

**DRAFT**

**REPORT TO**

**THE LEADER AND CHIEF EXECUTIVE**

**EAST HAMPSHIRE DISTRICT COUNCIL**

**GOVERNANCE REVIEW  
FINAL REPORT**

**David J Bowles & Associates  
November 2020**

## 1. INTRODUCTION

1.1 In December 2019 a member of the Council expressed concerns about decision taking and the actions of officers, making a number of serious allegations.

1.2 The specific allegations, made by former Cllr Cowper, in an email relating to the Applegarth disabled bungalows development included '**improper conduct**' and a case of '**corporate corruption [by the Council] not personal..but the Council putting money in its bank account by taking decisions improperly and lacking in full transparency**'. The email also contained allegations of having been '**misled by officers**'.

1.3 These allegations together with pre-existing concerns the Leader of the Council and the Chief Executive had about conduct and behaviours, within the Council, triggered a wider review of governance. I was appointed in February 2020 to carry out that review. The terms of reference for my review, agreed by the Leader and the Chief Executive, after consultation with the Chair of the Standards Committee, are:

- 1.1 ***The Council is committed to the highest standards of governance. Following concerns being expressed about the robustness of decision taking and the timeliness of officer advice in relation to the Applegarth development, the Leader of the Council and the Chief Executive after consulting with the Chair of the Standards Committee and Independent Person, have commissioned a short sharp review with the following terms of reference.***
- 1.2 ***To carry out a review of the Council's governance arrangements with an emphasis upon:***
  - 1.2.1 ***The wider culture, conduct and behaviours of Officers and Councillors;***
  - 1.2.2 ***The adequacy of and compliance with the Member and Officer Codes of Conduct and the Councillor/Officer Relations protocol including the robustness of the procedures and processes for dealing with complaints against Officers or Councillors;***
  - 1.2.3 ***In light of Applegarth the robustness generally of the decision making processes in the Council to ensure probity and transparency;***
  - 1.2.4 ***The adequacy of advice and information to Councillors and Officers on declaration of interests.***
- 1.3 ***The review will make recommendations to the Leader of the Council and Chief Executive on any steps the Council should take to further improve and strengthen corporate governance in relation to processes and procedures and in relation to conduct and behaviour.***

Shortly after making his allegations about Applegarth, former Cllr Cowper sought to retract the relevant email and all of the concerns contained within it as being mistakes on his part, suggesting that no investigation was required. Nevertheless, given the seriousness of the allegations, the Leader and Chief Executive, Gill Kneller, asked me, as part of this review, to investigate them for two purposes. First to assess whether there was any evidence which would

warrant commencing a formal disciplinary investigation into any officer and second as part of the broader review of decision taking. Cllr Cowper resigned from the Council in October 2020.

1.4 I should comment that the Council had already embarked upon a review of governance, focussing upon the Constitution and the Councillors' Code of Conduct in the first instance. This review should therefore be seen in the context of helping the Council refine its change programme and assist in focussing future activity, designed to strengthen governance.

1.5 I have completed my review. However, during the review, a significant number of allegations were made to me about member conduct and inappropriate member involvement in a number of matters. From the nature of the allegations there were also, by implication, alleged failings by officers to observe or enforce proper business-like processes. I issued a Preliminary Report to the Council commenting upon these allegations in some detail and advising the Council of my initial recommendations. This Preliminary Report stage was necessary to enable the Council to consider what action, if any, needed to be taken. The Council has concluded its deliberations, in accordance with its approved processes, enabling this final report to be issued.

1.6 It is not the purpose of this review to make 'findings' against any current or former officers or members. Where allegations about the conduct or behaviour of officers or members are included in this report, they are included solely for context and because the alleged conduct and/or behaviour impacted the way in which others approached governance within the Council.

1.7 By including references to those allegations in this report, I wish to make it clear that I do not adopt or endorse those allegations, neither do I make any findings of fact about those allegations. I have not put any of the allegations to current or former officers or members and I have not interviewed any former officers or members. I therefore do not know (and I cannot know) whether any of the allegations are true. Readers of this report must bear that in mind. A general governance review such as this is not the appropriate forum for those allegations to be investigated. Indeed, it is beyond the scope of my terms of reference to do so.

1.8 I have been the Chief Executive of four different Councils, including having been appointed specifically to assist in the turnaround of failing Councils. I have been a Non-Executive Director of the Institute for Public Finance and a member of the Audit Committee of the Chartered Institute of Public Finance and Accountancy. In addition, I am on the Council of Protect, the whistleblowing charity. I have also worked in the private sector.

1.9 I have carried out a number of special investigations and reviews ranging from irregularities in procurement and fraud through to organisational culture. I often assist Council Leaders with the appointment and appraisal of Chief Executives.

## **2. CURRENT POSITION**

### **2.1 Background**

2.1.1 In terms of governance, whilst well documented procedures and policies are important, the conduct and behaviour displayed, particularly by the organisation's leaders, are even more important. Their conduct and behaviour can set the tone and overarching management culture for the organisation as a whole. It will affect the degree to which the Council lives by, and adheres to, its stated values and approved codes and protocols.

This is reflected in the terms of reference which require me to consider:

*the wider culture, conduct and behaviours of Officers and Councillors*

Given the significance of conduct and behaviours I commenced this review by holding discussions with a range of members and officers. I spoke to 15 members, 14 officers, union representatives and Internal Audit. At draft report stage I have also consulted with the Chairman and Vice Chair of the Standards Committee and the Leaders and senior members of political groups. I must emphasise that all members and officers have been open and transparent in their dealings with me.

2.1.2 In many respects this initial feedback was very positive. There was very considerable support for the Leader's determination to move the Council forward and change the culture of the Council; however, there was strong and negative feedback in relation to two concerns; first member conduct and second the approach to taking decisions. Whilst these two issues were not representative of where the Council is now, the scale of them was such that it is having a residual impact.

2.1.3 These two issues of concern were acknowledged and accepted by the Leader and Chief Executive and prior to my appointment a number of steps had already been taken to tackle them. The Chief Executive, Gill Kneller, shortly after being appointed to the substantive role had re-drawn aspects of the role of a member in decision taking. In December 2019 the Leader had put in place a protocol designed to ensure appropriate professional relationships between officers and members. In October 2020 both referred a number of matters to the Standards Committee.

2.1.4 Further steps to improve governance, prior to the commencement of this review had been taken. For example, the Constitution was subject to a fundamental review, Scrutiny had been strengthened and it was already planned to update the Councillors' Code of Conduct.

2.1.5 A picture emerged of an organisation which now has a top team of members and officers who recognised past problems, had already taken a number of steps to respond to them and were committed to transforming the culture of the Council. Whilst progress is being made on that transformation, it is still work in progress.

2.1.6 The problem for the Council is that the two concerns raised with me had been evident for over a decade and as such had become deep rooted. That makes the change programme the Leader and Chief Executive have embarked upon more challenging to deliver. I summarise the two concerns expressed to me by a significant majority of those I spoke to:

a) Threatening and intimidatory behaviour

The allegations suggested a consistent pattern of threatening and intimidatory behaviour over a considerable period of time toward both officers and members. Failures such as

this can have implications on staff retention, result in employment claims, place staff under stress and lead to improper decision taking processes.

b) A lack of respect for the proper boundaries between members and officers and distortion of the proper decision-making process.

