



APPEALS AND REVIEWS COMMITTEE

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To: Councillors Capleton (Chair), Hunt (Vice-Chair), Cooper, Hachem and Miah (for attention)

All other members of the Council
(for information)

You are requested to attend the meeting of the Appeals and Reviews Committee to be held in Committee Room 1 - Council Offices on Friday, 12th April 2019 at 2.00 pm for the following business.

Chief Executive

Southfields
Loughborough

4th April 2019

AGENDA

1. APOLOGIES
2. DISCLOSURES OF PECUNIARY AND PERSONAL INTERESTS
3. DETERMINATION OF AN APPEAL BY COUNCILLOR DAVID HAYES AGAINST A FINDING OF A BREACH OF THE MEMBERS' CODE OF CONDUCT OF CHARNWOOD BOROUGH COUNCIL BY A PANEL OF THE MEMBER CONDUCT COMMITTEE (REF: MC4A, B & C 2018/19) 3 - 68

A report of the Monitoring Officer to enable the Committee to determine the above appeal is attached.

Annex 1 to the report sets out the Order of Proceedings to be followed.

APPEALS & REVIEWS COMMITTEE – 12TH APRIL 2019

Report of the Monitoring Officer

ITEM 3 DETERMINATION OF AN APPEAL BY COUNCILLOR DAVID HAYES AGAINST A FINDING OF A BREACH OF THE MEMBERS' CODE OF CONDUCT OF CHARNWOOD BOROUGH COUNCIL BY A PANEL OF THE MEMBER CONDUCT COMMITTEE (Ref: MC4a, b & c 2018/19)

Purpose of the Report

1. To enable the Committee to determine an appeal by Councillor David Hayes against a determination of a breach of the Members' Code of Conduct of Charnwood Borough Council by a Panel of the Member Conduct Committee on 27th February 2019.

Background

2. In September 2018 three complaints were received from Councillor Eric Vardy, Councillor Hilary Fryer, and Mr Geoff Parker (Chief Executive of the Council), about statements made by Councillor Hayes at a Borough Council meeting on 3rd September 2018. Councillor Vardy's complaint was also supported by Councillor Leigh Harper-Davies.
3. The complaints all related to supplementary statements made by Councillor Hayes in relation to two Questions on Notice he had submitted, and which were included on the agenda for the Council meeting.
4. Having undertaken a fact-finding review and having consulted with one of the Independent Persons, Mr Michael Pearson, the Monitoring Officer referred three concerns arising from the complaints for Investigation.
5. The Investigator concluded in her report that Councillor Hayes had not breached the Code of Conduct in respect of the first concern, and so no further action was required in respect of that matter. Elements of the Investigator's report which refer to that concern have therefore been redacted from her report (attached at Annex 2).
6. However, having considered the Investigator's report, and after consulting with Mr Pearson, the Independent Person, the Monitoring Officer decided that in respect the other two concerns that Councillor Hayes had a case to answer and that that the Investigator's report in respect of those matters should be referred to a Panel of the Member Conduct Committee for a hearing.
7. The two concerns in question were that at the Council meeting on 3rd September 2018:

'Councillor Hayes stated that the Head of Planning should be stopped from employment with a developer in future, and that officers' personal bank accounts should be made available for inspection. This implies that the Head of Planning has been involved in dubious or nefarious activity which brings

the reputation of the Council and its officers into question without any substantiating evidence which could be construed as being slanderous’.

And:

‘Elements of the statements made by Councillor Hayes were in breach of some of the General Obligations contained within the Members’ Code of Conduct of Charnwood Borough Council’.

8. The relevant sections of the Members Code of Conduct are as follows:

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 bring your office or your authority into disrepute.

Paragraph 3.11: You must follow the adopted corporate operational policies of the authority.

9. Paragraph 3.11 of the Code (as set out in section 8 above) imposes a duty on Members to follow the Protocol on Member/Officer Relations, which has been adopted by the Council and forms part of the Constitution, and which includes the following requirements:

Section 4(e): Dealings between officers and members should be based on mutual trust and respect.

Section 6(e): Members are able to ask questions about the Council’s decision and performance at both formal meetings and informally. Members will have regard for an officer’s level of seniority and area of responsibility in determining what are reasonable comments and questions.

10. A Member Conduct Committee Panel undertook a hearing on 27th February 2019, and resolved that Councillor Hayes had breached the Members’ Code of Conduct of Charnwood Borough Council, particularly paragraph 3.1: *‘you must treat others with respect’*. and that Councillor Hayes had also breached the Protocol on member/officer relations, section 4 (e): *‘dealings between officers and members should be based on mutual trust and respect’*.

11. The reason for the Panel’s decision was that they considered unanimously that, on the balance of probability, Cllr Hayes had breached the Code of Conduct. There was no dispute that Councillor Hayes had made the comments in question, and the Panel believed those comments to contravene the Code of Conduct paragraph 3.1 and the Protocol on Member /Officer Relations Section 4(e).

12. The Panel made the following decision in terms of sanctions that should be imposed against Cllr Hayes, for the reasons as set out:

RESOLVED that in respect of the breach of the Members' Code of Conduct and the Protocol on Member/Officer Relations by Councillor Hayes it be recommended:

1. that a formal letter be issued to Councillor Hayes setting out the breach of the Code that has been identified;
2. that the breach of the Code of Conduct was of such a serious level that the Panel felt it was appropriate to formally censure Councillor Hayes about his comments towards the Head of Planning and Regeneration, as they had been totally inappropriate and without foundation;
3. that Councillor Hayes be asked to apologise in writing to the Head of Planning and Regeneration about his unfounded comments and a copy be sent to the Monitoring Officer to be made public within 10 working days, subject to an appeal.

Reasons

- 1,2,3. The Panel considered these sanctions to be appropriate, as the matter was of a serious nature, and as the comments about the Head of Planning and Regeneration had been made in public an apology should also be made in public.
13. Councillor Hayes has appealed against the decision of the panel, and has given the following reasons:

'I am disappointed that my request on the 6th March for a transcript to be made available was refused, even though a recording is available, I have already stated that I don't recognise these minutes or could be described as being sanitised to the ordinary person in the street would recognise. (this view has been reached by carrying out a local survey)

Clearly a number of assumptions are being applied to evidence which has created a totally direct "spin" on the context of what I said as per the transcript and what element has been plucked out, rather than consider the wider issues of an administration as not being appropriately managed in the form of ensuring our employees operate under up to date T&Cs. I personally introduced a large number of new processes and systems into Charnwood as they were both new ideas and systems that were not meeting legislation. The failure of management to develop system interface, meant that my company paid for the external development to ensure contract instructions could be carried out as laid down within the contract documentations. The use of Restricted Trade agreements should have already been in place, departments have already lost income for not having these in place.

A decisions based the on balance of probability is open to interpretation, for example the lack of Monitoring of the CE over many years has a contributing factor, using a different interpretation would mean that Charnwood's IIP accreditations would not be valid as the CE has not had a performance review for some years. Ideas and suggestions from the wider outside world, can create a lack of knowledge within a local and inwardly focused point of view and

perception. There is also an issue when comments are made from Management experience with a sharp regional dialect being miss understood. As no accusations of wrong doing has been said or suggested.

If the words “differed on the intention and meaning of the statements” were applied, then calls for the CE to carry out a review and investigation to the management of the Decent Homes contract, Management using the incorrect property data, incorrect posting of allowances on the website and HMRC! Then we could just draw a line under events and look the other way or would that be a perception?

I acknowledge and confirm that this appeal has no bearing on my current situation of not being allowed to stand for re-election as a Conservative Candidate for Loughborough Shelthorpe Ward in the May Elections’.

Appeal Hearing Process

14. The order of proceedings for the appeal process for the Committee are set out in Annex 1.
15. The arrangements for dealing with appeals specify that they ‘will consider only material relevant to the reasons for the review set out by the Member’. Therefore, the Committee should restrict itself to the reasons for appeal submitted by Councillor Hayes.
16. As part of the pre-hearing process, the Monitoring Officer informed Councillor Hayes that it was unclear how the reasons he had submitted within his appeal were relevant to the decision of the Member Conduct Panel, as that decision related only to the comments he made about the Head of Planning and Regeneration at the Council meeting on 3rd September 2018. The Monitoring Officer therefore invited Councillor Hayes to consider whether he wished to restate the reasons for his appeal so that they related to matters that were relevant. However, Councillor Hayes did not respond to that approach from the Monitoring Officer.
17. The Monitoring Officer has therefore set out in Annex 3 his views on the relevance of the issues raised within Councillor Hayes’ appeal submission.
18. It will be a matter for the Committee to determine whether the reasons included within Councillor Hayes’ appeal are relevant to the decision of the original Panel. The Monitoring Officer’s advice is that only those matters that are relevant to that decision should be considered as part of the appeal process.

ANNEXES

- Annex 1: Order of Proceedings
- Annex 2: Investigator's Report (with redactions)
- Annex 3: Monitoring Officer's views on the relevance of the issues raised by Councillor Hayes within his appeal.

Officer to Contact: Adrian Ward
Monitoring Officer
(01509) 634573
adrian.ward@charnwood.gov.uk

ORDER OF PROCEEDINGS

1. The Monitoring Officer will summarise his report.
2. Councillor Hayes or his representative will present his case.

Persons to ask questions:
 - The Investigator
 - Committee members
3. It is understood that Councillor Hayes will not be calling any witnesses, but if he does:

Persons to ask questions
 - Councillor Hayes
 - The Investigator
 - Committee members
4. The Investigator to present her case.

Persons to ask questions:
 - Councillor Hayes
 - Committee members
5. The Investigator to call Councillor Draycott (Chair of the Member Conduct panel) as a witness:

Persons to ask questions
 - The Investigator
 - Councillor Hayes
 - Committee members
6. The Independent Person to provide his comments regarding the appeal.
7. Councillor Hayes to sum up regarding his appeal.
8. The Investigator to sum up regarding the appeal.
9. Once all the grounds for appeal have been considered, the Chair will adjourn the meeting and the Committee will leave the room to deliberate.

10. The Chair will then reconvene all parties to announce the decisions regarding facts and whether any or all of the grounds within the appeal are upheld. If none of the grounds for appeal are upheld, the original sanction recommendations will stand as Councillor Hayes has not appealed against them.
11. If any or all the grounds for appeal are upheld, the Chair will ask Councillor Hayes, the Investigator and the Independent Person if they have any views regarding the original sanctions.
12. The Chair will adjourn the meeting and the Committee will leave the room to deliberate.
13. The Chair will reconvene the Committee to announce the decisions regarding whether recommendations made by the original Panel should be amended or withdrawn.
14. The Committee's decisions and reasons will be recorded in the form of the minutes of the meeting which will be issued within 10 working days of the end of the hearing.
15. There is no further right of appeal for Councillor Hayes against the decisions of the Committee.

PRIVATE AND CONFIDENTIAL

INVESTIGATION REPORT FINAL (with redactions)

SUBJECT MEMBER	Cllr David Hayes of Charnwood Borough Council
COMPLAINANTS	Cllr Vardy (supported by Cllr (Leigh) Harper-Davies, Cllr Fryer all of Charnwood Borough Council and Mr Geoff Parker, Chief Executive of Charnwood Borough Council
COMPLAINTS REF	MC4a, 4b, and 4c 18/19
INVESTIGATOR	Elizabeth Warhurst, Head of Legal and Commercial Services and Monitoring Officer at North West Leicestershire District Council

This report represents the findings of an investigation carried out under the arrangements adopted by Charnwood Borough Council for dealing with complaints about member conduct under the Localism Act 2011 and the procedure in part 4 of the Constitution for dealing with non-Code of Conduct complaints.

