clerk that she could withhold details “for sensitivity”, would have correctly appeared in the “Land” box on p.5 of the “Declaration of Pecuniary and Other Interests” form and presumably also in the “Address” box on p.3. It would be inappropriate to disclose in the Report the “sensitivity” that led to the Clerk agreeing with Cllr Ellis that withholding the details was appropriate. However, for the avoidance of doubt, we make no suggestion here that that omission was in some way tainted.

That property, she told us, is located between Scotlands Close and Scotland Lane and is “adjacent” to the Red Court Estate. By “adjacent”, Cllr Ellis agreed with our suggestion that, “you could, as it were, go to the back fence andclimb into the Red Court Estate”. Indeed, it appears to us, looking at the plans on the Scotland Park website, that the proposed 50 house development in what is, overall, a large estate, is situated fairly close to Cllr Ellis’s property.

However, Cllr Ellis appeared to us to be playing down the significance of that proximity when we spoke to her saying that her home would actually be “adjacent to a sort of wildlife meadow, there would be no houses coming right up against me” and in any event, she said, the design of her home (e.g. triple-glazed windows) would minimise the impact on it of a housing development on the Red Court site.

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Cllr Ellis drew a clear distinction between the meeting of the Planning and Highways Committee nine months later on 10th September 2020 (when she *had* declared an interest, describing that decision as a “no-brainer”) and the Town Council Meeting on 28th November 2019 (when she *had not*). The Planning and Highways Committee, she said, 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 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.

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 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 in relation 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 then plain Ms 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 future, *with the aim of getting DS15 (formerly DS18) taken off the LPP2 altogether* [our italics]. Here Ms Ellis appears to us to be saying explicitly that HSRA’s intentions in relation to LPP2 were very specifically about the Red Court site rather than making generalised comments about the settlement boundary across Haslemere. We do not accept Cllr Ellis’s assertion that there was no “causal nexus not even tenuously” between HSRA and the settlement boundary. 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 on 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 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. When commenting on the Draft Report Cllr Ellis confirmed the importance

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of the settlement boundary to the Redwood (South West) Limited development plan for the Red Court site. It had the potential to create a “serious obstacle to that plan”, she said.

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 schemes 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 was herself a founder member of the Haslemere South Residents Association and we understand that the initial, informal meeting of what became HSRA was held at her home in June 2018.

Cllr Ellis had, in a personal capacity before she became a Town Councillor, formally objected to DS18 Red Court, Scotland Lane on 12th July 2018 though she told Robin Taylor that she didn’t know either about the Neighbourhood Plan or the settlement boundary when she did that.

Whatever she did or did not know on that date, Cllr Ellis soon became (or perhaps already was) a member of Haslemere South Residents Association. Not long after she became an HSRA committee member, a position she told us she resigned when elected to Haslemere Town Council in May 2019. HSRA’s opposition to the Red Court development is examined in more detail in Section 8.3.2 below.

Cllr Ellis explained to us in some detail and at some length that the redrawing of the settlement boundaries in the version of the Neighbourhood Plan that was considered on 28th November was a response to the erroneous interpretation of data by those who had prepared the March version of the Neighbourhood Plan. It was therefore intended to align with the views of residents who had contributed to earlier consultations. She told us that, “the perception that somehow I had gone into that process with the intention of emerging from it with a changed settlement boundary is just wrong”. We have not tried to verify Cllr Ellis’s statement about the lack of alignment of the March version of Neighbourhood Plan with the consultation data and accept it at face value.

However, notwithstanding Cllr Ellis’s description when she spoke to us of the part she played, 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. We believe that she is very likely to have known of its significance both whilst she was taking part in the “new eyes” review and for some months before she was elected. Certainly the 30th October 2019

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Neighbourhood Plan Working Party, which she attended, appears to have discussed the settlement boundary at some length. It appears too that she was also aware of its significance a year earlier on 22nd October 2018.

A few weeks later, the Scotlands Close Residents Association (of which we understand Cllr Ellis to have been a member) 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. Kirsten and [REDACTED] 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, on this occasion, Cllr Ellis does not appear to have been there to receive their thanks for her work on the matter.

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”.

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 Ellis 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. What is important here is not 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, they would never be found to be in breach of the Code (unless, of course, they admitted a breach). Moreover, what other councillors did or did not do is not relevant, we believe.

When considering the proximity of Cllr Ellis’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.