A number of allegations were made to me about the 'blurring' of the lines of responsibility between officers and members which together with the issue of behaviour had impacted, adversely, upon the way the Council was approaching decision taking.

Associated with this, officers highlighted the alleged difficulties they had and the lengths they had to go to in order to maintain business like, professional and proper decision taking processes. Those I spoke to said this sapped the organisation and created friction. There were strong indications that there had been a lack of openness and transparency.

2.1.7 In my experience taken together these can create an atmosphere of distrust. I deal with both of these issues later in the report.

2.1.8 I set out below some fairly high-level observations on recent developments in the Council derived from both interviews and a document review.

## **2.2 Recent developments in the Council**

### **2.2.1 Recognition of the need for change**

Cllr Millard, Leader of the Council, stated that he wished to transform the way the Council operated and ensure mutual respect and trust between officers and members. He acknowledged long standing governance and member conduct problems had damaged those relationships. Cllr Millard from all accounts was working with the Chief Executive, Gill Kneller, to create a more transparent and effective organisation. He praised Gill Kneller, who was appointed to the substantive post of Chief Executive in July 2019, and her contribution to date in helping shift organisational dynamics.

Following feedback from a wide range of officers and members there was recognition that Cllr Millard had made progress in changing the culture of the Council, and particularly now with Gill Kneller, there was an added edge and determination to create a strong performing organisation, based on mutual respect.

In my opinion the recognition by the Leader and the Chief Executive of the need for change, along with a number of recent changes in the Council, place it in a strong position to complete the transformation they aspire.

### **2.2.2 Strength of the top team**

Cllr Millard was elected Leader in 2017. It is clear that as he has become more confident in his role he has become more determined to tackle governance issues. Officers describe him as questioning and challenging, at times robustly, but in a way which helps improve performance or decisions. Likewise, I am told he will accept challenge from officers and takes advice, particularly about governance, seriously.

An officer commented that there had been a 'profound' difference in the atmosphere within the Council whilst recognising that problems remained and more needed to be achieved and consolidated. Other officers expressed similar views.

In addition the Leader is now supported by a strong officer team led by Gill Kneller who has already shown a degree of tenacity and determination, with the support of Cllr Millard, to tackle a long standing governance issue, a strong S151 officer and, in David Brown, had a strong Monitoring Officer who operated without fear or favour. David Brown has recently taken a post with a larger Council. Their combined influence is such that the Council appears to be focused on ensuring the culture improves, where officers and members can talk frankly to each other. There is a renewed emphasis on proper decision taking.

Some issues faced by Councils can be complex and require careful consideration as to the correct decision making process. In my experience it is not unusual, in any Council, for the Monitoring Officer to step in occasionally with early advice. David Brown told me he had to intervene on a few occasions where respective roles had not been fully understood. However, for reasons set out later in this report and because of the culture I describe, the Council needs to continue to focus on proper decision taking to ensure it eradicates, fully, the former way of working.

There is clear evidence that a new open and trusting style at the top of the organisation is already having a beneficial impact on the underlying culture of the Council. For example, one senior officer commented that the ***'Leader, Deputy Leader and Chief Executive were always supportive in putting good governance in place for transparent and robust decision taking'***.

However, the problems the leadership team face are deep rooted.

### **2.2.3 Constitutional review**

The steps taken in 2019 to update the Constitution particularly with the establishment of separate Audit and Standards and Scrutiny Committees was seen by all I spoke to as an important step in strengthening governance. I agree, whilst wishing to draw to the attention of the Council that its problems have been predominantly about not using the Standards Committee; there had been an inability of officers and members to tackle alleged behaviours through those arrangements. Changes to the Constitution will not resolve that.

The current wider and more fundamental review of the Constitution, which has now been completed and agreed, along with a revised Code of Conduct for members, was seen as important, by all of those to whom I spoke. Many thought the way the Constitution had been structured in the past, including those aspects dealing with the scheme of delegation to officers and Scrutiny, did not command confidence or enable there to be full and proper examination of decisions.

### **2.2.4 Tackling behaviour**

Action had been taken by the Leader with the support of the Chief Executive in relation to member conduct, initially through group discipline. More recently they both made complaints to the Standards Committee which were resolved in accordance with the Council's procedures. In my opinion timely challenge of conduct issues along with the changes to the Constitution referred to above have the potential to make significant improvements and help embed improved ways of working. The former is more important. Well intentioned and well-crafted Codes, processes and Constitutions can be fatally undermined by unchallenged behaviours.

### **2.2.5 Basic building blocks of good governance**

Progress has been made on what I would regard as some of the building blocks for good governance.

The previous lack of a clear policy framework (against which the Executive can be held to account for performance) has been tackled through the development of a Corporate Strategy which was approved in August 2020. A Place-Making and Regeneration Investment Framework was approved in December 2019. A number of other strategic documents have been approved.

Minority Group Leaders valued the Chief Executive making herself available to them, which is a contribution to transparency.

The two key statutory roles of the Monitoring Officer and Section 151 officer now sit at more appropriate levels within the organisation.

These improvements, along with recent challenges of member conduct and updating the Constitution and Codes of Conduct, will help build a stronger organisation.

## **2.2.6 Relationships between political groups**

For the first time in a considerable period the Council has a reasonably sizeable opposition. Generally, members of the controlling group welcomed the challenge.

Fair access to information and recognition, by the controlling group, of the opposition's role in challenge and scrutiny is often a pre-requisite to ensure that any challenge remains, civil, constructive and healthy.

I sensed that there is a genuine desire to ensure that all members, regardless of political party, can play a full and active role in the Council, with no desire to hamper opposition. The decision, as part of the review of the Constitution that the Chair and Vice Chair of Scrutiny will come from opposition groups was seen by all as positive. I note however that both the Chair and Vice Chair of Audit are held by the controlling group.

Whilst there was recognition of the role of the opposition in Scrutiny, it was not clear to opposition members how the Council interfaced with many external stakeholders or partnerships. This may have been exacerbated by the past lack of openness and transparency. Views were expressed that members were not kept up to date on significant issues or emerging issues, not through wilful suppression of information, but because there did not seem to be established mechanisms for wider engagement.

Concerns were expressed that last year the opposition did not feel that they had sufficient officer support in preparing an alternative budget. I understand that a factor was the strain on key officers supporting two Councils, at probably their most demanding time of the year. Arrangements and expectations have been clarified for subsequent years.

Members from all parties commented on how well and constructively key working groups such as those dealing with the Local Plan, the review of the Constitution and climate change had worked. Some comments were made that in more formal settings, such as Council meetings, the dynamics between groups were less effective.

Group Leaders need to be aware that relationships can deteriorate quickly by ill-judged comments or simple misunderstandings about respective roles. The nature of politics is that the opposition will oppose, and the controlling group may respond robustly. However, the nature and tone of those interactions can affect the culture of the Council and should be civil.

