

HARBOROUGH DISTRICT COUNCIL

REF: SC/34 - COMPLAINT OF BREACH OF CODE OF CONDUCT BY COUNCILLOR DR SARAH HILL, HARBOROUGH DISTRICT COUNCIL

REPORT OF THE INVESTIGATING OFFICER

1. Investigation

- 1.1** The Investigating Officer is Geoffrey Pook. I am a Solicitor (currently non-practising) and have over 20 years' experience as a local authority Monitoring Officer, latterly for Rutland County Council until April 2013.
- 1.2** I was appointed by the Monitoring Officer of Harborough District Council on 30 August 2017 to investigate the above complaint following the consideration of her initial report by the Ethical Governance Committee.
- 1.3** The complaint, made on 23 March 2017, was submitted by Councillor Phillip King, the Complainant, also an elected Member of Harborough District Council. The complaint centred on one part of the contents of a newsletter circulated to the public under the name of Councillor Dr Sarah Hill of Harborough District Council, the Subject Member. The part was headed: "Planning debacle needs investigation". The details of the complaint are set out below. They may be summarised for introductory purposes as alleging that the Subject Member made misleading and inaccurate statements regarding the processing of a planning application, which included insinuating that the Complainant and the then Leader of the Council had abused their positions.
- 1.4** Following consideration of the Monitoring Officer's report at its Extraordinary meeting on 17 July 2017, the Ethical Governance Committee resolved to refer the complaint for investigation.
- 1.5** I have interviewed Councillors King and Hill. They have commented on my notes of their respective interviews and we have exchanged further information and communications. I should like to thank them for their co-operation.

2. Factual Context

- 2.1** Councillor Hill was first elected to Harborough District Council at the whole-council elections held in May 2003 and has continued to be an elected member for the Market Harborough – Great Bowden and Arden ward to date. She is Deputy Leader of the Liberal Democrat group. Councillor Hill also has been an elected member of Leicestershire County Council since May 2005, representing the Market Harborough East division, which includes the village of Great Bowden. She has been Deputy Leader of the

Liberal Democrat group on the County Council and has chaired a Scrutiny committee, and she served on the former Police Authority.

- 2.2** Councillor Hill has been a member of the Planning committees at both the District and County Councils, although not currently or at the times material to this complaint. She has undertaken the training required to enable her to participate in planning decision-making. She is a member of Harborough District Council's Local Development Framework Task Group.
- 2.3** Councillor King was first elected to the Kibworth ward of Harborough District Council at the whole Council elections in May 2007 and has represented that ward to date. He has been Deputy Leader of the Conservative group and of the Council since May 2014. He was an unsuccessful candidate for the County Council division of Market Harborough East at the elections held in 2013 and 2017, and also in 2005 when the division had a different boundary.
- 2.4** Councillor King has chaired the District Council's Constitutional Review Committee for the last two years. He was Planning portfolio holder between 2013 and 2016, and is again now. He served on the Planning Committee for one year before becoming portfolio holder and now often substitutes for members unable to attend. He has undertaken the required training.
- 2.5** On 17 January 2017, the District Council's Planning Committee considered a revised outline planning application (reference 16/00997/OUT) for the construction of up to five dwellings and associated parking, access and infrastructure on land at Dingley Road, Great Bowden. The site is within Councillor Hill's ward and division. The original proposed development of the site had been for a greater number of dwellings and had attracted considerable opposition from the local community, which remained in respect of the revised proposal.
- 2.6** The application was stated to have been referred to the Committee for a decision because it had been requested to be so treated by the then Leader of the Council, Councillor Pain. The Council's Constitution delegates planning application decisions to Planning Officers except in certain stated circumstances, one of which is where any Member asks for a particular application to be sent to the Planning Committee. There is a time limit for such a request, which appeared to have passed before Councillor Pain's request. Councillor King had raised the question of whether the correct procedure had been applied in this case with the Monitoring Officer. It then emerged that there had been some confusion of practice, not so much affecting the referral of applications by Members, but in interpreting another provision of the Constitution which requires applications to be referred to Committee when five or more "counter-representations" to an application are received. This provision is intended to apply to objections to a proposed development rather than disagreement with the Planning Officers' recommendation.

- 2.7** In the case of the Great Bowden application, it should not have been referred by virtue of the request from a Member, which had been made out-of-time, but it should have been decided by the Committee because of the number of objections submitted. In an attempt to clarify the position, the Chairman of the Committee read a statement at the meeting before the item commenced in which he said that 47 letters of objection had been received and: "In addition, the application has been called in by a Councillor to be determined at Planning Committee. It has come to light that the call in was not received in accordance with the Council's procedures and applications where the level of counter-representations required a Member decision may not have been referred to the Planning Committee. Therefore, I have asked Officers to investigate this situation and report back to me. Going forward, all new applications covered by this provision, in the Constitution, will be brought before Planning Committee for determination".
- 2.8** Councillor King attended the meeting as a substitute. He spoke during the discussion of the Great Bowden application and moved approval of it, contrary to the Officers' recommendation of refusal. The application was approved, subject to conditions, by a vote of six to five. The reason for the decision was: "That the means of access is deemed to be satisfactory to the Highway Authority and that this is a sustainable location as indicated in the report at para 6.35". The report had stated "means of access to be considered only" and paragraph 6.35, in the section assessing Locational Sustainability, stated that the site was considered to be a sustainable location for housing development. The Officers' recommendation of refusal was based on: the proposed development being not in keeping with the character of the settlement and leading to less than substantial harm to the significance of nearby listed buildings and conservation area; no demonstration that the proposal could be successfully integrated in terms of design and layout; and the lack of an ecological buffer strip to hedgerows to demonstrate that demonstrable harm to biodiversity would be avoided.
- 2.9** Later in the meeting, the Committee considered an outline application (reference 16/01401/OUT) for the erection of up to 50 dwellings (access to be considered) on land South-West of Church Lane, Dunton Bassett. This application was refused, as recommended by Officers. The vote was 11 to one, with Councillor King being the sole dissenter.
- 2.10** At the Planning Committee meeting held on 7 March 2017, the Chairman read a further statement, this being what the minutes of the meeting described as the first available meeting of the Committee following the "conclusion of the investigation": " The investigation has now concluded and has found that there were issues with the way that Officers dealt with the call in request and it was apparent that the Council's procedures were not followed. The investigation additionally found that the interpretation of counter-representations within the Council's Constitution has not been consistently applied. ... The Constitutional Review Committee will be considering this provision in the near future. The investigation concluded that planning application 16/00997/OUT should have been considered by