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1. EXECUTIVE SUMMARY

- Concern 1** a finding of no breach of the Code of Conduct
- Concern 2** a finding of a breach of the Code of Conduct and the Protocol on Member/Officer Relations –para 3.1 and para 4(3) respectively.
- Concern 3** a finding of a breach of the Code of Conduct – para 3.11

2. COUNCILLOR HAYES' OFFICIAL DETAILS

Councillor David Hayes was elected to the Shelthorpe Ward of Charnwood Borough Council (CBC) in the local elections in 2015.

3. INITIAL CONSIDERATIONS

1) Members' Code of Conduct

When a complaint(s) is received about an elected member falling within the remit of the Members' Code of Conduct at CBC, the Council's arrangements for dealing with complaints about member conduct under the Localism Act 2011 (the arrangements) provide that the MO of CBC will take certain initial steps before deciding that the complaint should be investigated.

Those initial steps include a consideration of whether the "complaint is about the conduct of a member or co-opted member of the Borough Council or one of the 27 Parish/Town Councils in the Borough who was in office and the Code of Conduct was in force at the time of the alleged conduct". It is assumed that the MO has determined that this initial test has been met.

The MO is also required to consider "whether the conduct would, if proven, be a breach of the Code of Conduct" and "whether the complaint is sufficiently serious to merit further action". It is assumed that the MO has determined that these initial steps have also been satisfied and has followed the process set out in the arrangements before commissioning an investigation.

The investigator is not aware of any request by the complainants or witness to withhold their identity or nature of the complaints being made.

The complainant made a request to the investigator for the process for dealing with the complaints about him to be transparent and open to the public. This is a matter for the MO to note and consider when progressing the complaints through the CBC process.

The investigator has not considered it necessary to refer the complaint back to the MO for any of the reasons set out on page 18-7 of the arrangements.

Complaints have been made by 3 individuals, with one individual being supported by another Councillor at CBC. The complaints relate to a single event or incident, namely statements that Cllr Hayes made in response to the answers to questions he put to lead members at the meeting of CBC on 3 September 2018. Where a single event or incident generates a number of related complaints from different people, it would be usual to deal with the complaints collectively and it is reasonable to do so in this case. This investigation report deals with all three complaints which have been summarised in the MO's fact finding summary.

2) Protocol on Member/Officer Relations

The investigator has also been asked to consider whether conduct complained of could constitute a breach of the Member/Officer Protocol. The process for dealing with non-Code of Conduct complaints is set out in part 4 of CBC's Constitution at page 18-14. A complaint of conduct which breaches the Protocol on Member/Officer Relations could also result in a breach of the CBC members' Code of Conduct (as detailed below).

4. THE COMPLAINTS AND INVESTIGATORS INSTRUCTIONS

A summary of the complaints was provided by the MO at CBC to the investigator in his fact finding summary and this is attached as appendix 1. The MO has summarised the concerns as follows:

REDACTED

2. *Cllr Hayes stated that the Head of Planning should be stopped from employment with a developer in future, and that officers' personal bank accounts should be available for inspection. This implies that the Head of Planning has been involved in dubious or nefarious activity which brings the reputation of the Council and its officers into question without any substantiating evidence would could be construed as being slanderous.*
3. *Elements of the statements made by Cllr Hayes were in breach of some of the General Obligations contained within the Members' Code of Conduct of Charnwood Borough Council."*

The scope of the investigators instructions have been set by the MO. The scope is to investigate the complaints which are about what Cllr Hayes said the Council meeting in 3 September in response to raising questions about REDACTED and the west of Loughborough sustainable urban extension. The investigation does not extend to investigating these issues in their own right or other matters which may have been brought forward as part of the investigation process.

5. RELEVANT SECTIONS OF THE CHARNWOOD BOROUGH COUNCIL MEMBERS' CODE OF CONDUCT AND PROTOCOL ON MEMBER/OFFICER RELATIONS

The Code of Conduct

The MO's fact finding summary states that the conduct could be a breach of the following elements of the CBC Members' Code of Conduct.

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 your authority into disrepute"

Paragraph 3.11 "you must follow the adopted corporate operational policies of the Authority".

The MO advises that para 3.11 imposes an obligation on the member to follow the Protocol on Member/Officer Relations. This protocol having been adopted by the Council and enshrined in the Constitution.

Charnwood Borough Council Protocol on Member/Officer Relations

The protocol sets out CBC's expectations in respect of the way that Members and officers will work with each other in the furtherance of their respective roles. It provides assistance and guidance to members and officers in complying with their respective codes of conduct and aims to promote high standards of conduct my members and officers alike.

The MO has referred the investigator to the relevant sections of the protocol as follows:

Section 4(e) "dealings with between officers and members should be based on mutual trust and respect".

Section 6(e) "Members are able to ask questions about the Council's decisions and performance at both formal meetings and informally. Members will have regard for an officers' level of seniority and area of responsibility in determining what are reasonable comments and questions".

6. PURPOSE OF THE INVESTIGATION REPORT

The MO has commissioned an investigation into these complaints in order to assist him make a decision, in consultation with the Independent Person(s), in accordance with the available decisions set out at page 18-8 of the arrangements and also in respect of the available decisions under Para 18-10 of the arrangements (non-Code of Conduct complaints). This investigation report will make a finding in respect of the complaints. It will not make recommendations on the next steps.

In Respect of the Members' Code of Conduct

"The MO may decide that;

- I. The Member has not breached the Code of Conduct and no further action is required;
- II. The Member has breached the Code of Conduct but has taken appropriate steps to remedy the situation and no further action is required;
- III. The Member has a case to answer and the Investigators report should be referred to a panel of the Member Conduct Committee for a hearing."

Non-Code of Conduct Complaints - Member/Officer Protocol

In accordance with para 18-10 of the arrangements in CBC's constitution the MO may, following an investigation:

1. "Decide that there is no case to answer or that the matter can be resolved by agreement of the parties involved. In this case the MO will inform the parties involved and the Chair of the Member Conduct Committee.
2. Decide that there is a case to answer or that there is no possibility of the matter being resolved by agreement of the parties involved. In this case the MO will:
 - a. Prepare a report and inform the member of the procedure which will be used
 - b. Once the report is completed, inform the member and send him/her a copy of the report
 - c. Ask the member or his/her representative to provide details of the evidence which he/she wishes to present at the hearing and the witnesses which he/she wishes to call at the hearing."

A breach of the Member/officer protocol could also lead to a breach of the Members' Code of Conduct due to the obligation on members, within the code, to comply with a duly adopted protocol.

7. RELEVANT INFORMATION AND EVIDENCE GATHERED.

During the investigation the Investigator has had regard to the following information:

1. The fact finding summary provided by the MO (appendix 1).
2. The council agenda for the meeting of CBC on 3 September 2018 (not appended but publically available on line).
3. The draft minutes for the meeting of CBC on 3 September 2018 (not appended but publically available on line).
4. The audio recording of the meeting of CBC on 3 September 2018 (available publically on line).
5. A transcript of the questions, responses and supplementary questions section of the agenda for the meeting of CBC on 3 September 2018 (appendix 2) provided by the MO.

And gathered and had regard to the following evidence:

6. Interview and notes of the meeting with Cllr Vardy, complainant (appendix 3).
7. Interview and notes of the meeting with Cllr (Leigh) Harper-Davies (supporting Cllr Vardy's complaint) (appendix 4).
8. Interview and notes of the meeting with Cllr Fryer, complainant (appendix 5).
9. Interview and notes of the meeting with Mr Geoff Parker, Chief Executive (appendix 6).
10. Interview and notes of the meeting with Mr Richard Bennett, Head of Planning (appendix 7).
11. Interview and notes of the meeting with Cllr Hayes, subject member (appendix 8).

At the conclusion of the interview with the subject member, Cllr Hayes indicated that he wished to reserve the right to bring witness evidence forward. In later email correspondence, Cllr Hayes queried the complaints from the 3 complainants being considered together and indicated that he may wish to call witnesses in support of his broader concerns about the way that CBC is run. The investigator has advised Cllr Hayes that the remit of this investigation is limited to the matters referred to in section 4 above. It does not extend to investigating Cllr Hayes broader concerns.

The investigator is grateful for the co-operation of all those interviewed as part of this process and considers that there is sufficient evidence to make a finding in respect of the complaints within the scope of the investigation.

8. SUMMARY OF THE MATERIAL FACTS

The material facts are as follows:

1. The complaints arose as a result of comments Cllr Hayes made at a Council meeting on 3 September 2018.
2. Cllr Hayes had asked questions of the lead members for the REDACTED and planning portfolios in relation to matters within their purview. He had followed due process for asking questions at Council.
3. The questions were accepted and placed on the agenda for the meeting in the usual way. Responses to the questions were prepared in conjunction with the lead members and the questions and responses were included within the Council agenda.
4. The meeting on 3 September was a normal meeting, open to the public with the recording of the meeting published on the Council's website. There was nothing prior to the meeting to indicate that anything unusual would happen. Cllrs Hayes, Vardy, (Leigh) Harper-Davies and Fryer and the Chief Executive were in attendance at the meeting. Other than the Chief Executive, MO, Directors and committee staff, officers were not required to attend Council and the Head of Planning was not at the meeting.
5. REDACTED

6. Cllr Hayes asked his question regarding the west of Loughborough sustainable urban extension to Cllr Vardy as lead member. Cllr Vardy responded to the question and Cllr Hayes asked a supplementary question regarding the way that the council protected residents, giving the example of the Grange Park development (which was in Cllr Hayes's ward), in respect of the negotiation and drafting of S106 agreements. It is as part of the supplementary question that Cllr Hayes made statements which form the basis of this complaint. A transcript of the supplementary question is attached to the MO fact finding summary (appendix 1). The wording of the supplementary question is not disputed and the complainants have confirmed that the section that they take issue with is:

"The questions is Cllr Vardy, I call upon you to provide professional independent legal assessment of this S106 to avoid questions that the Council and/or its officers rolled over in the face of a hard determined developer. That the Head of Planning be stopped from employment with the developer in the future, and, as with many organisations have a transparency clause that officer's personal bank account details can be available for

inspection as required. Cllr Vardy, you must have unlimited confidence in the Head of Planning – quite simply I don't".

7. The complainants and the subject member agree on the key material facts as outlined above. They differ in their opinions of the meaning behind, and interpretation of, the statements, the potential impact that the statements could have had to the Councils reputation and whether they amount to a breach the code.

9. THE COMPLAINANTS' PERSPECTIVE

REDACTED

In respect of the statements made about the west of Loughborough sustainable urban extension, the complainants considered that Cllr Hayes was raising concerns without evidence in a form which was not appropriate. The complainants stated that there were other avenues through which Cllr Hayes could have raised any concerns about improper practices, not least the Police. So far as the complainants were aware he had not done so.

The Chief Executive said that questions at council were from a member to a member and it was uncommon for officers to be referred to in the response.

The complainants considered that the comments about the Head of Planning were inappropriate. Use of the word "the" Head of Planning made it clear that it was a reference to the current incumbent rather than the post in general. The statement inferred that the officer was engaged in corrupt practices in the form of improper payments being made to the officer from developers to secure advantage for the developers – in other words bribery.