It is inevitable given the nature of the political arrangements in local government that there will usually be some tensions between political groups. Whilst senior members of the controlling group recognised and valued 'constructive' challenge from minority political groups and vice versa, there were views expressed, by members of both main parties, which suggested that not

all interchanges were seen as 'constructive'. It is important that a healthy and constructive tension is developed between groups and between their Leaders; ultimately that will improve performance and the quality of decision taking for the benefit of the community. This healthy and constructive tension can often be encouraged by protocols or documented political conventions covering matters such as:

- Frequency and purpose of Group Leaders meetings, including matter such as attendance and agenda setting;
- Chief Executive briefings, their purpose and whether collective or separate and their frequency;
- Allocation of roles to opposition groups and the method by which those roles are allocated within the opposition, including the impact on the allocation of allowances;
- Pre-Council meeting discussions to manage Council meetings to make them more effective;

Issue such as transparency when using the whip can help build an ethical culture.

The value of effective Group Leader's meetings in particular should not be underestimated. They can help reduce tension and can be a way of briefing and obtaining wider input from members on confidential or sensitive matters.

Although the feedback has some encouraging aspects, the impact of COVID will have hampered the development of the political culture of the Council. In my opinion, as opposition is still relatively new the Council will need to continue to work to embed appropriate values, ways of working and the use of scarce officer resources, perhaps with external support.

Finally, officers have a role in the relationships between political groups. Their actions can help or hinder constructive relationships. For example, if officers work on a 'need to know' basis and are routinely perceived to be withholding information from members, that can be interpreted, incorrectly, by the opposition as the controlling group deliberately being obstructive.

### **2.2.7 Member training and development**

It was acknowledged that there had been a substantial influx of new members which creates challenges in terms of member training and development and, to some extent, behaviours. All opposition members are new to the Council and whilst the induction program was praised it was considered, with the benefit of hindsight, more focus could have been given to new members from opposition groups. Such members did not have experienced colleagues from their own political group to refer to for guidance.

Member training and development was generally considered effective, but concerns were expressed about relatively low attendance at some events. Some members thought that bite-size refresher sessions based on the induction programme would be of value; there was too much to assimilate, fully, in a short time in the original induction programme.

### **2.2.8 Advice on Code of Conduct and conflicts of interest**

Members generally considered that they had good support from officers when they needed advice on conflicts of interest. A number of members did comment however that refresher sessions would be welcome.

There was also an observation that quick informal advice rather than written advice may, at times, be preferable.

### **2.2.9 Boundaries between officers and members**

From feedback this has been a source of tension and confusion for some time; it is an issue the Leader and Chief Executive are working to resolve and have already made considerable progress upon. I refer to the matter in more detail later in this review.

Regardless of the problems I refer to later the relationships between officers and members are described as very good and effective whether experienced backbench members, portfolio holders or new members. It was clear that current portfolio holders understood in general terms the respective roles of officers and members and felt able to challenge, constructively, officers in their operational role. Likewise, Members welcomed objective advice from officers where decisions fell to members. However, given the long history of allegedly poor decision taking the Council cannot afford to be complacent and this view was endorsed by David Brown, the Council's former Monitoring Officer.

Some newer members were having difficulties navigating their way round the Council when dealing with patch issues. A couple of minor incidents of inappropriate interactions between officers and new members were cited but on both occasions they were resolved quickly and were based upon a lack of understanding of roles and responsibilities.

### **2.2.10 Scrutiny**

There has been a greater commitment to Scrutiny and importantly an acknowledgement of the key role that opposition members play in that function. It should be acknowledged that it is also a key role for backbench members of the controlling group. A number of members, whilst recognising progress with Scrutiny, raised concerns about resourcing the work of the Committee and these concerns were expressed across political groups.

Scrutiny is an important function which when carried out well can hold the Cabinet to account and help it, and the Council, take well informed decisions and improve services. When it is not carried out well it can be perceived as being disruptive and an arena for political point scoring. It then becomes of little value. Again because of COVID the development of Scrutiny may well have been hampered to some extent; early efforts to ensure it functions effectively could prevent significant difficulties later.

EHDC faces an additional challenge in that that key officers, who may assist Scrutiny, have the demands of working for two Councils and so the Council needs to consider carefully how it structures and approaches Scrutiny to use resources effectively, including considering its relationship with Havant.

### **2.2.11 Strengthening officer performance to support the Council**

Generally, officers felt that there was a high and appropriate level of empowerment although, as this review highlights and as referred to above, boundaries are not always understood.

There had been significant steps to improve governance surrounding the Council's income generation initiatives, particularly through property purchases. The investment frameworks have been revised and I understand steps are being put in place to ensure more robust assessment and decision making and within the limits possible, greater transparency. This sets a clearer framework within which officers are expected to operate.

The stability now in the S151 post and 'discipline' that post holder brings along with David Brown's 'firm' style of working are reported as having had a positive effect upon officer support to members, the management of the Council and governance generally.

A number of initiatives taken by the Chief Executive to improve communication and decision taking at officer level were appreciated, including the creation of the Corporate Governance Board. This Board, chaired by a Director, is charged with putting in place some of the basic elements of sound governance in a more structured and rigorous manner. Work has also been carried out around complex issues relating to governance and joint working with Havant.

### **2.3 Areas of Concern**

2.3.1 The above sets a very positive view of the Council and its direction of travel however there was a very evident and extremely strong undercurrent of uncertainty and concern. Whilst these concerns were being tackled by the Leader and the Chief Executive they were still, in my opinion, having a negative impact upon the Council.

2.3.2 For example regardless of the work being carried out by the Leader and the Chief Executive there was still reticent amongst some officers to be open with me until they were given assurances of confidentiality. Progress needs to be maintained to re-build staff confidence.

### **2.4 Implications for this review of governance.**

2.4.1. In my experience the scale of the issues raised with me in 2.1.6 above, and particularly the length of time they have been tolerated, could continue to have a negative impact upon governance for some time.

2.4.2 I have therefore looked in more detail at the culture of the Council and a number of decisions to understand more clearly those issues; that analysis is necessary if I am to frame recommendations to assist the Council complete the transformation the Leader and Chief Executive desire.

### **3 ADEQUACY OF AND COMPLIANCE WITH MEMBER AND OFFICER CODES OF CONDUCT**

#### **3.1 General expectations**

3.1.1 The expected behaviours for both officers and members can be summarised by the 7 Nolan Principles of Conduct in Public Life. These principles are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. The principles underpin the Council's Councillors' Code of Conduct and are implicit in the Officer Code.

The latest report on local government from the Committee on Standards in Public Life (CSPL) states:

*An ethical culture starts with tone. A civil tone when conducting politics is the basic starting point for a healthy ethical culture. This is true both for the relationship between Councillors and officers, and the relationship between different Councillors.*

I also note that the new draft Code of Conduct issued by the LGA refers also to '*Civility*'.