the Planning Committee due to the number of counter-representations received. Therefore, notwithstanding the means through which the application had been called in, it was correct that the application was determined by the Planning Committee”.

2.11 Both Councillor King and Councillor Hill were candidates for the election to the Market Harborough East division of the County Council to be held on Thursday 4 May 2017. In late March, the second in a series of three newsletters timed to disseminate material to residents in the division before the election was published on behalf of the Liberal Democrats. The newsletter had a banner reading: “Harborough East Focus – From Sarah Hill and the Focus Team”. “Focus” is the brand used by the party in its occasional updating and promoting communications to residents in many parts of the country. It is not clear whether this second newsletter was distributed before or after the official start of the election campaign, which would be the date of the publication of the official Notice of Election, but the front page led with a headline: “Local election “coming soon”” and a first paragraph which included the words: “In Market Harborough it’s a two horse race between hard-working Lib Dem Sarah Hill, or a Tory from Kibworth”. At the foot of the page was a photograph of Councillor Hill alongside a bold line of text reading: “Get a strong voice locally vote:” and underneath a mock-up of a line from a ballot paper containing the words: “HILL Sarah”, the party emblem and a cross in the box for casting a vote.

2.12 The second page of the newsletter included an article under the heading: “Planning debacle needs investigation”. The text read:

“Recent events in Great Bowden don’t show Harborough Council in the best light. A planning application for five houses was “called in” by the Leader of the Council, seemingly at the request of the Developers, apparently weeks after the Council constitution allowed. This meant the planning committee decided the application, not officers – who were ready to refuse the application. When it came before the committee, the Deputy Leader of the Council (a certain Phil King), pushed the application through, on a 6 to 5 vote, against expert advice.

The Lib Dems are demanding the Council investigate what happened, as this appears to undermine both the protocols of the Council and the concerns of local people.

Sarah said, “Whilst everyone makes mistakes, this undue haste does not inspire confidence that due process is being observed. There is pressure to build houses, but the concerns of local residents and the advice of employed experts should not be ignored”.

2.13 The technical merits of any decisions made by the District Council’s

Planning Committee are not relevant to this complaint, but it is helpful to be aware of the issues and their context when considering the actions of the individuals who are material to the complaint.

3. Complaint

3.1 The complaint submitted by Councillor King reads as follows (*the paragraph numbering is mine, intended for ease of reference, and the text has been edited where indicated in order to avoid repetition*):

1. In the last few days the attached leaflet has been handed to me, which I understand has been distributed widely in the eastern area of Market Harborough. The leaflet clearly states that this is “From Sarah Hill” who is both an elected member of Harborough District Council and of Leicestershire County Council.
2. I believe that the item on the second page, called “Planning Debacle needs investigation” breaches the HDC members’ code of conduct. In my view this leaflet presents a wholly misleading and inaccurate version of the events of the Planning Committee held on 17 January 2017, when I substituted for Cllr Mrs Robinson, and in particular to the application 16/00997/OUT Great Bowden.
3. As is clearly stated in the published, publicly available minutes of the meeting of 17 January: *[there followed the text of the Chairman’s statement set out at para 2.7 above and the resolution on the Great Bowden application set out in para 2.8 above.]*
4. Taking the first issue that this “needs an investigation”: as was clearly stated at this meeting, recorded in the minutes, an investigation is already being carried out. You *[this refers to the Monitoring Officer, to whom the complaint was made]* are also aware of the actions that are being undertaken to look into this, as it was in fact myself who raised this issue with you prior to this meeting in my capacity as Chairman of the HDC Constitutional Review Committee. In my view, therefore, this is a wholly inaccurate and false claim, as more than one investigation has already been instigated and reported back to planning members, the wider council and public via a subsequent statement at the Planning Committee on 7 March. At this meeting the Chairman of the Committee stated that it was entirely correct that 16/00997/OUT should have been considered by the committee. This leaflet has been published and distributed after this public statement and thus presents a factually misleading statement of the situation.
5. Secondly, that I had “pushed the application through” – this completely misleads the public about the facts of the situation. It leaves the reader with the impression that both the Leader and myself in particular have somehow abused our positions, when in fact it was a majority decision of the planning committee, taken after a lengthy debate. Yes, I did propose approval, however that was based on my knowledge, and recent experience in my own ward that the reasons for refusal, which involved a high degree of subjectivity, were not defensible. Also although this is a

committee of which I am not a regular member, I was the planning portfolio holder for 3 years, and have been involved in representing residents' concerns in relation to applications across my own ward area.