There were mixed views about what the statement about "future employment" meant. Whether it related to the Head of Planning being stopped from negotiating with developers whilst in his role at CBC or from working for developers in the future should he leave the employ of CBC. In either case the complainants were clear that they considered that the statements called the officers integrity into question.

The Chief Executive was also concerned that the statement also inferred inappropriate practices on the part of developers with whom the council dealt.

Cllr Vardy was an experience member and considered that the statement made by Cllr Hayes at the meeting went beyond “political banter” and “political rough and tumble” as they extended to criticising officers.

The Head of Planning learned about the statements being made after the Council meeting. He was offended and upset by the comments. He reported that he took his professional responsibilities and RTPI Code of Conduct very seriously having built up a good reputation over many years. He had taken the matter so seriously that he would consider seeking advice from the RTPI. He didn't believe that senior officers should have a thicker skin but that everyone should be treated with respect. He considered it was important for officers and members to have robust professional discussions but these comments went beyond that.

10. THE SUBJECT MEMBER'S PERSPECTIVE

Cllr Hayes explained that the questions he had submitted to Council were about issues which he had been raising for some time at CBC either with officers, lead members or his group, to which he had not had a satisfactory response. He felt that it was appropriate to raise the REDACTED west of Loughborough sustainable urban extension in the public domain to have them aired. The only way he felt that he could do that within the current system was by way of a question at Council as there was not the ability to make statements or speeches at Council.

He remained concerned about the way that some other, unrelated issues, had been handled by CBC and he gave examples of his request to have a meeting with a Director and his decision to return an amount of his members' allowances. He considered that there was a culture at the Council of not dealing with issues promptly and thoroughly, not providing him (and other members) with sufficient information and a lack of accountability which was exhibited at different levels but was the responsibility of the Chief Executive. These issues had been in his mind at the time he asked his questions at Council and influenced his supplementary statements/questions,

REDACTED

In respect of the West of Loughborough sustainable urban extension comments and the reference to the Head of Planning, Cllr Hayes refuted the suggestion that he was implying that the head of planning was engaged in underhand or dishonest practices. His statements had been intended to refer to, what he considered to be, usual employment practices in industry which required staff to have restraint of trade type clauses and the ability to scrutinise their bank accounts written into their employment contracts. Cllr Hayes didn't consider that the comments were disrespectful and he was speaking up for local residents. He said that he recognised that his management background and inner city school education sometimes meant that he spoke very bluntly about matters.

11. REASONING AS TO WHETHER THERE HAVE BEEN FAILURES TO COMPLY WITH THE MEMBERS' CODE OF CONDUCT OR PROTOCOL ON MEMBER/OFFICER RELATIONS

In considering whether Cllr Hayes breached the Code of Conduct and/or Protocol on Member/Officer Relations it is necessary to consider **Article 10 of the European Convention on Human Rights** (ECHR) in respect of the principles of freedom of expression. Article 10 provides that:

- “1. Everyone has the right to freedom of expression. This shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...the protection of the reputation or rights of others.”

Also of note are the words of Collins J in **Livingstone v The Adjudication Panel for England [2006] EWHC 2533 (Admin)**, at para 39:

“The burden is on [The Adjudication Panel for England] to justify interference with freedom of speech. However offensive and underserving of protection the appellant’s outburst may have appeared to some, it is important that any individual knows that he can say what he likes provided, that it is not unlawful, unless there are clear and satisfactory reasons within the terms of Article 10 (2) to render him liable to sanctions.”

The right to freedom of expression is an important right in a democratic society and it is clear that it may only be interfered with where there are good reasons for doing so within the terms of Article 10(2). A key issue for determination was thus whether a finding of a breach of the Code of Conduct and Protocol on Member/Officer Relations on the facts found, would represent no greater impairment to an elected member’s right to freedom of expression than is necessary to accomplish the legislative objective of the code. Any finding that Cllr Hayes had breached the code and protocol in relation to his comments in the council meeting on 3 September 2018 would amount to a restriction of his right to freedom of expression. This investigation has considered whether the comments made related to matters within legitimate concerns as a councillor (political or quasi-political comment) as they would benefit from a high level of protection under Article 10.2.

The question as to whether the comments made were fair and balanced should be, in the first instance the stuff of political debate and journalistic analysis. The presumption should be that censure through the regulatory approach of the code should be reserved for cases where impropriety or abusive ends are being pursued under the mask of promoting debate. Politicking, even if it involves unbalanced and misleading information is not necessarily a breach of the code, provided that the core assertions are correct.

A clear distinction exists between “rough and tumble” politicking, which is aimed squarely at the competence of political opponent and comments made which refer to officers, their professional conduct and reputation.

In **Heesom v Public Service Ombudsman for Wales**, Mr Justice Hickinbottom considered a councillor’s right to freedom of expression in some detail. His considerations drew attention to a number of earlier cases from which the following propositions could be derived:

1. While freedom of expression is important for everyone, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests.
2. This enhanced protection applies to all levels of politics, including local.
3. Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.
4. Whilst, in a political context, Article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false.
5. The protection goes to “political expression”; but that is a broad concept in this context. It is not limited to expressions or critiques of political values but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others.
6. Past cases draw a distinction between facts on the one hand, and comment on matters of public interest involving value judgment on the other. As the latter is unsusceptible to proof, comments in the political context amounting to value judgements are tolerated even if untrue, so long as they have some- any- factual basis. What amounts to a value judgement as opposed to fact will generously be construed in favour of the former; and, even where something expressed is not a value judgement but a statement of fact (e.g. That the council has not consulted on a project), that will be tolerated if what is expressed is in good faith and there is some reasonable (even if incorrect) factual basis for saying it. “Reasonableness here taking account of the political context in which the thing was said.
7. Article 10 expressly recognises, the right to freedom of expression brings with it duties and responsibilities however, any restriction must respond to pressing social need”

There have been other cases in which the Courts have given consideration to freedom of expression, the public interest in such freedom, and on the other side of the balance the public interest in proper standards of conduct by elected members. The Article 10 balancing process is highly sensitive and while decisions will provide valuable guidance on the general approach, the Courts have stressed that it is important to keep in mind the facts in any one case. What is essential is who the comments are directed to, who is involved in the debate and if the recipient is not in a political environment, the impact of the comments on them. In addition, it is possible to justify interference with the right to freedom of expression if the intention or impact results in civil or criminal activity such as defamation, inciting public disorder or breach of equality duties.

12. FINDINGS

Cllr Hayes was entitled to seek information regarding REDACTED and the way that the council dealt with the negotiation of S106 agreements, especially those in his ward. It is understood that Cllr Hayes has been very persistent in his pursuit of information. There is a difference of opinion in what Cllr Hayes regards to be satisfactory responses and what those providing the information (officers and members) regard as satisfactory. There is a balance to be struck between supporting members and providing information to members in the furtherance of their office and dealing with what may, due to the volume, frequency or nature may become burdensome requests. The way in which the officers and members and Cllr Hayes can work together in the future is something that the administration and senior officers may wish to consider.

Cllr Hayes was entitled to ask questions at Council to the lead members on both of these subjects. In doing so the initial question and any supplementary question should be appropriately framed and aimed at the right person.

Whilst more may be tolerated in respect of comments about members, as part of the rough and tumble of politics, it is submitted that greater care should be taken in making comments about officers as they are not in the same political environment. Officers serve the current political administration impartially and, at CBC do not routinely take part in debates at Council which is reserved for members. Under CBC's constitution, the questions are noted as being "questions to members".

Turning to each concern in detail:

REDACTED

2. *Cllr Hayes stated that the Head of Planning should be stopped from employment with a developer in future, and that officers' personal bank accounts should be available for inspection. This implies that the Head of Planning has been involved in dubious or nefarious activity which brings the reputation of the Council and its officers into question without any substantiating evidence would could be construed as being slanderous.*

Cllr Hayes states that he made these comments to highlight, in general terms, good employment practices which he felt should be introduced at CBC. This argument is not convincing. Whilst Cllr Hayes may hold a genuine belief that there are issues with the way that the Council negotiates S106 agreements, it is hard to find that Cllr Hayes made this statement to inform the debate or defend the interests of residents. Genuinely held concerns about the S106 process should have been directed more clearly to the lead member.

Accepting that oral statements sometimes lack the finesse of a written speech; these comments would suggest to the ordinary person on the street that the head of planning is involved in corrupt practices whilst in the employ of the council. The statement refers to "the" head of planning and concludes with "Cllr Vardy you must have unlimited confidence in the Head of Planning – quite simply I don't". This indicates that Cllr Hayes was raising specific concerns regarding the probity of the head of planning rather than making a suggestion about good employment practices.

The head of planning has heard about the statements being made and is concerned about his professional reputation and damage to his good standing in the local government community. This is a significant and reasonable concern since the work of the local planning authority can be controversial and unpopular. The planning process is not easily understood by the public and contentious issues can raise interest in the community. It is important that, in this context, the council's most senior planning officer has a good professional reputation and he is trusted to manage the development control service and provide advice to members, the public and developers.

Staff and members are entitled to be treated with respect. That is to say, they should be treated having regard to their abilities, qualities or achievements. There is no evidence from Cllr Hayes or others that the Head of Planning was engaged in corrupt practices. In contrast to concern 1. above, this is not a case where a genuinely held belief or concern in an element of the councils' work justified the making of an unevidenced and personal statement.

Having considered the matter carefully, it is found that, in making this statement, Cllr Hayes has breached the CBC Code of Conduct - Paragraph 3.1 – "you must treat others with respect".

It is also found that, for the reasons set out above, Cllr Hayes breached the Protocol on Member/Officer relations in making these statements.

Section 4(e) – “dealings with between officers and members should be based on mutual trust and respect”.

3. *Elements of the statements made by Cllr Hayes were in breach of some of the General Obligations contained within the Members’ Code of Conduct of Charnwood Borough Council.*

As a consequence of a finding in respect of concern 2 above, Cllr Hayes has breached the Code of Conduct - Paragraph 3.11 “you must follow the adopted corporate operational policies of the Authority”.

13. INVESTIGATORS DETAILS

The investigator is Elizabeth Warhurst, Head of Legal and Commercial Services and Monitoring Officer at North West Leicestershire District Council. The Investigator qualified as a Solicitor of the Senior Courts of England and Wales in 2001, has held the role of Head of Service and MO at North West Leicestershire District Council for 13 years and is experienced in the application of the Member's Code of Conduct.

APPENDICES

Appendix 1 - Complaint Report of Monitoring Officer and Independent Person, (inc. appendix A and appendix B)

Appendix 2 - Council Agenda - 3rd September 2018 Questions on Notice

Appendix 3 - Summary meeting note - Cllr Vardy

Appendix 4 - Summary meeting note - Cllr Harper-Davies

Appendix 5 - Summary meeting note - Cllr Fryer

Appendix 6 - Summary meeting note - Chief Executive

Appendix 7 - Summary meeting note - Head of Planning

Appendix 8 - Summary meeting note - Cllr Hayes

Complaints from Cllr Eric Vardy (supported by Cllr Leigh Harper-Davies), from Cllr Hilary Fryer, and from Mr Geoff Parker (Chief Executive of Charnwood Borough Council) concerning statements made by Cllr David Hayes at a meeting of Charnwood Borough Council on 3rd September 2018

Complaint Refs: MC4a, 4b and 4c (18-19)

Date: 9th October 2018

Summary of the Complaints and Potential Breaches of the Code of Conduct

The three separate complaints all relate to supplementary statements made by Cllr Hayes at the Council meeting on 3rd September 2018 arising from his two questions on notice, and so they are being considered together within this fact finding summary.