3.1.2 It is worth noting that the Monitoring Officer is a statutory appointment under s5 of the Local Government and Housing Act 1989 with specific responsibilities for conduct and lawful decision taking. Given the legal framework, the Monitoring Officer oversees the ethical standards of the Council and the application of the Code of Conduct. Guidance issued in 2006, in relation to Council Constitutions, stated:

*The Monitoring Officer will have a key role in promoting and maintaining high standards of conduct within a local authority*

3.1.3 Dealing with member conduct post the Localism Act 2011 (which abolished the Standards Board for England and neutered Standards Committees) usually takes one of three routes:

**1 Informal intervention** Informal intervention by either senior members or the Chief Executive or Monitoring Officer.

In most Councils informal intervention may require the Monitoring Officer to support a member by way of mediation, coaching and training.

**2 Standards Committee.** Notwithstanding the very limited power of Standards Committees, referring matters to the Standards Committee is consistent with strong governance; it ensures, in the interest of both the complainant and the 'accused' member, that there is proper examination of the concerns and a record of the outcome. Whilst individual instances of serious complaints, or repeated alleged misconduct, should be referred, always referring every incident to the Standards Committee no matter how 'trivial' can be counter-productive and even create tit-for-tat complaints. Often the most effective way of managing member conduct for one off minor transgressions is by informal intervention such as mediation or a quiet word, together with some coaching or training as referred to above.

**3 Action through the political group.** This is now arguably the most effective way of managing repeated or serious misconduct. It is not a substitute for a formal reference to the Standards Committee but action which should be considered alongside it. The latest Report of the Committee on Standards in Public Life highlights:

*'Party discipline can play a positive role in upholding ethical standards within a local authority'.*

3.1.4 Prior to the commencement of this review, none of the allegations made to me about member conduct, where the allegation arose after the implementation of the Localism Act, had been referred to the Standards Committee.

It is clear from feedback that the Council has for many years tolerated alleged interactions which are not 'civil'. I do note however that since his appointment and particularly from 2019 the Leader of the Council has intervened on a number of occasions including via group discipline. The Leader and Chief Executive have recently followed proper process with references to the Standards Committee.

## **3.2 Adequacy of Codes and Protocols**

3.2.1 There are a number of key documents in the Constitution including the Officer Code of Conduct, the Officer/Member Protocol and the Councillors Code of Conduct. There are other relevant documents such as the Planning Protocols and policies on Gifts and Hospitality. I have reviewed these documents.

### **3.2.2 Officers Code**

Officers are bound not just by Codes but also by the terms of their employment contracts and where appropriate may be subject to regulation and investigation by professional bodies. The officer Code is extensive and has been simplified during the review of the Constitution.

From feedback from Unions and staff the officer disciplinary arrangements are well understood and used as and when necessary.

### **3.2.3 Officer/Member Protocol**

This document too is relatively comprehensive and has been updated as part of the review of the Constitution. In my opinion it should cover more explicitly, and in some detail, the respective roles of officers and members in decision taking including those aspects I describe later in paragraph 4.1. Specifically, it does not give explicit guidance that individual members cannot simply instruct officers and the Protocol should do so.

### **3.2.4 Councillors' Code of Conduct**

The Council has recently revised its Code; it is a significant improvement. However, like all such statutory Codes on first reading it will not be clear to members, or the public, what may be a breach of the Code. In my opinion it should be supplemented by guidance, as an Annex to the Code, setting out how the Code would be interpreted in common situations (informal meetings, Trustee, School Governor, Committee member of a local organisation etc) particularly in relation to conflicts of interest. In addition, the guidance should deal with perception, an important issue which may not be well understood. In my review I have come across instances where in my opinion the importance of perception has not been recognised fully; members need to appreciate that acts which could be perceived as, for example, bias, could be breaches of the Code. It is not necessary to 'prove' actual bias. Whilst I accept that these matters will have been dealt with in training, such supplementary guidance would help members and the public understand expected behaviours.

I note that the preamble to the new Code refers to other Codes and Protocols in general terms but does not explicitly refer to each of them or make any of them part of the Code.

To its credit it is clear from members that the level of training on conflicts provided by the Council in part addresses these concerns. In addition, members commented that officers were

always willing to provide advice and assistance in this area. There were suggestions that some members would prefer early informal mediation prior to issuing formal advice.

### **3.2.5 Other Codes and Protocols**

The Council has a number of other codes, protocols and policies including those dealing with Gifts and Hospitality, Member and Officer involvement in Planning matters and the use of email. At the commencement of my review the status of these documents was unclear. The Councillors Planning Protocol does now form part of the Council's Constitution but the Code on Gifts and Hospitality is not explicitly referred to in either the member or officer Codes. Usually members are cautioned against meeting developers or potential business partners or contactors without officers present. This is not dealt with as explicitly as I would prefer.

### **3.3 Compliance with the Codes**

3.3.1 A very high proportion of those I spoke to, raised concerns about alleged conduct. I was genuinely surprised at the number of allegations. Furthermore, allegations made to me were not all historic. There are for example relatively recent allegations of threatening conduct or undermining behaviour, with an indication that the alleged culture has existed for a considerable time.

Allegations were also made to me about the recent release of information, allegedly disclosed by an unidentified member, which was detrimental to a Councillor.

3.3.2 Although many allegations were made to me spanning many years there were few instances where such conduct was challenged directly at the time by officers or members, or through the Council's procedures, with complaints made to the Standards Committee. Prior to the appointment of David Brown I could not find a single documented instance of an intervention by former Monitoring Officers.

3.3.3 As I have made clear in section 1 of this report, it is not the purpose of a governance review to investigate allegations against individual officers or members and make 'findings' of fact and I do not do so. However, what was clear from the interviews is that the alleged behaviour did impact the way in which some of those on the receiving end of the alleged behaviour approached governance.

Consequently, it is important to understand the nature of the concerns raised in order to assess their impact, if any, and if necessary, frame recommendations on the steps the Council should take.

### **3.4 Impact of failure to tackle alleged conduct**

3.4.1 There is little point repeating detailed allegations however they include the following types of alleged behaviour:

- There were genuinely held views that giving advice which was not welcome or was challenging would lead to retaliation;
- With middle managers or more junior staff allegations of a hectoring style used against them saying on issues which are quite complex just answer 'yes or no' repeatedly or shouting;
- There were repeated allegations of officers being frozen out or ignored after they either gave advice or took action with which a member disagreed;

- Alleged finger pointing and repeated threats to job security;
- Allegations of denigrating and undermining officers in front of third parties;
- Allegations of undermining and disrespectful behaviour toward members;
- Allegations of throwing documents across the room, hitting and thumping the table;
- Allegations of 'instructions' to sack officers who had acted in accordance with their professional judgement;
- Genuine belief that some staff have left the Council because of member conduct;
- Allegations that some staff had effectively been banned from working at Penn's Place;
- Allegations of marginalisation of members who disagreed;

In my opinion many of these, as single or isolated incidents, would have warranted references to the Standards Committee as set out in 3.1.3 (or at the very least informal intervention or investigation). If this was an alleged pattern of behaviour carried out by the same individual, it would certainly fall within what I describe as 'repeated misconduct'.