6. In a later application at the same meeting, 16/01401/OUT – Dunton Bassett, the vote was 11-1 to agree with the refusal, I was the only one in favour on that occasion.
7. Overall, this is an inaccurate and highly misleading portrayal of the situation, the fact is that an investigation had already been instigated at my behest and this has been informed to members and public via public statements at this and subsequent meetings. It brings both individual members, and the Council into disrepute and insinuates “improper” behaviour by named members, namely myself and the Leader.
8. Conclusion, the HDC Members' Code of Conduct has been broken in several areas by Cllr Dr Hill, in particular under Part 2 – Principles:

Principle 1 – Selflessness – this leaflet and the article within, has not been published or distributed with the aim of acting wholly in the terms of public interest – this is a blatant politically motivated attack on myself and the Leader, implying that we have somehow broken rules of the Council and “pushed” through a planning application, which is in my view not supported by the facts. This is not in the public interest.

Principle 6 – Honesty – it is not an honest representation of the facts of the situation nor of the role and participation of planning committee members – which is not just to pass through all officer recommendations without proper scrutiny or evaluation.

Principle 7 – Leadership – it undermines the role and reputation of the planning committee and its members by suggesting to the readers that I somehow abused my power and role as Deputy Leader to “push” through a decision against 11 other members of the committee. It helps to stoke the flames of distrust between local communities, council members and officers in respect of the planning processes and decision making.

Under Part 3 – General Obligations, I believe that this article, its publication and distribution has also broken the following:

3.5 – brought the Council into disrepute and by implying improper behaviour by myself, the Leader and the professional staff of the Council.

9. The breaches of the code I have asserted are not exclusive. I consider the publication and distribution of this literature to be a very serious matter and breach of the code in a number of places and request that this matter is now looked into further.

4. Code of Conduct

- 4.1** Harborough District Council has adopted a Code of Conduct for Elected and Co-opted Members in accordance with the provisions of the Localism Act 2011. The Code was Appendix B to the report to the Ethical Governance Committee on 17 July 2017.
- 4.2** It is necessary to establish which elements of the Code potentially are engaged by the allegations. Part 1 of the Code sets out some general provisions. Part 2 lists seven guiding principles for the behaviour of Members, articulating the fundamental values of public service that underpin conduct. Part 3 provides a set of enforceable minimum standards, derived from the principles, for the conduct that is expected of Members when they are acting in that capacity. Part 4 deals with interests and is not material to this complaint.
- 4.3** The complaint specifies principles within Part 2 of the Code which the complainant considers to have been breached by Councillor Hill. They are Principle 1, Selflessness; Principle 6, Honesty; and Principle 7, Leadership.
- 4.4** Part 2 begins: “In accordance with the requirements of the Localism Act 2011, you must have regard to the following principles and observe the following rules of behaviour: ...

Principle 1 – Selflessness – Holders of public office should act solely in terms of the public interest.

Principle 6 – Honesty – Holders of public office should be truthful.

Principle 7 – Leadership – Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.”

- 4.5** The complaint also specifies paragraph 3.5 of the general obligations in Part 3 of the Code which the complainant considers to have been breached by Councillor Hill. I consider that the allegations additionally engage paragraph 3.1:

Paragraph 3.1 – You must treat others with respect.

Paragraph 3.5 – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute.

5. Relationship between Code of Conduct and Election Campaign

- 5.1** I have been asked to consider whether, or to what extent, the Code of Conduct applies to communications from a Member to his or her ward

residents in contemplation of a forthcoming election. One of Councillor Hill's responses to the complaint was that the newsletter was an election leaflet and, as such, should not be subject to the Code. This question engages paragraph 1.5 in Part 1 of the Code, which is concerned with the scope of the Code:

Paragraph 1.5 – You must comply with this Code whenever you:

1.5.1 - act in your capacity as a member or co-opted member of the Authority;

1.5.2 – conduct the business of the Authority (which, in this Code, includes the business of the office to which you are elected or appointed).

- 5.2** Election law does provide for a range of offences and illegal practices which are specific to actions taken or words published in any way during election periods. Of particular relevance in the context of this complaint is section 106(1) of the Representation of the People Act 1983, which makes it an illegal practice to make or publish false statements of fact in relation to a candidate's personal character or conduct, unless there are reasonable grounds for believing that the statement is true. The practice carries a maximum fine of £5,000. Section 106(1) applies during the formal election period which starts with publication of the Notice of Election.
- 5.3** The Electoral Commission's Guidance for Candidates and Agents in Local Elections in England and Wales addresses issues which might arise during an election campaign. It makes clear that campaigning can start at any time, although most of the election-specific rules apply from publication of the Notice of Election (or sometimes the last day for such publication, which is the 25th working day before polling day). Complaints of breaches of section 106(1) must be made to the Police, not the Returning Officer. There is provision for the alleged offender to apply for relief if he or she has made a mistake.
- 5.4** Civil actions for libel or slander are an alternative means of redress, and are the only routes available if the false statements are not about the personal character or conduct of a complainant. Injunctions using section 106(1) offer a quicker route than civil action because only a prima facie case is needed. Further, if damage is proven, the material which is the subject of a complaint under section 106(1) does not have to meet the civil standard of defamation.
- 5.5** The Electoral Commission makes the point that during an election campaign, harsh and unflattering statements are often made by political opponents, for there appears to be greater latitude extended towards these statements at such times as opposed to any other times. However, such latitude is not extended in law: an election campaign is not a licence for defamation.
- 5.6** The question of when a Member is acting in the capacity of a Member and

conducting the business of his or her authority has been discussed by courts and tribunals in cases relating to the Model Codes of Conduct which were issued under the Local Government Act 2000. The best known case was that involving the former Mayor of London, Ken Livingstone, which concluded in 2006 (*Livingstone v The Adjudication Panel for England [2006] EWHC 2533 (Admin)*) and led to the amended Model Code in 2007. The precise wording of the paragraphs relating to the scope of the various Codes has differed, especially since the “deregulation” of the wording brought in by the Localism Act 2011. However, paragraph 1.5 of Harborough District Council’s Code is sufficiently close to the equivalents in the old Model Codes to enable material parallels to be drawn.