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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 Ellis’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”

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

2. Aside from her membership of HSRA, the adjacency of Cllr Ellis’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 Ellis 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

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

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 Ellis’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 Ellis’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”.**

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 http://Haslemeretc.org/wp-content/uploads/2020/06/2019_code_of_conduct.pdf available on the HTC website
- (6) Haslemere Town Council Standing Orders <https://Haslemeretc.org/wp-content/uploads/2021/02/2020-Standing-Orders.pdf> available on the HTC website
- (7) Wikipedia entry for Haslemere <https://en.wikipedia.org/wiki/Haslemere>
- (8) 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
- (9) Email Tom Horwood (CEO, WBC) to MK 21st June 2021, conforming closure of independent investigation referred to in Section 7.1 above
- (10) 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>
- (11) 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>
- (12) 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/>
- (13) Knight Frank marketing brochure
- (14) National Planning Policy Framework <https://www.gov.uk/government/publications/national-planning-policy-framework--2/>
- (15) Waverley Borough Council Local Plan <https://www.waverley.gov.uk/Services/Planning-and-building/Planning-strategies-and-policies/Local-plan>
- (16) 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=M4C0VK_SH7V54tLWEaTftA%3d%3d
- (17) 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
- (18) Waverley Borough Council LPP2: Site Allocations and Development Management Policies Pre-Submission Document

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- 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
- (19) Haslemere Neighbourhood Plan <https://www.waverley.gov.uk/Services/Planning-and-building/Planning-strategies-and-policies/Neighbourhood-planning/Haslemere-Neighbourhood-Plan>
- (20) 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>
- (21) Training pack “Introduction to Code of Conduct” May 2019
- (22) Haslemere South Residents Association website (various) <http://www.Haslemeresouth.com/>
- (23) Haslemere South Residents Association meeting minutes 22.10.18; 15.11;18; 29.12.18.
- (24) 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>
- (25) Guidance on Local Government Association Model Councillor Code of Conduct <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>
- (26) 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>
- (27) 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>
- (28) HSRA Constitution (agreed 3rd September 2018)
- (29) Email from Brian Cox dated 4th December 2018 re: HSRA stand at Haslemere Christmas Fair 2018.
- (30) Email Brian Cox to MK dated 21st May 2021 re: Knight Frank and details of Redwood purchase/lotting of Red Court Estate.
- (31) Haslemere South Residents Association Twitter account <https://twitter.com/HaslemereSouth?fbclid=IwAR0dRdCgX50bcFUqpCQEaNkYiBT7kR8PTAwY9oYcGBi2b83DOWORVb2hmA>
- (32) Haslemere South Residents Association Facebook page <https://www.facebook.com/HaslemereSouth/>
- (33) Peter Leete and Partners Estate Agents website <http://www.pleete.co.uk/team.html>

APPENDIX 1 (Continued) - CLLR ELLIS 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 Kirsten Ellis

- (xxix) Email to MO 28.05.20 with emails attached denying allegations and acknowledgement from MO 01.06.2020
- (xxx) Email to MO 02.06.2020 and reply by MO 8.6.2020
- (xxxi) Email exchange between KE and MO 8 – 10.6.20 re: membership of HSRA at al.
- (xxxii) Email MO to KE 30.06.20 with attachment

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- (xxxiii) Email exchange KE and MO 2.7.20 – 10.07.20 re: HSRA et al.
- (xxxiv) Email MO to KE 12.8.20 confirming outcome of informal investigation, subsequent emails 18 & 19.8.20 involving the MO, KE and Cllr Steve Williams and Email MO to KE 1.9.20
- (xxxv) Emails KE and Daniel Bainbridge 9 & 11.9.20
- (xxxvi) Email exchange KE and MO 18.9.20 – 15.10.20 re: Independent Person
- (xxxvii) Email exchange MO and KE 30.10.20 – 1.12.20 re: decision to appoint external investigator et al.

Part 3 - Transcript of interview with Cllr Ellis

- (xxxviii) Transcript of meeting to discuss Haslemere Code of Conduct with Cllr Kirsten Ellis 26.6.20

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) Email from Cllr Ellis to HTC Members dated 31.5.20 re: Neighbourhood Plan Survey
- (xliii) Note of points raised during meeting with HTC Clerk 28.5.20
- (xliv) Cllr Ellis declaration of pecuniary and other interest
- (xlv) Haslemere Town Council Members' Code of Conduct
- (xlvi) Amended declaration of interest for Cllr Ellis

Additional document

Kirsten Ellis Response to Monitoring Officer (as sent to Monitoring Officer by email 25.06.20 prior to 26th June Meeting (see xxxviii above)