Full details of the complaints are attached in Appendix A, and the concerns raised can be summarised as follows:

1. REDACTED
2. Cllr Hayes stated that the Head of Planning should be stopped from employment with a developer in future, and that officers' personal bank accounts should be available for inspection. This implies that the Head of Planning has been involved in dubious or nefarious activity which brings the reputation of the Council and its officers into question without any substantiating evidence, and which could also be construed as being slanderous.
3. Elements of the statements made by Cllr Hayes were in breach of some the General Obligations contained within the Member Code of Conduct of Charnwood Borough Council.

Cllr Hayes' conduct as referred to within the complaints could potentially be in breach of the following requirements contained within the Member Code of Conduct, and the Protocol on Member/Officer Relations:

Member Code of Conduct, section 3.1: *'You must treat others with respect'*.

Member Code of Conduct, section 3.5: *'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute'*.

Member Code of Conduct, section 3.11: *'You must follow the adopted corporate operational polices of the Authority'* (NB. This includes the Protocol on Member/Officer Relations – see below).

Protocol on Member/Officer Relations, section 4(e): *'Dealings between members and officers should be based on mutual trust and respect'*.

Protocol on Member/Officer Relations, section 6(e): *'Members are able to ask questions about the Council's decisions and performance both at formal meetings and informally. Members will have regard for an officer's level of seniority and area of responsibility in determining what are reasonable comments and questions'*.

Cllr Hayes' Response to the Complaints

Cllr Hayes has responded to the complaints as follows:

'While my representative is currently not available to make comments, I do however confirm that I strongly reject the allegations made against me! and will defend the comments that I have made as not being of an hominem nature but of the role and office of the individuals.

I also formally request that the Complaint made by the Chief Executive and by Cllr Harper Davis REDACTED be investigated by someone other than yourself as the Monitoring Officer. The reason being that should these complaints go forward from the fact finding stage, it's possible that I will be calling on you as part of my defence.

I also feel it necessary that I draw your attention to the comments made by Cllr Vardy directly about me as an individual, which may be in breach of the code of conduct and would welcome your views regarding this point.

REDACTED

As previously stated, and in the interest of local and transparent government, I believe all data should be publicly available'.

Conclusion of the Monitoring Officer

Cllr Hayes was elected in 2015 and signed his declaration of acceptance of office on 8th May 2015, and was therefore a Borough Councillor at the time of the meeting in question.

It was a full Council meeting, and therefore he was clearly acting in his capacity as a Councillor when he made the statements which are the subject of the complaints.

A transcript of the statements made by Cllr Hayes at the meeting is attached at Appendix B.

It is evident that within the statements made by Cllr Hayes he called into question the actions of individual Council officers, namely REDACTED and the Head of Planning & Regeneration.

In particular, his statements alluded to improper dealings between the Head of Planning & Regeneration and a developer over the negotiation of a s106 agreement.

Although Cllr Hayes has responded to the complaints, unless he is able to provide firm evidence to substantiate the allegations he made within his statements then he could potentially be in breach of the relevant requirements of the Member Code of Conduct and the Protocol on Member/Officer Relations.

Due to the nature of some of the comments made by Cllr Hayes within his statements, if there has been a breach of the Code of Conduct it could be a serious matter.

Therefore I conclude that a full investigation is required to determine whether there has been a breach of the Member Code of Conduct or the Protocol on Member/Officer Relations by Cllr Hayes.

Adrian Ward
Monitoring Officer

Views of the Independent Person

This matter goes to the heart of proper member/officer relations in local government, which should be based on mutual trust and respect until evidence of wrong-doing or poor performance is produced. Since Cllr Hayes did not produce such evidence, his critical remarks do not appear to be justified. So there is a potential breach of one or more Sections of the Member Code of Conduct which I believe is sufficiently serious to warrant a formal investigation.

Mr Michael Pearson
Independent Person

CLLR VARDY'S COMPLAINT (Ref. MC4a)

Council 3rd September 2018

I wish to make a formal complaint about Cllr D Hayes following his supplementary questions on notice 10.2 at the above meeting.

My complaint should be read in conjunction with the formal transcript of those items.

REDACTED

Now turning my attention to Q10.2

Cllr Hayes stated that the Head of Planning be stopped from employment with the Developer in the future. Based on what evidence? There's an implication that the Head of Planning is engaged with some dubious activity where is the evidence for that? He goes on to say that other (unnamed) organisations have a transparency clause in that officers bank account details are available for inspection. What is Cllr Hayes implying here also? A reasonable person not associated with the Council might conclude that some nefarious activity has taken place or is suspected. Where is the evidence for such a statement? All these matters do at the very least bring the reputation of the Council and officers into question and without an ounce or shred of evidence.

To say I was dismayed at Cllr Hayes public comments is an understatement. The officers were not able to defend themselves from this unwarranted attack so I do so for the reputation of the Council it's Officers and to attempt to allay fears this might bring to our residents that their Council is not being run lawfully.

Supporting Comments from Cllr Harper-Davies

I fully support Cllr Vardy's email in relation the way Cllr Hayes spoke out against

REDACTED

CLLR FRYER'S COMPLAINT (Ref. MC4b)

I am making a formal complaint against Cllr. David Hayes as a result of the statements he made at the Council Meeting on 3rd September, 2018. I have not made this decision lightly but very strongly believe that he brought the council into disrepute.

REDACTED

With reference to item 10.2 the supplementary statement/question Cllr. Hayes made inferred that the Head of Planning was somehow involved in dubious un-professional behaviour with planning applicants. To publically state that the bank accounts of the officer should be examined was totally uncalled for. Again with the officer or anyone else unable comment this could almost be construed as slander. Again this brings the council into disrepute. The official record and recording is my supporting evidence.

MR PARKER'S COMPLAINT (Ref. MC4c)

*I wish to register a formal complaint regarding the behaviour of Councillor Hayes at the Council meeting on 3rd September. I believe that elements of his supplementary questions/statements at items * and 10.2 were in breach of his obligations under Part 3 of Section 20 of the Council's Constitution.*

* REDACTED

Transcript – Council 3rd September 2018

Item and 10.2 – Questions on Notice

REDACTED

10.2 – West of Loughborough Sustainable Urban Extension

Cllr Hayes: Yes please madam mayor, Cllr Vardy, thank you for your description of the S106 process. However, I think you've rather missed the point on protecting the Council and the future residents. The point is that some years ago – 2001/ 2002 – someone sitting in your chair will no doubt have provided the same non- answer. The real nub is a good or bad deal but certainly the people of Grange Park would say they have a bad deal from the current William Davis legal agreement which is trying to be changed as we speak.

Your description and your continual refusal to learn from this poorly negotiated agreement could lead, just mean simply, [slight distortion in recording] in the future, others will be asking the same questions. Your answer to me that we know more than we did then is pretty laughable.

The question is, Cllr Vardy, I call upon you to provide independent legal assessment of this S106 agreement to avoid questions that the Council and/or its officers rolled over in the face of a hard, determined developer. That the Head of Planning be stopped from employment with the developer in the future, and as with many organisations have a transparency clause that officers personal bank account details can be available for inspection as required. Cllr Vardy you must have unlimited confidence in the Head of Planning – quite simply I don't.

Cllr Vardy: Cllr Hayes, once again we hear from you a mish- mash of poorly worded questions, accusations etc. I will just refer you to our written response and that's the end of it. Thank you

Public Document Pack



This meeting will be recorded and the sound recording subsequently made available via the Council's website: charnwood.gov.uk/pages/committees

Please also note that under the Openness of Local Government Bodies Regulations 2014 that other people may film, record, tweet or blog from this meeting. The use of any images or sound recordings is not under the Council's control.

To: All Members of the Borough Council

You are requested to attend the meeting of the Charnwood Borough Council to be held in the The Preston Room, Woodgate Chambers, Woodgate, Loughborough on Monday, 3rd September 2018 at 6.30 pm for the following business.

Chief Executive

Southfields
Loughborough

24th August 2018

AGENDA

10. QUESTIONS ON NOTICE

3 - 11

To deal with the following questions on notice, submitted under Full Council Procedure 9.9(a):

Forthcoming scheduled meetings of Council

Council Meeting Date	Deadline Date and Time for Councillors to submit Questions on Notice (under Full Council Procedure 9.9(a)), Requests for Position Statements (under Full Council Procedure 9.10) and Motions on Notice (under Full Council Procedure 9.11(a))
Monday, 3rd September 2018	Wednesday, 22nd August 2018 at noon

Monday, 5th November 2018	Friday, 26th October 2018 at noon
Monday, 21st January 2019	Friday, 11th January 2019 at noon
Monday, 25th February 2019	Friday, 15th February 2019 at noon
Monday, 25th March 2019	Friday, 15th March 2019 at noon

Councillors, please send your question, request for position statement or motion on notice to:

Karen Widdowson, Democratic Services Manager
Council Offices, Southfield Road, Loughborough, LE11 2TX
Email: democracy@charnwood.gov.uk

COUNCIL – 3RD SEPTEMBER 2018

ITEM 10 QUESTIONS ON NOTICE

10.1 Councillor Hayes – Decent Homes Contract

Will the Leader please confirm or deny if the Council have received a claim from Wates, following the expiry date of the Decent Homes contract and if so the details of the claim?

The Leader, or his nominee, will respond:

The Council appointed Wates Construction Limited to provide maintenance services to the Council's residential housing assets under a 4 year framework agreement dated 31st March 2014. Following the expiry of the framework agreement, and conclusion of the underlying contracts, in March 2018, Wates submitted a draft final account to the Council, in accordance with normal industry practice, which seeks to reconcile payments which it considers are due to it under the contracts with payments received from the Council.

The Council is currently evaluating the merits of Wates interim final account and will respond to Wates with the Council's final valuation shortly.

10.2 Councillor Hayes – West of Loughborough Sustainable Urban Extension

Can the Lead Member for Planning tell the Council what arrangements have been put in place to protect the Council regarding the £100million pound gross development value Section 106 legal agreement with developers relating to the sustainable urban extension west of Loughborough to ensure it provides the people of Charnwood with a strong negotiated agreement, which has been delegated to the Head of Planning and Regeneration?

The Leader, or his nominee, will respond:

The Section 106 legal agreement has been drawn up based on the community benefits approved by the Plans Committee in September 2016. It has been signed and planning permission was therefore issued on 20 July 2018. The legal agreement is ultimately enforceable by the courts but includes arbitration clauses if there is any dispute over the interpretation of the legal obligations. The signatories to the agreement including the developer or the Council may invite the signatories to vary the agreement at any time (but all parties have to agree to the variation). The agreement provides a contributory sum to be paid to the Council to ensure that the legal agreement is monitored over the build out of the development.

10.3 Councillor Campsall – Security for Older People's Bungalows

The Council provides valuable housing in the form of older people's bungalows. However the layout of bungalows in the Garendon ward is such that there are no fences between them to prevent access to the rear of the properties. A number of residents, all of whom are older people, have experienced problems as a result. There have been cases of people accessing the rear of properties causing a substantial invasion of privacy as well as genuine fear and concern. There have also been two break-ins where access was made from the rear of the property, one of which also involved an assault. This has led to a number of people having to keep their windows closed even during the recent hot weather.