5.7 The analysis adopted in the Livingstone case regarding Members acting in an “official” capacity was discussed by the Upper Tribunal in the case of *MC v Standards Committee of LBC Richmond [2011] UKUT 232 (AAC)*, which also considered the judgment in *R(Mullaney) v The Adjudication Panel for England and Others [2009] EWHC 72 (Admin)*. The principles which may be drawn from the cases are:

(a) the conduct of the Member must be linked to their membership of the authority;

(b) unlawful conduct is not necessarily within the Code (eg shoplifting);

(c) Parliament could have provided differently to deal with some circumstances;

(d) a fact-sensitive analysis is always required;

(e) Code definitions require the application of ordinary English descriptive words in order to make informed judgments by reference to the facts;

(f) two decision makers could apply the law correctly yet reach different conclusions without being irrational.

5.8 Standards for England (SfE) was the body responsible for the oversight of the conduct regime created by the Local Government Act 2000. It issued some guidance in the wake of the Richmond case on points concerning when Members could be said to have been acting, claiming to act or giving the impression of acting as a representative of the authority. This was part of the scope in the 2007 Model Code which does not apply in Harborough District Council’s Code. However, the guidance does extend to the circumstances of this complaint. SfE said that the Richmond judgment could have significant ramifications for blogs and election or other political material. It was considered unlikely that most blog postings would include content holding the Member out to be acting as a representative of the authority rather than simply a Member unless they give the impression the Member is speaking for the Council. However, depending on the circumstances, such communications might be regarded as conducting the business of the office of Member. This is because it is reasonable to

regard communicating with constituents at large about issues of local political interest as being part of the business of the office of a councillor.

5.9 It seems to me to be difficult to argue that the scope of the Code as applying when acting in the capacity as a Member and conducting the business of the office of councillor does not apply during election campaigns. The dissemination of material designed to influence voters can start long before the official election period, which commences with the publication of the Notice of Election. It would be absurdly artificial if a line had to be drawn at that date and the Member's role as a councillor became suddenly suspended for the purposes of the Code of Conduct. To do so would be to imply that it is more acceptable to say or do certain things just because there is an election. If Parliament had intended such a distinction, it could have provided accordingly.

5.10 In the context of this complaint, there is the added dimension of the election being for a different authority from that whose Code is alleged to have been breached. A Member should not be able to hide behind the fact of that election in relation to conduct which is a breach of another authority's Code. It is not clear whether the conduct which is the subject of this complaint occurred before or after the Notice of Election was published, but in my opinion it does not matter because the Code applied in any event. I would suggest that the difference which the fact of the election period might make is the way in which the decision makers regarding complaints under the Code actually view the seriousness of any particular conduct which they find to have taken place.

5.11 My conclusion on this relationship question is that the Code of Conduct does apply to conduct which takes place in the context of an election campaign.

6. Evidence

6.1 Evidence of the Complainant – Councillor King stated that he had no dealings with the Great Bowden housing development application before it went to the Planning Committee meeting on 17 January 2017. It was not a big issue from a planning point of view as far as he was aware. However, a procedural point had been raised by him after the then Leader of the Council, Councillor Pain, told him during one of their regular discussions that he had referred the application to the Committee after being approached by the applicant. Councillor King was not sure how the Council's procedure applied. As Chairman of the Constitutional Review Committee, he asked the Monitoring Officer about the rules relating to the circumstances in which applications are referred to the Committee rather than being determined by Officers.

6.2 Councillor King knew that the Chairman of the Planning Committee intended to make a statement on the matter at the meeting on 17 January, but he did not know what he would say. The Chairman announced that he

had asked for an investigation of the circumstances. The investigation by the Monitoring Officer discovered that the processes for removing the delegation of decision-making from Officers in respect of individual planning applications had not been applied uniformly for some time. The Great Bowden application should not have been taken to the Committee by virtue of the Leader's request, but it was appropriate for it to be a matter for Committee decision because of the number of counter-representations made. The Chairman advised the Committee of this outcome at its meeting on 7 March. Councillor King believed that the rules were clearly understood now.