3.4.2 In my view, collectively these allegations amount to accusations, which if proven, would suggest a pattern of threatening and intimidatory conduct and behaviour toward both officers and members. It is important that the organisation recognises the impact of the collective failure, of challenging such conduct. Quotes from interviews, which give an insight into the impact include:

- An officer culture of working around problems and having '*no confidence that any complaint would be properly investigated*' and lead to any change;
- Officer comments that we '*are always working around them*' and thinking '*how would they react if I did this*';
- Suggestions that dealing with governance problems '*just saps energy*';
- a member refers to being '*cautious and reserved*' in their conversations;

These typical views and comments are inconsistent with robust decision taking and sound governance.

3.4.3 These are not insignificant concerns. Local authorities are complicated organisations with an unusual set of relationships between officers and members. Councils deal with complex competing demands and complex issues of public policy; they spend public funds. Most decisions cannot be determined simply by the impact upon the profit and loss account. To take those decisions effectively there needs to be trust, transparency and a willingness to have robust but '*civil*' debate, whilst recognising the democratic mandate.

3.4.4 It is clear from the documents and files that I have reviewed and the conversations I have had that there have been many instances of alleged inappropriate conduct and behaviour toward officers and members over many years. However, the repeated failure of many officers and many members to apply the Code or intervene in a timely manner appears to have had very significant implications for the Council.

It has allowed such alleged behaviour to become 'normalised' and accepted as something to tolerate and work around and can result in a form of insidious intimidation where the most basic rules of governance have been ignored.

3.4.5 As well as having very serious implications for governance the joint repeated failure to act will have had an adverse impact upon the health and well-being of staff and indeed some members. It has left the Council open to allegations that it would rather bear the cost of staff turnover or compromise agreements than face down alleged unacceptable behaviour. Arguably the Council failed in its duty of care to its staff.

The alleged conduct appears to have prevented the Council from working in a business-like manner, hampered proper decision taking, added to cost and no doubt damaged the reputation of the Council, particularly with potential business partners.

3.4.6 Failing to investigate allegations in a timely manner is also unfair to members against whom those allegations are made as it allows rumour, suspicion and mistrust to promulgate which may have no foundation. Complaints must be investigated in a timely manner in the interest of all parties.

3.4.7 I make these observations as it is important that the Council recognises the scale of the problems which have arisen and the need for change, if it is to restore the trust of its workforce and build a reputation for professionalism with key partners and developers.

3.4.8 There is no point having a Code unless you apply it.

## **4 ROBUSTNESS OF THE DECISION TAKING PROCESSES IN THE COUNCIL TO ENSURE PROBITY AND TRANSPARENCY**

### **4.1 General expectations**

4.1.1 The terms of reference require me to look at decision taking processes. There are some very straightforward principles; these include that members cannot simply instruct officers, member decisions must be taken in a transparent way, only relevant matters must be considered and advice should be taken. The proper role of officers and members needs to be respected.

Regardless of how well a Constitution is written, to reflect the above principles, and a scheme of delegation devised, there will always be areas for interpretation around member and officer responsibilities. High performing Councils will have developed ways of managing the ambiguity.

4.1.2 Officers will often consult, quite rightly with members before taking an officer decision. The effect of that consultation can improve the quality of the decision but the onus and responsibility for that decision remains firmly with the officer. This convention is well understood throughout local government. Members cannot hold officers to account if they countermand or issue instructions on matters which do not fall within the proper sphere of member responsibility.

If an issue is particularly contentious there is nothing preventing an officer, on rare occasions, from delegating a decision back up to members. Where that happens members still nevertheless have to apply the member decision making rules of taking advice and transparency. For example, officers may be authorised to respond to Consultation Papers. Where these are routine technical issues an officer response is appropriate; where however it may be complex and potentially politically contentious, such responses should be from appropriate members.

4.1.3 Where, in accordance with the Constitution, matters fall for members to decide the decision must be taken in a transparent manner, after taking appropriate advice and in accordance with the Constitution.

4.1.4 Relationships should not be 'cosy'. Appropriate and robust challenge of officers can improve the quality of officer decisions and likewise appropriate and robust challenge by officers of members can improve member decisions. As referred to earlier such challenge should be '*civil*'.

4.1.5 Often individual Members will have skills and experience which do not exist within the officer team. Again, high performing Councils will find ways of using those skills and experience, whilst retaining appropriate boundaries and responsibilities.

### **4.2 Scrutiny**

4.2.1 A key part of the decision taking process is the role of backbench and opposition members in Scrutiny and the ability to either call in items for review or influence pending decisions or policies. It has been suggested that the way the EHDC Constitution had previously been framed, deliberately or otherwise, resulted in limited member scrutiny of decisions.

4.2.2 This has been addressed and recent changes have strengthened Scrutiny, although as referred to above there were concerns about whether there was sufficient officer support for the function which, from feedback, is still developing and evolving.

### **4.3 Review of current papers**

4.3.1 A fairly high-level review of recent Cabinet papers shows them to be well structured, containing relevant information and, with an adequate Scrutiny function, may give a degree of

confidence in the quality of formal decision taking as the Council moves forward. However, David Brown has told me that, as Monitoring Officer, he has had to provide advice on proper process and that in his opinion the former decision taking processes, referred to below, had become so ingrained that it will take some time to eradicate former ways of working.

#### **4.4 Organisational understanding of proper decision taking**

4.4.1 In my experience the sort of culture which has been alleged to have been prevalent in the Council, may have had a negative impact upon governance and particularly in informal settings and upon informal decisions. Indeed, it is likely that in such a culture, there will be a lack of transparency and significant decisions taken outside of the normal or proper processes.

4.4.2 I have seen documents going back to 2013 which on face value suggest that the Council may have lost sight of the proper decision-making processes by which officers and members could be held to account for their actions. An email by a former officer dealt with operational matters and that 'instructions' were being issued by members. The focus of the email was which member had the authority to issue those 'instructions'. Of concern to me is that the email exchange did not reflect that members cannot simply issue instructions on the operational matters which were under discussion. The email stated:

***I am very clear that paid managers are implementing directions from the Leader. They are very clear about this too.  
Should there be any differences of opinion between Portfolio Holders, Cabinet members and the Leader, these are to be left to those respective Councillors to discuss and determine any change in instruction. In the meantime the Leader's word is final as far as I am concerned.  
Given that under the current model of working Portfolio Holders are meeting and giving instructions around their Portfolios too I would be very grateful if Cabinet members could ensure they keep the Leader well briefed about their intentions so that there is no confusion for staff regarding instructions***

Where instructions are to be issued, then Councillors must do so through a proper process as prescribed in the Constitution. It is not clear to me how the statements in the email were consistent with the Council's Constitution and the proper roles of members and officers.

I have not interviewed the former officer concerned about this email; however, on face value and given the seniority of the officer, this email and the sentiments described has added to my concern about how decisions have been taken.

4.4.3 In addition David Brown has commented to me that whilst there are renewed efforts to work within what should be the established governance arrangements there are still occasional instances where it is not clear that either officers or members fully understand what is expected of them. I must however emphasise that my interpretation is that this a symptom of the degree to which proper process had been subverted in the past and the difficulty in delivering change; I did not sense that it was now due to any wilful disregard of the Constitution by members or officers.