Would the Lead Member therefore look into taking steps to protect these vulnerable people by putting up appropriate fences to prevent access to the rear of their homes?

The Leader, or his nominee, will respond:

It is saddening to hear that the most vulnerable members of our community have been targeted.

The bungalows in the Garendon Ward do not suffer from many incidences of crime and anti-social behaviour.

A large scale fencing scheme at the bungalows is not a proportionate or necessary response to problems that residents may have experienced.

I would encourage residents to take simple steps to increase their personal safety at home, and advice in this respect can be found on the Leicestershire Police website.

The Council has a dedicated Landlord Services Anti-Social Behaviour (ASB) Team. Tenants experiencing ASB should report it to the Council either online at the Council's website, or by telephone on 01509 634 666.

10.4 Councillor Bradshaw – Section 106 Payments

Would the Cabinet Lead Member give an update on how the group that meets to review Section 106 payments has performed over the last year?

And can the Cabinet Lead Member inform Full Council why the group does not look at Section 106 monies that have not been paid, for example where triggers in the agreement have not been reached or older applications, some of which are outstanding for many years longer than agreed?

The Leader, or his nominee, will respond:

Officers meet quarterly to monitor and report progress on spend. The group has good cross-directorate representation. The majority of

Section 106 contributions have been committed to a scheme or are being considered to be committed to “join up” separate contributions in a particular locality. The total amounts allocated and amounts already spent are identified by parish/ward so it is clear what has been achieved in each locality, as well as what is current.

Where contributions have been delayed in spend, the reasons are identified, e.g. to create a bigger scheme pot once more contributions have come “on line”, or the contribution spend is dependent upon a legal requirement which may have an uncertain end date, like land adoption. There are over 110 current agreements of which a handful of schemes (less than 10) have had refreshed timeframes agreed with the developer. Current agreements amount to approximately £3.6m and over half are already committed to schemes identified by parishes, health centres, community organisations etc.

The working group also works on forward planning for fresh Section 106 sums when new developments have been approved through the planning process. The need for forward planning across project schemes and maximising resources to the greatest benefit for an area will continue to form a key aspect of the remit of this working group. Considerable work continues with individual wards, parishes and community organisations on their proposals for Section 106 funds, but also “horizon scanning” for up and coming development and contributions that enable officers to plan early for consultation.

The quarterly report from the group is used to update the Lead Member on Section 106 matters on a quarterly basis. This information is also included in budget reporting at Cabinet and has also helped to inform questions at the Performance Scrutiny Panel and recent member training on Section 106 issues.

10.5 Councillor Draycott – Court Fees for Council Tax Summons

English local councils are set to be refunded money after they were overcharged for taking legal action over unpaid Council Tax. The Ministry of Justice has stated that court fees for Council Tax summons had been set too high since 2013/14 following an “administrative error” that charged an additional £2.50 per application.

As the Council’s policy is to pass on court costs how will the Council ensure the refunded money is paid back to each person concerned?

The Leader, or his nominee, will respond:

Legislation has recently been passed reducing the cost for Councils in making Summons applications to the Courts from £3.00 per case to £0.50 per case. This translates into a reduction in costs applied for from Magistrates Court of £2.50 which has reduced the level of costs applied to customer accounts following successful applications.

At present the Council is awaiting guidance and information regarding the potential to backdate this reduction in costs. Once this information

is received, the Council will then be in a position to confirm what action it will take with regards to this matter.

10.6 Councillor Draycott – Bring Sites

At Full Council on 25th June in a Position Statement requested by the Labour Group, Councillors were told that 70 bring sites would close in Loughborough and Charnwood. (item 8 on the agenda). Can the Cabinet Lead Member inform Council of the following:

- How many of the 70 sites have closed and of the remainder when will they close?
- How many will remain open and why?
- How many parish and town councils have chosen to pay for them to remain in their areas?
- How many will remain open at the University and how are they going to be paid for?

The Leader, or his nominee, will respond:

Please find my response to your questions below.

- *None of the sites have closed yet. It is anticipated that they will all be removed by end of September 2018.*
- *The banks for paper, card, cans and glass will all be removed. A small number of private textiles banks may remain on privately owned sites.*
- *I understand that two parish councils are considering running sites independently from the Borough Council.*
- *The Council is removing all bring banks from University sites and I understand that the University are considering making independent arrangements with private contractors for new banks. The University will be responsible for any costs.*

10.7 Councillor K. Harris – Reactive Contracts for Cleansing and Open Spaces

On several occasions recently I have had complaints from residents about streets not being cleaned or paths cleared and I have noticed and reported cases myself. On each occasion the Head of Service has got the work done promptly. As I was concerned about the number of complaints piling up, I asked about this and was told that the contracts are reactive. The procurement officer even told me that complaints are good because that gets the work done. Can the Lead Member reassure me and my residents that this is the best way to deliver services and that it is not just a measure to cut corners and save money?

The Leader, or his nominee, will respond:

Street Cleansing throughout the Borough is undertaken by the Council's Contractor, Serco, under the Environmental Services Contract. The contract requires Serco to keep all of public highways (including footpaths and cycleways), and Council Open Spaces free of

litter and detritus. The contractor deploys its resources pro-actively to ensure that all areas are maintained at the required standard. The graded standards used to monitor the cleanliness of areas are put into two categories; litter and refuse, and detritus (mud, soil, grit etc.)

The Contract has been operating in this way since 2009 and the performance has been consistently high throughout that period. The current levels of performance are:

- *Improved street & environmental cleanliness - levels of litter
2.4% of areas inspected falling below a Grade B*
- *Improved street & environmental cleanliness - levels of detritus
3.8% of areas inspected falling below a Grade B*
- *Percentage of people satisfied with cleanliness standards
71.53% of residents satisfied with the levels of street cleansing.*

Compliments for the service outnumber the number of complaints by a ratio of approximately 3 to 1.

Areas maintained by Charnwood have been classified into one of four main land zones, which are set out in the Code of Practice on Litter and Refuse. If a site falls to a grade C or D for either litter and refuse, or detritus, it is considered that the cleanliness is poor and classed as unacceptable, and should be handled within the set response times as laid out below

Zone	Description	Response Time
Zone 1 - high intensity of use	Busy public areas	Half a day.
Zone 2 - medium intensity of use	'Everyday' areas, including most housing areas occupied by people most of the time	1 day.
Zone 3 - low intensity of use	Lightly trafficked areas that do not impact upon most people's lives most of the time	14 days.
Zone 4 - Areas with special circumstances	Situations where issues of health and safety, reasonableness and practicality are dominant considerations when undertaking environmental maintenance work	28 days, or as soon as reasonably practicable

More information on this matter including grading standards can be found on the Council's website:

<https://www.charnwood.gov.uk/pages/streetcleaningandlitter>

Regular inspections are conducted by Serco and Council staff to ensure that a high level of cleanliness is maintained at all times. A significant number of inspections, and additional less formal monitoring takes place. However, the monitoring that is conducted can only be classed as a sample of the borough at any given time.

Residents and elected members are encouraged to report any areas of concern in order that an appropriate response can be made to each case.

Finally it is important to note that whilst the contract has brought significant efficiency savings to Charnwood, the contract was never awarded on the basis of cheapest option, with quality being a more significant factor.

10.8 Councillor Miah – Local Government in Leicestershire

Can the Leader inform Council what discussions have taken place with the County Council regarding a proposed unitary authority for Leicestershire? Can he also disclose to Council what discussions he has personally had with the Leader of Leicestershire County Council, Mr Nick Rushton, regarding the matter?

Has he or any member of his administration, or officers of the Council or anyone at his request, had any formal or informal discussions with any other Leader, member or officer of any other councils within Leicestershire regarding the matter of the proposed new unitary council or any other combination or formation of councils? And if so what was the outcome of those discussions?

The Leader, or his nominee, will respond:

Leicestershire County Council has had no discussions with members or officers of this Council regarding its proposals for a unitary authority for Leicestershire.

District Council Leaders in Leicestershire have discussed the model of local government in Leicestershire and published a joint statement on 27th July. This was reported to Cabinet at its meeting on 16th August.

Discussions are ongoing at Leader and Chief Executive level to adopt a collaborative approach with other Local Authorities in Leicestershire to examine what may be the best way of delivering local services for residents in the County, and in the wider context of the East Midlands region.

10.9 Councillor Hamilton – Anti-social Behaviour

Can the Lead Member inform Council what is being done about the anti-social behaviour being suffered by our residents? There has been a recent spate of incidents in Sileby, Shepshed and Loughborough including the town centre where gangs of youths can be seen hanging around and causing severe issues for residents. What specific actions

have officers taken in those three locations and what were the outcomes?

Can the Lead Member also inform Council how many reported incidents of anti-social behaviour have been logged by the Council in each ward within the Borough over the past twelve months?

The Leader, or his nominee, will respond:

Tackling anti-social behaviour (ASB) and improving the outcomes for victims is a key strategic priority for the Community Safety Partnership. Profiling of repeat locations, victims and perpetrators occurs on a monthly basis and is discussed at the multi-agency Joint Action Group (JAG).

Each high-risk case receives detailed discussion and there is a mandatory referral to Victim First. An incremental approach is taken in order to tackle perpetrators with outcomes ranging from: verbal / written warnings, Anti-Social Behaviour contracts, possession orders to evict (if tenants) and County Court Civil Injunctions. All of these tactical options have been utilised by the Council within the last 12 months. In terms of positive action being taken against perpetrators, the Partnership has seen a 60% increase in the first quarter of 2018/19.

Specifically in relation to Sileby, Shepshed and Loughborough town centre, all 3 locations have been referred to the JAG. Each has been referred to the Youth Offending Service who have deployed their IMPACT team to each location to engage with groups of youths. Offenders have been identified, multi-agency meetings have been convened and the above incremental approach is being applied to tackle persistent offenders. Further information can be found at:

https://www.charnwood.gov.uk/files/papers/smb_08_august_2018_item_07_crime_and_disorder_reduction_and_community_safety/SMB%2008%20August%202018%20Item%2007%20Crime%20and%20Disorder%20Reduction%20and%20Community%20Safety.pdf

Overall incidents of ASB across the Borough are down compared to last year. The table below breaks down the number of ASB incidents logged by the Council within the last 12 months by Police Beat:

Beat Area	19th August 2017 to 19th August 2018
Beat 56 Covers Woodhouse Eves, Newtown Linford, Cropston, Rothley and Quorn	61
Beat 57 Mountsorrel	41
Beat 58 Anstey	27
Beat 59 Covers Wymeswold, Hoton, Burton on Wolds, Barrow Upon Soar, Sileby, and Seagrave	99
Beat 60 Covers Birstall and Wanlip	17

Beat 61 Covers Queniborough, Syston, Thurmaston, Barkby, Beeby and South Croxton	132
Beat 62 Covers Ashby Road Estate, Loughborough University, Storer Road Area, Loughborough Town Centre and Loughborough College	221
Beat 63 Covers Nanpantan, The Outwoods and Shelthorpe	49
Beat 64 Covers Hathern, Shepshed and the Dishley Road Estate	94
Beat 65 Covers Bell Foundry Estate, Warwick Way Estate, Parts of Alan Moss Road, Meadow Lane, Sparrow Hill, Pinfold Gate, Leicester Road	195

QUESTIONS ON NOTICE TO COUNCIL – PROCEDURE

- Councillors are required to submit a question on notice in writing by 12noon on the sixth working day prior to Council, the title of the question is published on the Council Agenda.
- Questions and responses will be published at the end of the previous working day (usually the Friday prior to a Council meeting on a Monday) and will be available at the Council meeting for Councillors, the press and the public.
- After the questions and responses are published Councillors may indicate that they wish to ask a supplementary question and/or make a statement by noon on the day of the Council meeting.
- The Mayor will invite those Councillors who have indicated that they wish to do so to ask a supplementary question and/or make a statement.
- The Leader (or relevant Lead Member on behalf of the Leader) or Chair of the Committee is able to respond.
- The total time each person can speak on a single question is time limited.