- 6.3** Councillor King did not know precisely what information was given to the opposition group, or when, during this period, but he understood information was provided. However, the group leader did attempt to raise questions at the meeting of the Council on 27 March. The Leader of the Council said that the questions had been answered and referred to the Planning Committee minutes setting out the Chairman's statements at the meetings on 17 January and 7 March. Some comments were made at the Constitutional Review Committee meeting on 25 July when other Planning issues were being discussed.
- 6.4** Councillor King attended the Planning Committee meeting on 17 January as a substitute member in response to a late email circulation requesting cover for a Committee member who was not able to attend. This was not an unusual situation and he offered simply because he was available, not because of the business on the agenda. The Constitution was changed fairly recently to enable Executive Members to be members of the Planning Committee, so there was no bar to his attending as a voting member.
- 6.5** There was no discussion of the Great Bowden application to which Councillor King was party before the meeting. He did speak first in the debate, but not by prior design. He stated that it is not in his nature to remain silent if he has an opinion. He knew the site location and did not agree with the weight which the Officers' report (recommending refusal of the application) placed on the impact of the proposed development on the nearby conservation area. He said he was influenced by experience of a previous application in his own ward when Officers had dismissed conservation as immaterial.
- 6.6** The Great Bowden application was an outline one for up to five dwellings, with access to the site the only detailed aspect for decision. The Highway Authority had no objection, subject to conditions, and Councillor King considered that sufficient mitigation by design of the details could overcome what the report itself stated was "less than substantial harm" anyway. He moved approval and that was the decision by a majority of one. He did not think the vote split on a party political basis and maintained that any influence which he had on the outcome came solely from the debate. He was a bit surprised that the application was approved. Some local residents and the ward Members were unhappy, he believed, but that is not unusual in planning matters.

- 6.7** Later in the same meeting, Councillor King stated that he said similar things in relation to an application which he considered to be similar and was the only member of the Committee who voted to approve the application, with 11 voting to refuse. He felt it might have been the case that some members responded to a large attendance by local objectors. Not so many residents of Great Bowden had attended for that application.
- 6.8** Councillor King said people tend to want to blame someone when things go against them, but in this case it should be borne in mind that the Council does not have a five years' supply of housing, nor an up-to-date Local Plan, and the National Planning Policy Framework drives a presumption in favour of development. He was not aware of any attempt to challenge the Great Bowden decision. He has sought to organise a call-in of close planning decisions in the past, to enable the Council to reconsider a Committee decision, but no call-in request was made on this occasion.
- 6.9** Councillor King said he became aware of the Focus leaflet a day or two before he made his complaint. It was early in the County Council election campaign, he thought perhaps towards the end of March – certainly after the Planning Committee meeting on 7 March. Someone handed him a copy, saying “you need to see this”. His reaction to the text under the heading “Planning debacle needs investigation” was that it insinuated that the Leader and himself had acted improperly, inferring that they had tried to rig the planning decision. Councillor King felt insulted; there is a certain level of give and take in election campaigns, but this was below the belt.
- 6.10** Councillor King did not know the planning applicant and had no connection with the case to his knowledge. His election agent told him the Returning Officer would not accept a complaint under the election rules. He was not prepared to let the matter go, so made a complaint under the Code of Conduct. He did not wait until after the election because it could appear to be sour grapes if he had lost. He was not aware that the Great Bowden planning matter was mentioned subsequently in the election campaign, but considered it was likely that some residents and voters would have believed the Focus text to be accurate.
- 6.11 Evidence of the Subject Member** – Councillor Hill’s initial response to the complaint was made in a telephone conversation with the Monitoring Officer on 25 April 2017 and was reported to the Ethical Governance Committee as a transcript in the following terms:

“Councillor Hill’s view is that this additional complaint is vexatious and bullying and an abuse of the system.

The complainant has a different view of events to her. Her view is that the leaflet complained about is an election leaflet and should not be dealt with as a Code of Conduct complaint.

The issues have in any event been raised previously and specifically at full Council in March 2017.

At the time that this was written this was the position that was believed at the time. This was following a number of conversations. It is an issue of perception.”

- 6.12** At interview, Councillor Hill explained that the Liberal Democrat party distributes written communication to residents by means of leaflets under the banner of “Focus”. Normally these are printed on a District Council ward basis, but this varies in election periods. In March and April 2017 they produced three editions titled with the County Council division name of Harborough East as they were aimed at influencing voters for the County Council elections on 4 May. The Focus leaflets are produced in accordance with a house style template. In non-election times their frequency depends on what is going on and how active local party workers are at any time. Copies are delivered house-to-house. Social media input is separate and Focus is not made available online.
- 6.13** Councillor Hill writes the text for the leaflets in her ward and division. It is checked by one or two colleagues and by her election agent, although she usually signs off the content. If any of them think there might be a problem with any text, there is a qualified agent party member based in Hinckley who will advise.
- 6.14** The edition containing the text which is the subject of this complaint appeared in the second of three election editions and was distributed in late March or early April. Councillor Hill stated that almost the same wording was used in a piece in the Great Bowden March village newsletter. The ward Members have a regular slot in that newsletter if they wish to take it. Normally it deals with planning matters.
- 6.15** There is a list of topics for Focus, but the Great Bowden development issue emerged at the right time for the second pre-election edition. At the time of writing and publishing, Councillor Hill maintains that she believed all of the content to be true. Indeed, since then there had been assertions that what she wrote was untrue, but she had seen no evidence to support them. Nothing she had learned since told her that what she wrote was inaccurate.
- 6.16** The Great Bowden planning story is a District Council matter, but Councillor Hill explained that there is always a degree of fluidity between District and County issues in Focus. She admitted that she named Councillor King in order to try to score election points as he was her opponent. She might have named him even if it had not been in a pre-election period, especially if he had been the Portfolio Holder for Planning. Councillor Hill was not aware of any response following the village newsletter piece, so did not think it was particularly controversial. She had not named Councillor King in that article as the newsletter is a non-political publication.