#### **4.5 Review of recent decisions**

Given the Terms of Reference and the specific allegations made by former Cllr Cowper in relation to Applegarth of '***Corporate corruption [by the Council]***' and '***..taking decisions improperly and lacking full transparency***' I have reviewed a number of decisions and actions with those allegations in mind.

#### 4.5.1 Applegarth

In 2017 the Cabinet approved a shared funding model whereby the Council helped facilitate shared equity housing by taking a stake in developments. Any future profits on individual investments are placed in an earmarked fund for use to fund other similar schemes. At the time the Council commits to a scheme, a funding fee is also charged which goes to the revenue account.

In 2015 planning permission was given to CALA Homes for a substantial housing development at Applegarth, in Grayshott, which included a requirement for allotments.

In November 2018 CALA sought preplanning application advice from the Council for 4 bungalows and removal of the requirement for allotments. A copy of the preapplication advice, which was generally helpful, was provided to former Cllr Cowper as local ward member by the Case Officer. I understand that former Cllr Cowper replied that he was **'content for delegated approval'**.

Officers interpreted the response as having no objection to an eventual application.

The opportunity was brought to the Council's housing officers attention by CALA. In March 2019 CALA and Council officers met and explored the possibility of affordable bungalows on the site. The Council made Merlion Housing Association aware of the opportunity. However, in June 2019 CALA rejected an offer from Merlion for the site.

In July 2019 there were officer discussions with Merlion and CALA about the affordability of the site and the potential for the use of the shared funding model above.

A planning application, for 5 bungalows was submitted on 9<sup>th</sup> July 2019.

Following submission of the application former Cllr Cowper expressed concerns about the application and sought more information stating **'there is growing local opposition'**.

In August the Housing Development Manager responded to the CALA planning application indicating that whilst there was no need for rented housing (due to other sites) wheelchair accessible homes would be supported for shared equity.

In August a draft Cabinet Report was prepared by the Housing Development Officer and circulated to senior officers suggesting the use of the shared funding model for the scheme. The report, at that time, was not accepted as Executive Directors wished to review the entire shared funding model and scheme to assess whether the governance arrangements were robust. On 21<sup>st</sup> October a pack of information responding to the concerns raised by Executive Directors in August was circulated.

The planning application itself, for 5 bungalows, received 45 letters of representation mainly objections. The Case Officer recommended the application for approval but former Cllr Cowper declined to delegate the decision and asked for the decision to go the Planning Committee for determination citing 3 main reasons, **'the proposed loss of green space for allotments'**, the additional units would exceed the original application, stating **'the numbers [of units in the original application] were agreed and they should remain as they are'** and that **'there is no defined need for additional housing in Grayshott'**. Cllr Pond who was the Chair of the Committee, and Cllr Mrs Glass, the Planning Portfolio Holder agreed the call in.

The Planning Committee was held on 24<sup>th</sup> October. On the afternoon before the Planning Committee meeting, former Cllr Cowper met with officers to explore the application in more detail. At the time of this meeting the Case Officer was unaware of the potential for the Council to be involved in the development; indeed, even if he were it would not have been a relevant

matter for consideration. I understand that up to this point there had been no discussion with any members about the use of the shared funding model for the Applegarth scheme.

I understand that at the Planning Committee that evening the item was introduced by the Chairman, then the Case Officer dealt with the application followed by an objector. The Parish Council did not wish to speak.

Members of the Committee who have expressed a prior opinion on the application, in a manner which could be considered as 'pre-determination', can address the Committee as a Ward Councillor but not vote. Former Cllr Cowper remained a voting member of the Committee.

In accordance with convention the Chairman asked former Cllr Cowper as the local member to speak first and from all accounts did so very forcefully, and then moved that the application be rejected, on 3 grounds, before there had been further debate by other members. The grounds included no need for the development, no need for affordable housing and that the case for not needing the allotments had not been made. The proposal to move to an immediate vote triggered further debate and discussion on the application.

The motion by former Cllr Cowper was lost 2-9 with 1 abstention. The Chairman then moved the recommendation as set out in the officer report. After further debate and discussion, the application was approved 10-1 with 1 abstention.

Subsequently officers met on 27<sup>th</sup> November to review the accounting treatment of the shared funding model, legal issues etc. Once Executive Directors were satisfied with the principles of the scheme, the Applegarth proposal was considered and it was agreed to propose to Cabinet entering into a shared funding agreement with Merlion. A draft report was circulated on 2<sup>nd</sup> December 2019.

A pre-Cabinet briefing meeting was held on 5<sup>th</sup> December 2019. One of the papers which was to be discussed was the Applegarth development and the proposed deal with Merlion. The morning of the meeting Cllr Louisson emailed the Housing Development Manager and Cllr Mrs Butler, copying in Cllr Mrs Glass and former Cllr Cowper, stating that he was '***A little uncomfortable in the light of [the Applegarth] paper that the council had an interest in the planning permission granted at committee to CALA for these bungalows, but several members of Cabinet sat on the [planning] committee making that decision as we were not advised of the interest at the time.***' Cllr Louisson sought assurance about the robustness of the decision.

The informal Cabinet meeting was supported by a number of officers. From all accounts that part of the meeting dealing with Applegarth was fraught. I understand the issue of a conflict of interest, which had been raised by Cllr Louisson, was discussed and the Deputy Monitoring Officer provided assurance that there was no conflict of interest (as members were unaware of any possible Council interest in the scheme at that time) and undertook to confirm that in writing and look at the timeline in relation to the Planning Committee. Former Cllr Cowper attempted to persuade the Cabinet not to approve the proposed investment in the scheme.

I understand that the view taken at the end of the discussion was that the Cabinet would support the scheme.

On 6<sup>th</sup> December, former Cllr Cowper emailed Cllr Millard, Gill Kneller and David Brown, the then Monitoring Officer asking a series of questions about the deal with Merlion, questioning the Deputy Monitoring Officer's advice and seeking an urgent investigation. He asked for a reply within a week asking to be informed if that was not possible. Cllr Millard asked Gill Kneller to inform members of the likely timescale to investigate and formulate a response.

On 12<sup>th</sup> December, David Brown emailed a response on the conflicts of interest issue to Cllr Louisson and copied in the Leader and Gill Kneller. The email stated that Cllr Louisson may wish to consider further distribution. Attached to the email was a 4 page advice note. In summary it stated that as members of the Planning Committee were unaware of the possibility of any deal with Merlion, a conflict situation did not arise. It also commented that any challenge to the planning decision would fail.

Cllr Louisson replied late on Friday 13<sup>th</sup> December to David Brown stating that given the general election earlier, he would take the time over the weekend to consider that advice note and return with any further points on Monday 16<sup>th</sup>.