SUMMARY MEETING NOTE WITH CLLR VARDY OF CHARNWOOD BOROUGH COUNCIL**26 OCTOBER 2018****INTERVIEWER: ELIZABETH WARHURST**

EW introduced herself and explained her role and remit. She had been commissioned to investigate complaints made by Cllr Vardy and others into statements made by Cllr Hayes at the meeting of Council on 3 September 2018.

EW explained that she had listened to the recording of the Council meeting which had been published on line, looked at the questions submitted on notice to the meeting, the responses, draft Council minutes, CBC Members' code of conduct and arrangements for dealing with complaints about member conduct. She had also had the benefit of a summary of the complaint provided by the MO at CBC which included the complaints, the initial response from Cllr Hayes and a summary of the steps taken by the MO.

EW explained that her remit was limited into investigating the comments made by Cllr Hayes in relation his questions on notice about **REDACTED** and the "West of Loughborough Sustainable Urban Extension". It did not extend to looking into these issues in their own right.

Cllr Vardy stated that had been elected in 2011 and had been the Cabinet Lead/support member for Planning, Economic Regeneration and Tourism since then. Cllr Hayes had been his deputy for a period of time following his election in 2015. Cllr Vardy had provided mentoring and support to Cllr Hayes in his role as Deputy. However, the relationship between them had not been an easy one due to Cllr Hayes approach and behaviour towards officers which was often adversarial. A political decision had been taken to remove Cllr Hayes from his role and seats on committee and he was now a backbencher.

By way of context, Cllr Vardy explained that Cllr Hayes had, prior to his election, been employed by CBC as a contracts officer.

Cllr Vardy recalled that the meeting of Council on 3 September was an ordinary meeting with an uncontroversial agenda. There were a number of questions on notice from members, but that was usual.

REDACTED

In respect of item **10.2 West of Loughborough Sustainable Urban Extension**

By way of background, Cllr Vardy explained that the Grange Park development was in Cllr Hayes ward. Cllr Hayes had been raising concerns regarding the S106 for a number of years. Cllr Vardy had responded to his concerns by providing him with information and supporting an extension of time on the S106 obligation regarding the transfer of land for a community centre.

Cllr Vardy understood that the comment about the head of planning being “stopped from employment with the developer in the future” meant that Cllr Hayes wanted the Council to do something to stop the head of planning working for the developer should he ever leave the employment of the Council.

He considered that the other comments regarding the transparency of the personal bank accounts of officers suggested unethical and nefarious activity between officers and developers. His comments were speculative and sought to make officers appear guilty by innuendo.

Cllr Vardy said that Cllr Hayes had provided no evidence to substantiate his statements, despite having had the opportunity to do that as part of the complaints process.

EW asked whether members generally debated matters at Council, did they engage in political “banter” and challenge of other members. Cllr Vardy said that did take place. There was a good level of political challenge and “banter” across the chamber. Challenge and scrutiny was vital to local government and was very good at CBC.

However, Cllr Hayes comments about individual officers had crossed the line. Cllr Vardy said that he had considered carefully whether to bring the complaint or not. He had decided to do so as he felt that officers were not able to respond to defend themselves against unevidenced accusations. He had reflected on what a reasonable person would think if they had heard that part of the meeting and concluded that they would think that officers might be corrupt. Statements like this could impact on the reputation of the Council and the relationships that officers needed to maintain with developers to do their jobs. Officers owed a duty to developers/applicants and the public to deal with applications professionally.

Cllr Vardy stated that it was important that members and officers understood their respective roles. Members needed to understand that officers were employed to run the Council on their behalf. There was a need for tolerance, patience and respect and to maintain a good working relationship. Cllr Hayes sometimes overstepped the line. It was not necessary or appropriate for him to act as “one man scrutiny band” and it wasn’t right that he could say what he liked without facing recriminations for it.

Cllr Vardy said that he was willing to examine evidence on any of the claims from Cllr Hayes, should that be forthcoming.

EW advised that she needed to meet with other members and officers as part of her investigation. She would prepare a report for the MO and he would take it through the next steps in the process.

EW stated that, should Cllr Vardy remember anything else then she could be contacted.

-END-

SUMMARY MEETING NOTE WITH CLLR (LEIGH) HARPER-DAVIES OF CHARNWOOD BOROUGH COUNCIL**26 OCTOBER 2018****INTERVIEWER: ELIZABETH WARHURST**

EW introduced herself and explained her role and remit. She had been commissioned to investigate complaints made by Cllr (Leigh) Harper-Davies and others into statements made by Cllr Hayes at the meeting of Council on 3 September 2018.

EW explained that she had listened to the recording of the Council meeting which had been published on line, looked at the questions submitted on notice to the meeting, the responses, draft Council minutes, CBC Members' code of conduct and arrangements for dealing with complaints about member conduct. She had also had the benefit of a summary of the complaint provided by the MO at CBC which included the complaints, the initial response from Cllr Hayes and a summary of the steps taken by the MO.

EW explained that her remit was limited into investigating the comments made by Cllr Hayes in relation his questions on notice about the "decent homes contract" and the "West of Loughborough Sustainable Urban Extension". It did not extend to looking into these issues in their own right.

Cllr (Leigh) Harper-Davies explained that she was the lead member for major contracts like the decent homes works contract. For context, she explained that Cllr Hayes used to work at CBC as a contracts officer. She had not known him when he worked for the Council. She felt that he sometimes blurred the line between his former role as an employee and his current role as member.

REDACTED

The Council meeting on 3 September 2018 was a normal Council meeting. The press did sometimes attend Council but Cllr (Leigh) Harper-Davies could not recall if they were in attendance at that meeting. Cllr Hayes would frequently ask questions at Council and Cllr (Leigh) Harper-Davies felt that there was an undercurrent to them.

REDACTED

She didn't hear everything that was said in response to the question regarding the S106/SUE matter as she was distracted processing her thoughts about what Cllr Hayes had just said in response to her question. She had been sat next to Cllrs Mercer and Poland and they asked her if she had heard what Cllr Hayes said. She recalled hearing the end of his response when he effectively referred to bribery and corruption. She was dismayed by what she had heard.

EW advised that she needed to meet with other members and officers as part of her investigation. She would prepare a report for the MO and he would take it through the next steps in the process.

EW stated that, should Cllr (Leigh) Harper-Davies remember anything else then she could be contacted.

-END-

SUMMARY MEETING NOTE WITH COUNCILLOR FRYER OF CHARNWOOD BOROUGH COUNCIL**12 NOVEMBER 2018****INVESTIGATOR: ELIZABETH WARHURST**

EW introduced herself and explained her role and remit. She had been commissioned to investigate complaints made by Councillor Fryer and others into statements made by Councillor Hayes at the meeting of Council on 3 September 2018.

EW explained that she had listened to the recording of the Council meeting which had been published on line, looked at the questions submitted on notice to the meeting, the responses, draft Council minutes, Charnwood Borough Council Members' Code of Conduct and arrangements for dealing with complaints about member conduct. She had also had the benefit of a summary of the complaint provided by the Monitoring Officer at Charnwood Borough Council which included the complaints, the initial response from Councillor Hayes and a summary of the steps taken by the Monitoring Officer.

EW explained that her remit was limited into investigating the comments made by Councillor Hayes in relation to his questions on notice about the "Decent Homes Contract" and the "West of Loughborough Sustainable Urban Extension". It did not extend to looking into these issues in their own right.

Councillor Fryer had been a councillor at Charnwood Borough Council since 2003 and had been the Cabinet Lead Member for Development and Planning from May 2007-May 2009 and then became Lead Member for Waste, Open Space, Tourism and Leisure from May 2009 until November 2017. Councillor Hayes had been a councillor since 2015 and prior to that had been an officer at Charnwood Borough Council. Councillor Fryer had known of Councillor Hayes in his time as an officer at Charnwood Borough Council as he was a member of the team working in one of her portfolio services and he had been on project boards that she had attended.

The Council meeting on 3 September was, in most respects, a normal meeting, until the questions were asked by Councillor Hayes. Charnwood Full Council meetings were generally lively meetings where debate, scrutiny and challenge of fellow councillors were encouraged. The Conservative administration believe that this is important, given their large majority, holding 41 out of 52 seats on the Council. The questions from councillors item is now considered at the end of the agenda, rather than the beginning.

Questions were encouraged and were rarely refused. It was good practice for the member asking the question to let the lead member know they had a supplementary question to enable the lead member to provide a response. Members often engaged in political banter across the Chamber and it was a good humoured atmosphere, by and large.

Councillor Fryer stated that, if a councillor had a concern, it should initially be raised through the lead member, Whip or Leader. The proper channels should be followed. There was also the facility to engage the lead member through the Cabinet process, for example to request a meeting on an issue. Councillor Fryer did not believe that it was appropriate to address officers or use their names / titles in meetings in the way that Councillor Hayes had done as they had no opportunity to respond.

REDACTED

In respect of the question at Item 10.2 - West of Loughborough Sustainable Urban Extension

Councillor Fryer stated that she was concerned about comments from Councillor Hayes in his supplementary question:

“That the Head of Planning be stopped from employment with the developer in the near future and, as with many organisations, have a transparency clause that officers’ personal bank account details can be available for inspection as required”.

Councillor Fryer took that comment to mean that Councillor Hayes believed that the Head of Planning be stopped from negotiating with the developer because there was something underhand involving financial transactions going on between them. If a member of the public had heard that they could imagine that the Head of Planning was too close to the developer. She believed the comments were targeted at the current incumbent post holder as Councillor Hayes had said “the” Head of Planning and that he had intended to make this point.

Councillor Fryer said that Councillor Hayes was familiar with the procedures at the Council. If he had a genuine concern, why had he not exhausted all the other avenues first? It could have been raised at Scrutiny.

There was a reaction around the room with other councillors saying things like “you can’t say that”.

The relationships between officers and members were generally good and everyone was approachable and open to listening to issues and concerns. Councillor Fryer had been part of the selection process for prospective councillors in the past. Those involved in the process always emphasised the need for councillors to treat each other and officers with professionalism and respect.

Councillor Fryer had not spoken to Councillor Hayes about the matter of the complaint. As one of Charnwood Borough Council's longest serving councillors she felt that something needed to be done about the comments. She had received an e-mail from Councillor Hayes about the complaint. She had sought advice from the Monitoring Officer, Leader and Whip about it.

SUMMARY MEETING NOTE WITH MR GEOFF PARKER, CHIEF EXECUTIVE OF CHARNWOOD BOROUGH COUNCIL

12 NOVEMBER 2018

INVESTIGATOR: ELIZABETH WARHURST

EW introduced herself and explained her role and remit. She had been commissioned to investigate complaints made the Chief Executive and others into statements made by Cllr Hayes at the meeting of Council on 3 September 2018.