- 6.17** Councillor Hill stated that she used the term “pushed through” because Councillor King is a forceful politician and spoke strongly according to some colleagues who attended the Planning Committee meeting on 17 January. She thought so too having listened to the audio recording of the meeting. She did not attend the meeting, but was aware that the application was on the agenda for a decision.
- 6.18** The bigger issue for her was finding out about the procedural issue. The story broke a few days before the meeting. It was stated in the report that the application had been “called in” by the Leader even though the site was not in his ward. In his statement to the Committee, the Chairman referred to an “investigation”. As a party group, the Liberal Democrats became aware of the outcome, but had no knowledge of the details of how the investigation was conducted or what precisely was considered.
- 6.19** The group leader, Councillor Knowles, raised the matter at the March meeting of the Council, highlighting that proper procedure had not been followed. There was a bad-tempered exchange, but the Chairman of the Council closed down the item. At that stage it was more about who had found out first that there was a procedural irregularity. The Constitution does allow any Member to “call in” an application, so the simple fact that the Leader had done so was not the problem for the Liberal Democrat group; it was more the fact that the referral had been made outside the permitted timescale. The group wanted a more specific report on the circumstances, but were told that there was only a draft report. At the date of interview, Councillor Hill said the matter was still limping on, which added to her group’s frustration - the investigation had not been signed off by the group leader as it was being revised.
- 6.20** With regards to the planning application itself, Councillor Hill lobbied against it. Originally it had been for outline permission to build nine dwellings on the site, but it had been reduced to five. The site is in the flood plain and the access is not very good. Construction had not started at the date of interview. Councillor Hill opposed it at the time, but in her opinion worse cases have been approved subsequently. There was talk of referring the decision to Council, but it would have been a hiding to nothing and the required number of Members to support a referral could not be obtained in time. The Parish Council would not seek Judicial Review because of the cost and associated risks.
- 6.21** Councillor Hill stated that planning applications are not discussed at group meetings. Members do sometimes talk to each other one-to-one about their views on particular applications. She did not know if there was a challenge attempt made at the Committee meeting on 17 January on the procedural point, but suspected that the view would have been simply to get on with making a decision on the merits of the application. She was surprised and disappointed by the outcome and was party to texts and calls about what had happened.
- 6.22** Councillor Hill said that the Planning Committee investigation took place

behind the scenes. There was no active involvement of her group between the two meetings on 17 January and 7 March, although Councillor Knowles might have been advised and involved in the statement made by the Committee Chairman at the second meeting. She was satisfied that the Chairman had the legal right to act as he did.

6.23 As far as she knew, no election complaint about the Focus text was made to the Returning Officer. Party advisers had told her that they consider the Focus material to be part of an election communication and to be outside the scope of the Code of Conduct and the Standards regime. Councillor King had made a Code of Conduct complaint to the Monitoring Officer about a waste issue included in the first pre-election Focus edition, but that was held not to have sufficient merit to be taken further. Councillor Hill was made aware of the second complaint quite soon after it was made. She was concerned that the Conservatives might retaliate in their next leaflet, but they did not. It was about two weeks later before she was able to speak to the Monitoring Officer to offer an initial response to the complaint. She was not surprised that a complaint was made, although Councillor Hill said she often does name opponents in Focus text. She felt that Councillor King was trying to fetter her freedom of speech. He does like to have the last word on things and she was wound up at the time because of the election. She thought it was simply a different interpretation of events.

7. Findings of Fact

7.1 This section addresses the specific issues raised by the Complainant, the Subject Member's initial response and the evidence given by both. Section 2, Factual Context, contains the relevant facts which are on the record.

7.2 The Focus newsletter which is at the core of the complaint was published and distributed to households in the Market Harborough East division of the County Council probably in late March 2017, given the date of the complaint. This might have been before publication of the Notice of Election, but for the reasons set out in section 5, I do not believe it matters whether it was before or after the official election period began. The content would have been drafted some time before distribution, after the Planning Committee on 7 March, but probably before the Council meeting on 27 March.

7.3 By Councillor Hill's admission, the relevant article was designed to promote her County Council election campaign, even though it related to District Council business. It referred to Councillor King by name because he was a rival candidate for the County Council division. The earlier article for the Great Bowden village newsletter was expressed in more moderate terms for a non-party political medium, so the wording was changed deliberately for the Focus edition. The village newsletter included the following:

“At the risk of sounding like a broken record, planning, in particular recent events with regard to Dingley Road, are in the news. The application, on

the opposite side to the Cemetery, for up to five houses was set for refusal by officers because of the impact on the conservation area. For reasons which are still not clear, just as a decision notice was to be issued, it was called to the planning committee by the Council Leader. At the planning committee where the application was decided the Council's Deputy Leader argued strongly in favour of the application, which was passed by 6 votes to 5.

We have also discovered it didn't need to be called in at all due to the number of letters from the public and that the Council's constitution on this whole topic has been misinterpreted."

7.4 The procedural point which arose regarding the Great Bowden application can be described fairly succinctly. The Constitution provided that any Member could remove the standing delegation of most types of planning application to Officers by requesting that any particular application be determined by the Planning Committee. This power was not restricted to ward Members, so it was legitimate for Councillor Pain to make such a request. However, such a call-in by a Member must be made within 28 days of the date of the weekly list on which the application appeared. In this case, that period had passed some time before Councillor Pain actually made his request. In investigating the circumstances following Councillor King's referral to the Monitoring Officer, Officers discovered that there had been some confusion amongst Planning Officers generally in relation to when delegation was properly removed. Another provision in the Constitution stated that delegation was removed if five letters of counter-representation from different households, raising valid planning points in the case of objections, were received in response to public consultation. Counter-representation meant views contrary to the application, not contrary to the Officers' conclusion. The Great Bowden application should have been considered by the Committee on this ground and that is what happened in the end.