Before the formal Cabinet meeting, due to be held on 17<sup>th</sup> December 2019, former Cllr Cowper sent an email, from his private email address, to Cllr Millard's private email address, dated 15<sup>th</sup> December and timed 08.47 which I set out below in full:

**From:** <[fcowper@xxx](mailto:fcowper@xxx)>  
**To:** [Richard. Millard@xxxxxxxx.com](mailto:Richard.Millard@xxxxxxxx.com)  
**Date:** 12/15/2019 8:47 am  
**Subject:** Merlion

**Hi Richard,**

***I'm sorry for what follows, truly! But I've been up several times in the night fretting over this Cabinet paper and I'm exhausted.***

***It's not about the Grayshott issue. If we can agree some words as discussed, that issue goes away for me and thank you for your help with that.***

***I need to be direct. I think that there is improper conduct in the Council and I think there is a cover up. I'll explain very clearly why.***

***You may recall that last Friday week, the 6th. I wrote to Gill, copying several people, asking questions about the propriety of this deal. When you re-read the email you'll see I asked for a reply by Friday 13th, (i.e. in a week), or, if not possible, a note to that effect and a date by which I would receive the reply. What could be fairer than that? Gill responded on the Monday I think it was, saying she was confident that Mr. Brown would reply as requested. As you might expect from that officer, he hasn't. With the background, I suspect that his failure to reply may not be rudeness or inefficiency but deliberate concealment.***

***One of the questions I asked was how was it that the "deputy monitoring officer", who attended the last Cabinet Briefing on the 5th and whose name escapes me, tried to persuade Cabinet that the Cabinet members who determined the Applegarth Vale 5 bungalows application, did not have a pecuniary interest? With EHDC gaining the fee for the loan plus 125% of the equity in the 5 bungalows, EHDC stands to gain upwards of £.1million pounds from a consent decision so of course we had an interest to declare!!!! Failing to explain this bizarre statement promptly, indeed not explaining it at all when offered the chance, makes me very suspicious.***

***Richard I'm increasingly concerned that we may have a case of corporate corruption here. Not personal corruption such as an officer putting money into his or her bank account in return for a Council decision, but the Council, corporately, putting money into its bank account by taking a decision improperly and lacking in full transparency***

***So the catalogue of circumstantial evidence that suggests there is a corporate corruption case to answer is thus;***

***1. On Thursday 24th October, the day of the planning decision, I met with Messrs [Case Officer] and [Officer], (respectively the planning and housing case officers for the Applegarth Vale Five). I asked them to explain why these***

*five dwellings were proposed for consent for an unsustainable location with no local need. Both agreed there was no local need, (although the committee report explicitly states otherwise by the way), but that it was an opportunity that could not be missed due to the lack of suitable plots. Both of them concealed from me the ongoing discussions with Merlion and the huge financial gain to the Council that would arise on consent. It is inconceivable that in a normal open discussion with the local member, with all the rules that govern those discussions, that this concealment was anything other than deliberate*

*2. On the evening of the 24th October the Planning Committee heard the application and gave consent on a majority vote. The officers present and the case report, made no mention of the Merlion deal that was under discussion despite the fact that it was a germane, contextual fact to the planning application.*

*3. Four Cabinet Members took part in the debate and three voted in favour of consent, despite the fact that EHDC stands to make very large financial gains as a result of a consent decision. Those Cabinet Members should have been warned that this case delivered cash benefits to EHDC and should have been allowed the opportunity to step down from the committee. The existence of this cash deal was concealed from them. In fact that makes the decision vulnerable to a Judicial Review.*

*4. On Thursday 5th December the Deputy Monitoring Officer attempted to persuade Cabinet that those four members did not have to declare an interest even though at the time the Council stood to gain upwards of £1million from a consent decision. Why did the Council's Monitoring function mislead the Cabinet in this way?*

*5. On Friday 6th December I put many of these points in an email to the Chief Executive, copying yourself and the Monitoring Officer and requested a reply by one week later, or alternatively a date by when the answers could be supplied. Despite the assurance of the Chief Executive, no reply has been received. Why has the Council refused to answer these questions about the Merlion deal? (For your information I checked my Council emails at 08.50 this morning and at that time there was no reply).*

*Richard, can you imagine what would happen if this email fell into the hands of our auditors, the media or the Secretary of State?*

*I simply cannot support the paper with this cloud of suspicion and unanswered questions. I feel I have a public duty to whistle blow on what seems, on the surface, to be a deliberate engineering of a decision in which the Council has a very large financial interest and which might be, if the facts ever become known, corporate corruption by the Council. This suspicion is aggravated by several cases of deliberate concealment, culminating in Mr, Brown's failure to respond.*

*Richard, to avoid this mess, I urge you to withdraw the paper until these concerns can be dealt with.*

*Please be aware that the time limit for a JR of the planning consent runs, in this case, not from the date of consent but from the date when the cause became known, which is 5th December. EHDC could get into an awful mess if it signs a deal with Merlion and then loses the underlying planning consent.*

*(In case Mr.*

*Brown disputes this, there is case law on this which can be easily seen on the internet).*

*I'm happy to talk on the phone any time today after 10.30am.*

*Best wishes,*

*Ferris Cowper Council emails to ferris.cowper@easthants.gov.uk please.*

Although the email was from and to private email addresses, faced with such allegations the Leader, correctly in my opinion, referred the email to the Chief Executive.

Almost immediately after this email above, at 9.30 am on the same day former Cllr Cowper emailed Cllr Millard and Gill Kneller, copying in David Brown and Cllr Louisson seeking a response to the issues raised in his email on 6<sup>th</sup> December. Cllr Louisson replied that he received an advice note, commenting briefly on its content, but stating it did not provide some of the detailed information on Merlion that former Cllr Cowper had requested. Former Cllr Cowper responded questioning why he had not had a copy of the email. As far as I can assess he did not ask for a copy.

On 16<sup>th</sup> December the Director for Regeneration and Place, responded to the questions former Cllr Cowper had asked in relation to Merlion.

The scheme was approved at the Cabinet meeting on 17<sup>th</sup> December. Former Cllr Cowper left the meeting before Applegarth was discussed.

I understand that if the scheme was not approved at that particular Cabinet meeting the proposed financial arrangement would fall and the bungalows may not be built.

Once it became clear that former Cllr Cowper's email had been shared with the Chief Executive, former Cllr Cowper emailed two officers, Gill Kneller and the Director for Regeneration and Place on 18<sup>th</sup> December 2019 apologising for **'the unacceptable private email you have seen'**. Former Cllr Cowper also stated that he retracted his email and the concerns expressed with it and suggested that no investigation was required. Gill Kneller's response was that given the gravity of the allegations, which in her opinion amounted to attempts to deceive a Committee, and the serious accusations against officers they could not be ignored and investigation would be put in motion.

Former Cllr Cowper also met with the Cabinet and apologised to the Cabinet for the embarrassment.

As will be evident from the above there is nothing to support former Cllr Cowper's allegations:

**1 Mr Browns alleged failure to reply on time was deliberate concealment.** Mr Brown did reply on 12<sup>th</sup> December on the conflicts of interest issue to the member who raised the concern in the first place, Cllr Louisson, and left onward distribution to Cllr Louisson. Mr Brown also copied in the Leader. It may have been better for Mr Brown to have copied in a wider range of members but there is nothing which would suggest 'concealment' let alone deliberate. Furthermore, I note that former Cllr Cowper did become aware of the email from Mr Brown but did not appear to seek an urgent copy.

I do note however that the response on some of the wider issues, from the Director for Regeneration and Place was not until 16<sup>th</sup> December. Whilst that may not have in accordance with the timeline requested by former Cllr Cowper, there is nothing to suggest deliberate concealment by that officer either.