EW explained that she had listened to the recording of the Council meeting which had been published on line, looked at the questions submitted on notice to the meeting, the responses, draft Council minutes, CBC Members' code of conduct and arrangements for dealing with complaints about member conduct. She had also had the benefit of a summary of the complaint provided by the MO at CBC which included the complaints, the initial response from Cllr Hayes and a summary of the steps taken by the MO.

EW explained that her remit was limited into investigating the comments made by Cllr Hayes in relation his questions on notice about the "decent homes contract" and the "West of Loughborough Sustainable Urban Extension". It did not extend to looking into these issues in their own right.

REDACTED

In respect of item 10.2 West of Loughborough Sustainable Urban Extension

Mr Parker stated that, by way of background, the comments which caused him concern in paragraph 3, were not referring to the West of Loughborough SUE (Garendon site). They were, in fact, about the Grange Park development which is in Cllr Hayes ward.

Mr Parker said that the statement about "the Head of Planning be stopped from employment with the developer in the future" could infer that there should be a restriction on the officer's future employment. The paragraph also implied that developers could be making improper payments to officers and it called into question the integrity of officers and developers, by suggesting that the Head of Planning was dishonest and resorting to improper practices. It brought the Council into disrepute. It was not an objective and evidenced based statement.

It was uncommon to refer to officers in the answers to questions by members and the supplementary questions. The questions and answers were a matter between the member and the lead member.

The council had a gifts and hospitality register and Mr Parker was not aware of any unusual entries in relation to the head of planning. If Cllr Hayes had evidence of bribery and corruption on the part of officers, this should be raised with the police and himself as Head of Paid Service. Cllr Hayes had not, so far as he was aware, done so.

Mr Parker could not recall whether there was a reaction to the statement being made in the meeting. He does recall thinking to himself "what did Cllr Hayes just say" but he was engaged in his role in the meeting.

Mr Parker stated that, the fact that this statement had been made by Cllr Hayes was known amongst senior managers at the council. Mr Parker had discussed the issue with Mr Bennett and informed him that he intended to make a complaint about it. He had also sought advice from Mr Ward, the MO.

-END-

SUMMARY MEETING NOTE WITH RICHARD BENNETT OF CHARNWOOD BOROUGH COUNCIL**12 NOVEMBER 2018****INVESTIGATOR: ELIZABETH WARHURST**

EW introduced herself and explained her role and remit. She had been commissioned to investigate complaints made by Cllr Vardy and others into statements made by Cllr Hayes at the meeting of Council on 3 September 2018.

EW explained that she had listened to the recording of the Council meeting which had been published on line, looked at the questions submitted on notice to the meeting, the responses, draft Council minutes, CBC Members' code of conduct and arrangements for dealing with complaints about member conduct. She had also had the benefit of a summary of the complaint provided by the MO at CBC which included the complaints, the initial response from Cllr Hayes and a summary of the steps taken by the MO.

EW explained that her remit was limited into investigating the comments made by Cllr Hayes in relation to his questions on notice about the "decent homes contract" and the "West of Loughborough Sustainable Urban Extension". It did not extend to looking into these issues in their own right.

Mr Bennett has not been at the Council meeting on 3 September 2018. He never attended Council in his role. He was aware of the question from Cllr Hayes and had put the response together for the lead member.

By way of context, Mr Bennett stated that he was aware that Cllr Hayes had been asking questions about the section 106 agreement (completed in around 2002) for the Grange Park development for around 2.5 years. Broadly, Cllr Hayes was concerned that those things which had been included in the masterplan for that development were not being realised. For example, when the planning committee determined the planning application for the site, they had decided to prioritise s106 contributions for the Epinal Way extension. This was a significant piece of infrastructure work. This meant that other elements of the masterplan had taken a lower priority. For example, the plan for the development of a Local Centre and community centre had changed^[RB1].

Mr Bennett's view was that Cllr Hayes did not have an easy relationship with staff, his fellow Councillors and the administration and in seeking to manage this and deliver for his constituents was often confrontational when representing their concerns and issues.

Mr Bennett had dealt with Cllr Hayes in respect of the Grange Park section 106 for around 2 ½ years. He had been asked various questions and Cllr Hayes had been provided with responses. Sometimes Cllr Hayes' questions were repetitions and the lead member had decided that the Council would not provide information again where it had already been given to Cllr Hayes.

Mr Bennett was on leave on the day of the Council meeting. He had been made aware of Cllr Hayes' comments by his Director, Ms Mallon on his first day back in the office. Ms Mallon provided him with a transcript of the meeting. He had not listened to the audio recording.

He discussed the matter with his Director and considered whether this was something which he should refer to the RTPI to see what support they could offer. He had decided to await the outcome of the CBC investigation process before deciding whether to take any further action.

On reviewing the transcript, Mr Bennett was concerned about the 3rd paragraph in particular;

“The Head of Planning be stopped from employment with the developer in the future, and as with many organisational have a transparency clause that officer’s personal bank account details can be available for inspection as required”.

Mr Bennett considered that this statement suggested that there was an improper relationship between himself and the developer that he either was now, or would in the future be, in the employ of the developer and was using his knowledge of the council to his and the developers benefit. It suggested that he was either taking backhanded payments from the developer now or should he work for the developer, in the future, his bank account should be scrutinised for a ‘welcome’ payment.

Mr Bennett was familiar with his professional code of conduct and standards. For example, if at some point in his career, he was to move into the private sector, he would not be able to operate in the area of Charnwood Borough Council for a period of two years.

He was offended, cross and upset when he heard what Cllr Hayes had said. Although he had not always found Cllr Hayes easy to work with, he was surprised that he had made such a statement. Mr Bennett had been a professional officer since 1997 and had built a reputation for being even handed and ‘straight down the line’ and the statement from Cllr Hayes called into question his honesty and integrity and therefore undermined his reputation. The statement was made in a public meeting and the audio recording was available, irrespective of whether many people had listened to it.

Mr Bennett did not believe that senior offices should be expected to have a “thicker skin” and accept such statements being made about them. All officers were employees of the council and should be treated with respect. Generally, the working relationship between officers and members of CBC was very good. It was possible to have robust professional discussions, respect different viewpoints and efficiently conduct the business of the council.

Mr Bennett said that the incident at Council was known to the senior leadership team and one of his team members was certainly aware of it, having heard about it from a colleague.

Mr Bennett had not seen Cllr Hayes since the meeting or spoken to him about the incident. He had received and responded to an email from Cllr Hayes in which he requested some information about the Grange Park Development.

Mr Bennett was aware that the Chief Executive was putting a complaint in about the statements made by Cllr Hayes at the council meeting, on behalf of officers. It was important that the council did not turn a blind eye to such behaviour. This being the case, he did not feel it was necessary to make an individual complaint. However, he would keep the situation under review and would seek advice on his position.

SUMMARY MEETING NOTE WITH CLLR HAYES, OF CHARNWOOD BOROUGH COUNCIL**14 NOVEMBER 2018****INVESTIGATOR: ELIZABETH WARHURST**

EW introduced herself and explained her role and remit. She had been commissioned to investigate complaints about the statements made by Cllr Hayes at the meeting of Council on 3 September 2018. The complaints had been made by Cllr Vardy (supported by Cllr Leigh Harper-Davies), Cllr Fryer and Mr Parker, the Chief Executive. Cllr Hayes asked about the transparency of the process and whether the meeting notes would be made available to the public. He was very keen that the whole process be open to public scrutiny. EW advised that the next step was for her to compile her report and submit that to the MO. The MO would decide the next steps. EW advised Cllr Hayes to seek advice and follow guidance from the MO who was very experienced in the process.

EW explained that she had listened to the recording of the Council meeting which had been published on line, looked at the questions submitted on notice to the meeting, the responses, draft Council minutes, CBC Members' code of conduct and arrangements for dealing with complaints about member conduct. She had also had the benefit of a summary of the complaint provided by the MO at CBC which included the complaints, the initial response from Cllr Hayes and a summary of the steps taken by the MO.

EW explained that her remit was limited into investigating the comments made by Cllr Hayes in relation his questions on notice about the "decent homes contract" and the "West of Loughborough Sustainable Urban Extension". It did not extend to looking into these issues in their own right.

Cllr Hayes provided some background to his experience and various roles including CBC. He considered that he didn't have the usual background of a member. He had been a senior manager working for the London Borough of Lewisham for a number of years directly managing a large workforce, winning two rounds of cct and achieving BSI and IIP across a number of different service areas and locations. He also worked on the transfer of the GLA and ILEA to the Borough. He also commented that he regularly met and discussed issues and topics with Members of the ruling Labour administration local MPs and shadow Ministers.

He then moved to Serviceteam a private company (3i) as an Area Director responsible for a number of LA's contracts across the UK. He was also part of the Management team who successfully won a £40m a year PFI contract for delivering a range of services to LB Lambeth.

Cllr Hayes then set up his own company and spent the next 10 years troubleshooting or problem solving for both local authorities and the private sector working in a range of contract areas; waste, highways, facility management, parking and parking finance and local government reorganisation, in the West Country along with similar roles in the private sector.

He had been the head of client services for Islington and Haringey both at the same time. He had a proven had a track record of senior management roles and experience in change management and successful tendering. He had also spent time working as an officer at CBC. Initially he joined the council as an Interim Manager for a 3 month period to undertake the role of the day to day management of the Waste and Street Sweeping contract. The interim manager contract was extended and he was asked to join a tender team to write and deliver a new Waste and Litter Sweeping contract. He was well placed to do this having been part of the central government working group who had written the EPA 1990. He also led the officer's presentation to Members scrutiny group. He was due to leave the council once the contract was let. However, he was invited

to stay on to oversee the first year of the contract and provide some cover for the contracts manager who was on maternity leave. This role often required direct contact with Members of all parties when they reported issues and to ensure issues and problems were resolved.

Councillor, Professor Preston, lead member in Cabinet often approached Cllr Hayes to discuss issues with him. Cllr Hayes liked working at CBC. He felt it was the right size of organisation to really make a difference and he was driven by the chance to make improvements and he had brought a different approach to CBC of a “can-do” attitude of tackling problems rather than avoiding and using the treacle management approach.

In 2010, having left the council at the end of his contract, Cllr Hayes said that he was invited to apply for another role at CBC which would be advertised in due course. He was successful in securing the position of a project manager. Cllr Hayes explained that he had dealt with members since the early 90s in various roles. He also had experience in dealing with MPs. He understood the political environment and how important it was to deliver on the promises made to the constituents. He felt that he brought a different range of skills and experience to his role as a councillor. The role of councillor was challenging, especially for new members as it required a lot of work and reading of lengthy documents. He had observed that some new councillors struggled and he had been able to offer his skills and experience to support them in their roles.

He had been elected in 2015 for the Shelthorpe ward. It had previously been a labour controlled ward. He had been able to “hit the ground running” following his election due to his experience.

Cllr Hayes explained that he went onto Cabinet following his election in June 2015 where he was the Deputy lead member for Planning and directly responsible for regulatory services for 2 years. He knew that area of the business really well in terms of environmental health, enviro crimes. He embraced the chance to look at the commercialism agenda, improve services, reduce the budget and learn from best practice elsewhere. He had a real desire to make change and behave with integrity, making tough decisions when necessary. He began to feel uncomfortable in his role when he was challenging issues and effectively being asked to “rubber stamp” items at Cabinet. This approach went against his values. Cllr Hayes came off Cabinet in June 2017 and became a backbencher. He still had a belief that issues should be challenged and members should “do the right thing”. He took some inspiration from Barry Quirk, Chief Executive of the Kensington and Chelsea Borough Council who had spoken about councils who produced lengthy reports which don’t contain all the relevant information in a clear and concise way.