7.5 The Focus article stated that Councillor King "pushed the application through" at the Planning Committee meeting on 17 January. Councillor Hill used this terminology because Councillor King is a forceful politician and spoke strongly in favour of the application, a view expressed to her by some colleagues who had attended the meeting and one with which she agreed having listened to the audio file. In my opinion, the audio recording does not support that interpretation.

7.6 Councillor Knowles, the Liberal Democrat group leader, spoke first on the Great Bowden application in his capacity as a ward Member; he was not a member of the Committee. He took the opportunity of remarking on the statement made shortly before by the Chairman about the procedural issue, saying that he felt the Officers should have put more detail in the statement. He went on to speak against the planning application and in favour of the Officers' recommendation of refusal. When the item was opened to the Committee members for debate, it was actually Councillor Rook who spoke first, albeit to ask a question about the potential for the development area to

become larger than the application site in future. Councillor King was the then the first speaker on the merits of the application. He began by saying that he would not be popular for his opinions on the matter and went on to refer to paragraph 6.35 of the report which stated that the site was sustainable for housing. He considered there was no defensible reason to refuse the application and referred to other cases where refusals had been overturned on appeal. The case Officer cited paragraph 14 of the National Planning Policy Framework and said that the concerns of the Historic Buildings Officer should prevail. She also said that access was not the only issue and that there was a question of establishing the principle of five dwellings being constructed on the site. Councillor King responded by repeating his view that a refusal was not defensible on appeal and moved approval.

7.7 Councillor King's contribution was made in calm, measured terms and the subsequent speakers also conducted the debate in what I would describe as a normal manner. The Committee comprised 10 Members of the Conservative group and two of the Liberal Democrat group. Two other Conservative Members spoke in support of Councillor King's stance, one emphasising the closeness of the decision. One Conservative Member spoke in favour of the recommendation to refuse, as did the one Liberal Democrat Member who spoke. The vote at the conclusion of the debate was not recorded, but it was six votes to five in favour of approving the application, subject to conditions. That means that at least three Conservative Members voted to refuse it, which tends to suggest that if Councillor King had been determined to "push the application through", he had done so by carefully calculated influencing of sufficient individual Members before the meeting, rather than through applying pressure through his seniority in the group. Such an intention would also need to have been in place regardless of whether Councillor King had attended the meeting as a substitute, given the late timing of his becoming one. There is no evidence to support any finding other than that Councillor King spoke to his beliefs on the matter in an acceptable manner and that five other Committee members agreed with him. Whether those others came into the meeting with that determination in mind or were persuaded by Councillor King's argument is immaterial. I have heard nothing to suggest that this decision was made any differently from others made by the Planning Committee. Later in the meeting, Councillor King took the same stance on an outline application for 50 dwellings on a site in Dunton Bassett, again recommended for refusal, but on that occasion his was the only vote in favour of approval. I include this fact simply as an illustration that Councillor King's mere presence at the meeting did not in itself persuade other Members to support his positions.

7.8 The Focus article was headlined "Planning debacle needs investigation" and included the statement: "The Lib Dems are demanding the Council investigate what happened". Councillor King's complaint was that this was an "inaccurate and false claim" in that the procedural aspect had been investigated at his instigation and the results had been made public in the Planning Committee Chairman's statements made at the meetings of 17

January and 7 March, before the article was written. It is correct that the proper route for the application had been resolved for the purposes of making a planning decision and that it had been explained to some extent, but at that stage there does not appear to have been an opportunity for the Liberal Democrat Members to ask any questions or receive more details. I have heard references to an attempt to ask questions at the Council meeting on 27 March, but there is nothing specific in the minutes of the meeting on the subject and nor have I found anything on the audio file. There is a related reference in the Leader's Report (Minute 518) under the heading "County Elections":

"... I would urge that if district council business is referred to as part of election campaigns it is imperative we all seek to report information fairly and accurately as it would be a disservice to this Council, and the public alike, not to do so."

The Focus article would have been written before that meeting. In any event, I understand that at the time of writing, there is a draft report on the matter which remains to be completed.

8. Conclusions

- 8.1** I am satisfied that all the relevant conduct is within the scope of the Code of Conduct as Councillor Hill was acting as a District Councillor in the material dealings.
- 8.2** In the context of local government standards of conduct, Paragraphs 3.1 and 3.5 of the Code of Conduct are the same as their predecessors in the Model Code of Conduct which all authorities were required to adopt before July 2012. The category that Members had failed to treat others with respect was one of the more common ones under which complaints were made. These complaints included conduct towards fellow councillors, Officers and members of the public. I consider it reasonable to adopt the same position under the current Code of Conduct as it sets a baseline for acceptable behaviour towards anyone with whom a Member has dealings in their capacity as a councillor. In politics, rival groups are the norm. It is expected that each will campaign for their ideas and they might also seek to discredit the policies and actions of their opponents. Criticism of ideas and opinion is part of democratic debate and does not in itself amount to failing to treat others with respect. This is widely understood by all concerned, including the public. However, individuals should not be subjected to unreasonable or excessive personal attack. There is an important distinction between the cut-and-thrust of politics and making unreasonable slurs.
- 8.3** The concept of bringing the office of councillor or the council into disrepute usually involves behaviour which affects the views of more than one person about the office of councillor or the authority. It involves conduct which is sufficient to damage the reputation of the office or the authority as against

simply damaging the reputation of an individual, for example conduct which undermines the authority's reputation as a responsible service provider. It is not necessary to show an actual effect on reputation as the words "reasonably regarded" make it an objective test.

8.4 The Committee on Standards in Public Life in its Annual Report for 2015-16 said: "The Committee promotes the Seven Principles as consistent descriptors of ethical standards They can then be translated into outcome focused, locally based rules, codes or methods of implementation which are flexible enough to adapt to changing circumstances" To seek to establish a breach of the Code based solely on the wording of any of the guiding principles in my opinion requires something exceptional if the more specific minimum standards are not satisfied. It would be inappropriate to stretch the wording of Principles 1, 6 and 7 (see paragraph 4.4 above) to create a possible breach of the Code.

8.5 Whilst it is not straightforward to separate out different elements of the Focus article, the complaint sought to do so by identifying the reference to "needs investigation" separately from the allegation of "pushing the application through". Addressing the first point, it is true that by the time of the publication of the article, over two months after the Planning Committee meeting on 17 January, there had been two public statements made by the Committee Chairman, one at each of the 17 January and 7 March meetings. These dealt with the facts of the application initially being treated as one for a delegated decision by Officers, then being referred to the Committee as a result of the call-in by Councillor Pain, before the realisation that the call-in, although legitimate, was made out-of-time and the second realisation that it was a matter for Committee anyway because of the number of counter-representations. The statements included an assurance that the confusion which had led to the discrepancy had been resolved and would not be repeated. Councillor King felt that the outcome of an investigation had been made known and that the call for the Council to investigate made in the Focus article was inaccurate and false in that a sufficient investigation had taken place already. It might not have been Councillor Hill's intention, but it seems to me that the words used in the article were neither disrespectful to any individual nor could reasonably be regarded as bringing the office of councillor or the authority into disrepute. The scope of the putative investigation being sought was not defined, but it could have been wider than the one which had actually been carried out up to that time. I do not consider that a member of the public reading the article would have his or her confidence in Members generally or the Council as a body being able to fulfil their functions and duties damaged simply by a call from one Member or group of Members for an investigation.

I conclude that Councillor Hill did not act in breach of Principles 1, 6 or 7 or paragraphs 3.1 or 3.5 by publishing the words "needs investigation".

8.6 The element of "pushing the application through" raises more personal

issues. Councillor King stated that he believed the wording of the article would give a reader the impression that both he and the then Leader of the Council, Councillor Pain, had abused their positions. The article referred to the Great Bowden application having been called in by the Leader “seemingly at the request of the Developers”. Councillor King said that Councillor Pain told him he had met the developers and subsequently made his call-in request. I do not believe it matters whether the developers actually asked him to call in the application. Lobbying is an acceptable part of local government, although Members need to comply with general rules of conduct and a separate code or protocol which applies to Planning matters. Councillor Pain was entitled to make a request under the Council’s Constitution, although it was correct that the call-in was eventually ruled out-of-time. There has been no suggestion that Councillor Pain sought to exert any pressure regarding the timescale aspect. Councillor Pain has not made a complaint about this matter, but clearly there is an overlap which affects him. The words used do not say that he definitely reacted to a request to him made by the developers, but even if that was the case, it would not have amounted to failing to treat him with respect because he would have been entitled to do so.

I conclude that Councillor Hill did not act in breach of Principles 1, 6 or 7 or fail to treat Councillor Pain with respect under paragraph 3.1 by her reference to his calling in of the planning application.

8.7 However, the Focus article, unlike the insertion in the village newsletter, did not mention that the call-in in fact was unnecessary because of the number of counter-representations which had been received by the Council. Instead, the piece proceeded straight to say: “When it came before the committee, the Deputy Leader of the Council (a certain Phil King), pushed the application through, on a 6 to 5 vote, against expert advice”. The reference to the closeness of the vote might be thought on its face to militate against the force of the expression “pushed the application through”, but it might have been anticipated to increase the impact on readers and voters who were opposed to the application and continued to be disappointed by the outcome. The reference to “expert advice” was repeated at the end of the article and could be expected to have a similar effect, conveniently ignoring the nature of planning decision-making. “Pushing through” carries an undertone of imposing someone’s will on others, perhaps without due regard to the facts or the rights and wrongs of a matter. I have seen and heard no evidence to suggest that this was a fair description of what happened at the Planning Committee meeting on 17 January. Councillor Hill admitted that she had named Councillor King in the piece with her eyes on the forthcoming election. Section 5 sets out my views on the interaction between the Code of Conduct and election campaigns. I consider that the wording of the Focus article fell on the wrong side of the line by failing to treat Councillor King with respect.

I conclude that Councillor Hill did fail to treat Councillor King with respect in breach of paragraph 3.1 by publishing the words “pushing the application through”.

8.8 In my opinion, the combined effect of the references in the Focus article to both the Leader and the Deputy Leader of the Council could reasonably be regarded as insinuating that the two most powerful Member post holders in the authority had acted to bring about an outcome to the planning application which ignored the experts (the Planning Officers) and, by inference, the “right” public opinion. Further, there was an implication that the means by which this was achieved, if not improper, were at least questionable.

I conclude that Councillor Hill could reasonably be regarded as bringing the Authority into disrepute in breach of paragraph 3.5 by publishing the article under the heading “Planning debacle needs investigation”.

**Geoff Pook
Investigating Officer
February 2018**