Whilst he had been on Cabinet he had been shocked at the way the council ran the services in his portfolio. After speaking to the Head of Service and Director, he had learned that they didn’t know the commercial details of the operation of the business such as hourly rates, net cost of services and hadn’t reviewed internal recharges for some time. He had been able to do some good work, for example, in reviewing the costs of providing a taxi licence to establish whether the services was being provided at subsidised rate. He felt that the Council needed to take a more business-like approach.

There was no strategy available to reduce costs, improve services or to develop income growth. Managing services efficiently to develop income growth and reduce the impact on the general fund was something that he had done in the 90s.

He was clear on his role as a councillor and how that differed from his role as an officer. This had also made him aware of when he was being stonewalled and not being provided with information.

Cllr Hayes had been an advocator to introduce recordings of meetings as the minutes didn't always reflect what had happened at meetings. He felt that the minutes were drafted in such a way as to "smooth off the rough edges" and portray a positive image. Cllr Hayes observed the transcript of the council meeting of 3 September was interesting.

On discussing the function of modern minutes, Cllr Hayes was aware of the fact that minutes were intended to be a record of the decisions of the body concerned, they were not intended to be a verbatim record and that might explain the different approach between the recording and the formal minute.

On the 15th December 2016 while still on Cabinet, he requested a 30 minute meeting with the strategic director to discuss progress in his service areas for that year. He was interested to learn what had gone well and what improvements could be made the following year and to give her a box of chocolates. He found it hard to get the meeting arranged and had sent around a dozen emails before an email was sent to the CE to register a complaint. (This complaint was not included in a report to members) He was then requested to meet-with the Leader and then the Chief Executive to explain why he needed the meeting with the Director. The meeting then took place on the 1st February 2017 which had been really useful. He felt it would be difficult and unacceptable to explain to the electorate why it taken 6 weeks to arrange a meeting.

As a result of this delay he didn't feel that he could accept all his allowances as he was not able to undertake his job. He made a complaint that he was being professionally frustrated and unable to fulfil his role as a councillor and returned £30 by cheque to the Council. The cheque was cashed by the council, but he learned that the website still showed him as being in receipt of the full amount of allowance and HMRC were also working from this incorrect information on his P60. He raised the matter with the MO and the leader, whip and deputy leader were aware of his concerns. Nobody tackled the issue and 14 months later he told the council he would bring legal proceedings for the publication of the incorrect information. A cheque dated the 6th April 2018 was sent to Cllr Hayes on the basis that they couldn't process the return of the allowance.

Cllr Hayes felt that this example encapsulated his concerns about the lack of accountability to resolve issues at CBC; that there was a strategy of arrogance and ignoring issues in the hope that, over time, the member would forget and things would go away.

Turning to the council meeting on 3 September:

REDACTED

REDACTED

REDACTED

In respect of item **10.2 West of Loughborough Sustainable Urban Extension**

Cllr Hayes said that he used to be the deputy to the lead planning member, Cllr Vardy. He didn't have a planning background but was keen to be involved and learn. He had a different, more hands on/detailed approach to Cllr Vardy who tended to be more hands off.

In the early days of his planning role he had met with officers to understand more about the larger planning applications, such as Grange Park. The S106 had been described as "weak" by officers. Cllr Hayes described his concerns about the way that the S106 had been drafted. There were large areas of open space that were not maintained by S106 funding as the contributions had been prioritised for infrastructure contributions and there was no trigger point for the creation of a children's' play area and the development was 18 years old. The S106 contained a clause in relation to the provision of land for the development of a community centre which was time limited for a period of 10 years. He had worked with residents to secure lottery funding of £500,000k. The 10 year time limit expired in 2015 and a number of one year extensions were agreed with the developer. However, in 2017 the developer declined to agree a further extension. They were now keen to develop out that part of the site for around 30 houses.

Cllr Hayes has asked, on three occasions, for a review of Planning Permission and S106 to consider lessons learned and how the council could secure better outcomes via the S106 agreement on large developments. He felt that he had been robustly brushed away a number of times and the council were letting residents down. He had decided that the council would need to live with the failings of the Grange Park S106 but he wanted to seek assurances that the other applications were dealt with to achieve the best outcome for residents and the council.

It was against this background that he had asked his question at council about the Garendon planning application and S106. He wanted to avoid the same thing happening again. Cllr Hayes understood that the council had delegated the authority to negotiate S106s to the head of planning and that this was commonplace in councils. However, the officer might not have had experience in negotiating agreements of this size and value. Officers were good, but often the best went to work for developers and private companies on much greater salaries.

Cllr Hayes was disappointed in the answer to his question as it was telling him things that he already knew about the 106 CIL process. He understood that the responses to questions were also for the benefit of the public who may not be aware of the process in the same way that members would be. His question was intended to seek assurance that the S106 would secure a good deal for the community and that the agreement had been reviewed externally.

In response to the complaints, Cllr Hayes stated that;

He was concerned as to why it was so difficult to get an answer to a simple question and provide assurances. The reference to the “head of planning being stopped from...” was a reference to a “restraint of trade” type clause. Where he had worked previously, it had been the norm for such clauses to be included in employment contracts.

The reference to the head of planning’s bank account – this was a question of transparency which was important when officers were in a decision making position. He had also had a similar clause in his employment contracts in the past.

He refuted the suggestion that the statements inferred that the head of planning was engaging in underhand or corrupt activities. If he had felt that was the case, he would have taken his complaint to the police.

He had not made any accusations about the head of planning’s probity or conduct. He had been making a point about good employment practices which were commonplace elsewhere. These were particularly important in the case of CBC, as the organisation had declined to review and learn from previous experiences with The Grange Park S106.

He refuted the suggestion that his remarks were disrespectful. He was standing up and speaking out for residents, to provide the public with confidence and transparency in this area and the Council.

He does however recognise being educated in an inner city school, his management experiences and his regional dialect meant that he took a no nonsense approach and spoke clearly about issues.

The complaint was part of a bigger issue in the way that local government was being managed. CBC officer’s was not accountable to the electorate and often passed the parcel.

Cllr Hayes has made it clear that he will defend himself against the complaint.

Cllr Hayes had brought some documentary evidence with him and offered to provide further evidence if needed. EW confirmed that it would not be necessary to share that evidence at this stage, though she had looked at papers concerning the members allowance issue in the meeting. Cllr Hayes reserved the right to bring written or witness evidence forward if necessary as the process progressed.

Cllr Hayes confirmed that he was content with the interview process and had said all that he wanted to say in response to the complaint.

-END-

MONITORING OFFICER'S VIEWS ON THE RELEVANCE OF ISSUES INCLUDED WITHIN COUNCILLOR HAYES' APPEAL

(Note: The Monitoring Officer's comments are shown in blue text)

I am disappointed that my request on the 6th March for a transcript to be made available was refused, even though a recording is available, I have already stated that I don't recognise these minutes or could be described as being sanitised to the ordinary person in the street would recognise. (this view has been reached by carrying out a local survey)

In the view of the Monitoring Officer, the issue of whether a transcript of the hearing was produced is not relevant to the appeal

For information, it was explained to Councillor Hayes that it would take several hours of officer time to produce a transcript of the hearing, and that this was not felt to be justifiable given that the audio recording is publicly available.

Clearly a number of assumptions are being applied to evidence which has created a totally direct "spin" on the context of what I said as per the transcript and what element has been plucked out, rather than consider the wider issues of an administration as not being appropriately managed in the form of ensuring our employees operate under up to date T&Cs. I personally introduced a large number of new processes and systems into Charnwood as they were both new ideas and systems that were not meeting legislation. The failure of management to develop system interface, meant that my company paid for the external development to ensure contract instructions could be carried out as laid down within the contract documentations. The use of Restricted Trade agreements should have already been in place, departments have already lost income for not having these in place.

In the view of the Monitoring Officer, Councillor Hayes' actions during his time as an officer of the Council four years and more ago are not relevant to the appeal

For information, Councillor Hayes indicated during the investigation into the complaints that he personally paid for the IT interface between the Council and its refuse contractor, and in his appeal submission he claims that it was his company which paid. No current officers in the relevant service are aware of either situation being the case.

Within the contract a specific responsibility was placed on the contractor, rather than the Council, to install suitable IT equipment and an interface between themselves and the Council.

Councillor Hayes was an officer of the Council at the time, with direct responsibility for assisting in managing the contract in question and ensuring that the contract terms and conditions were complied with. Therefore, for him or his company to have been involved in funding an IT interface that was clearly designated as being the contractor's responsibility may have represented a conflict of interest.

A decisions based the on balance of probability is open to interpretation, for example the lack of Monitoring of the CE over many years has a contributing factor, using a different interpretation would mean that Charnwood's IIP accreditations would not be valid as the CE has not had a performance review for some years. Ideas and suggestions from the wider outside world, can create a lack of knowledge within a local and inwardly focused point of view and perception.

In the view of the Monitoring Officer. the Council's IIP (Investors in People) accreditation and the Chief Executive's performance reviews are not relevant to the appeal

For information, the usual burden of proof for non-criminal matters is the balance of probability.

Also for information, Councillor Hayes asked a question on notice about the Chief Executive's performance reviews at the January 2019 Council meeting, and the answer given by the Leader was as follows:

'The Chief Executive's most recent personal review was held on 1st November 2018, and was undertaken by a panel established by the Personnel Committee (i.e. Councillors Barkley, Draycott, Morgan and Snartt).

There was no specific panel review in 2017 due to the resignation of the previous Leader, Councillor Slater, and records for previous years are no longer available.

However, as well as the formal annual reviews undertaken by the Personnel Committee panel, the Chief Executive's performance is subject to ongoing review and discussion as part of the regular meetings he has with the Leader and the Deputy Leader'.

There is also an issue when comments are made from Management experience with a sharp regional dialect being miss understood. As no accusations of wrong doing has been said or suggested.

If the words "differed on the intention and meaning of the statements" were applied, then calls for the CE to carry out a review and investigation to the management of the Decent Homes contract, Management using the incorrect property data, incorrect posting of allowances on the website and HMRC ! Then we could just draw a line under events and look the other way or would that be a perception ?

In the view of the Monitoring Office, matters relating to the Decent Homes contract are not relevant to the appeal

For information, a scrutiny 'task and finish' panel was established to specifically review and investigate the Decent Homes contract, and all the recommendations made by that panel have been implemented.

In the view of the Monitoring Officer, matters relating to Members Allowances are not relevant to the appeal

For information, Councillor Hayes failed to follow the required renunciation process for £30 of his allowances some years ago, which resulted in the reported figures being incorrect by that amount.

After Councillor Hayes had continued to pursue the matter with officers for over a year, including threatening to take legal action against the Council, in April 2018 he was refunded the £30 and advised of the correct process to follow if he still wished to renounce the amount in question, which to date he has not done.

For clarity, the current materiality threshold (i.e. the level at which corrections to the statement of accounts would be required) set by the Council's external auditors relating to members allowances is £89,000.

I acknowledge and confirm that this appeal has no bearing on my current situation of not being allowed to stand for re-election as a Conservative Candidate for Loughborough Shelthorpe Ward in the May Elections.

As Councillor Hayes states, this matter is not relevant to the appeal.