**2 The Deputy Monitoring Officers advice that there was no pecuniary interest was wrong.** The advice was correct.

**3 'Concealment' of a possible deal with Merlion from former Cllr Cowper [at his meeting before Planning Committee] as local member was deliberate.** At the time of the conversation I understand that the Case Officer was not aware of a possible deal by Merlion. Furthermore, even if he was aware it was not germane to the planning application which must

be considered on its merits. I would be concerned if the Case Officer was aware of a possible deal and raised it, as it may confuse an issue which should be considered on its merits; it is not relevant. If the Case Officer had been aware and had informed former Cllr Cowper, then former Cllr Cowper would need to consider whether to declare an interest.

**4 The officers present [at the Planning Committee] and the case report, made no mention of the Merlion deal that was under discussion despite the fact that it was a germane, contextual fact to the planning application.** It is not a germane or contextual fact to the planning application. To ensure the integrity of the planning system it is a fact which most certainly is not germane and it would be wholly improper to take the prospect of such a deal into account. Any actual or possible financial interest of the Council is not a relevant matter when considering a planning application. To take such matters into account would be a breach of planning regulations and leave the Council open to Judicial Review.

**5 Concealing the deal increases the prospect of Judicial Review.** I have seen nothing which supports such a claim. In fact, the reverse. That members of the Planning Committee and the Case Officer were unaware that there was a possibility that there may have been a deal with Merlion is, if anything, a strong argument to resist a Judicial Review.

In conclusion I have found nothing which would warrant recommending a formal disciplinary investigation against any officer.

#### **4.5.2 More general review of informal and formal decision taking**

I reviewed a number of issues over the past few years ranging from the decision not to join the PSAA (a form of public sector bulk buying for external audit services), possible bids for garden villages through to possible joint ventures for property development.

In my opinion a disturbing pattern emerged:

- There were instances where officer recommendations in reports did not appear to be the unfettered recommendations of officers;
- Allegations that proper procurement processes were not being followed;
- Advice on conflicts of interest appear to have either been misunderstood or ignored;
- The respective roles of officers and members had not been respected;
- There was evidence that informal decisions may have been taken prior to proper analysis;
- Not all options had been considered;
- Actions had left the Council open to allegations of bias toward a company;
- Hospitality had been accepted during contract negotiations. Although contributions equivalent to the value of the hospitality were often made to the Chairman's Charity Fund, this would in my opinion undermine public confidence;
- There was clear evidence of a breakdown of trust and confidence between members and officers in dealings with companies;
- The provision and alleged use of private email accounts during negotiations;

I could find little evidence during this period of any intervention by key statutory officers and particularly former Monitoring Officers, prior to David Brown's appointment.

Whilst the above is of considerable concern I must make it clear that few 'final' decisions were taken which were, in my opinion, improper.

This is because given the apparent long-standing failure to challenge alleged improper behaviour at source, the officer tactic when dealing with its impact upon decision taking and projects was the extensive use of external legal advice, in an attempt to enforce a proper and business-like

approach. As far as I can assess this tactic generally worked but, by its nature, it did not bring issues to a head quickly, was costly and a considerable drain on the organisation. The approach ameliorated the worst aspects of the culture on decision taking within the Council.

The extent to which officers relied upon external legal advice to try to put proposals within an appropriate governance framework and felt unable to give that advice directly themselves is also an indicator of poor officer member relationships which existed at the time; a belief by officers that their advice would not be trusted and would be challenged and so external advice would in any case need to be obtained.

Whilst the ramifications of the above are serious they could have been even more so. Along with the reliance on external legal support referred to above, Cllr Millard's appointment and a new stronger team of officers has contained many matters.

However, poor and highly suspect decision taking processes will have resulted in a significant cost to the Council including in terms of external support and lost officer and member time. It is unlikely to have inspired confidence amongst key business partners. I should add that there is nothing to suggest that any potential business partners acted improperly; they are entitled to expect Councils to react in a proper manner to business approaches and have strong governance in place. It is not for them to lift the veil and assess whether members have heeded advice and adhered to the Council's own standards and procedures.

On my extensive reading of documents and files and from interviews this should not be interpreted as a clash of cultures; trying to inject a private sector ethos into a public sector body. Whilst there can be some complexities in public procurement and State Aid rules to comply with, the problems I identified were far more basic; their roots were in alleged conduct and behaviours.

## **4.6 Observations**

4.6.1 After a thorough review including taking statements I observed that the decision-making process in relation to the Applegarth development, which in part triggered this review, had not been improper. On the evidence I have seen I can give no such assurance on other formal or informal decisions the Council may have taken in recent years.

4.6.2 Members set strategy and determine policy and officers implement those strategies and policies. Officers come forward with recommendations albeit shaped by members' policies and strategies; ultimately members must be sufficiently distanced from the issue so they can form a balanced judgement on the final decision. They should constructively challenge officers and cannot do so if they have been inappropriately and intimately involved.

4.6.3 Separation of roles is a cornerstone of good governance and of the Constitution. Officers cannot act as Councillors and Councillors cannot act as officers. This is not some strange 'local government bureaucratic' arrangement. The same general principles apply in the private sector in relation to the role of non-Executive Directors. Non-Executive Directors are not supposed to act as an Executive Director. Separation of roles is a very simple basic principle which applies in both the public and private sectors.

4.6.4 In my opinion a culture developed where some officers had become overly compliant and the boundaries between officers and members distorted, undermining good governance and transparent decision taking.

4.6.5 The governance arrangements had been undermined and effectively corrupted by the Council's own acts and failures. It failed to provide the level of assurance one would expect in any organisation, particularly one entrusted with public funds.

4.6.7 Although the Council now appears to have, from all accounts, a Leader in Cllr Millard who sets a very different tone and a strong Chief Executive supported until recently by David Brown, a Monitoring Officer prepared to be robust and intervene if necessary, it should not assume it can simply shrug away the problems of the past. It needs to re-focus on proper decision taking and I make recommendation in my report on how that may be achieved.

## 5 CONCLUSION AND RECOMMENDATIONS

### 5.1 Current position

5.1.1 Current senior members and officers have all indicated strong support for the change in the culture of the Council, being promoted by Cllr Millard and Gill Kneller. Much has been achieved to date and there is strong correlation in the respective views of officers and members of the past and where the Council needs to change. All those I spoke to, whilst acknowledging the substantial changes in recent months and years, regarded the current position as 'work in progress'.

Members I spoke to welcomed open dialogue, robust constructive challenge from officers, their own group or the opposition. Officers attitudes are similar. They too expect challenge from colleagues and elected members and recognise the democratic mandate of Councillors.

They all expect such interactions to be 'civil'.

5.1.2 To complete the transformation of the Council there are two key issues which need to be acknowledged to move forward:

**c) The Council's failure to act in a timely manner, to an alleged culture of intimidatory conduct and behaviour, has been unacceptable**

The latest report by the Committee on Standards in Public Life commented:

*High standards of conduct in local government are ... needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.*

The culture of the Council has been to not challenge robustly and consistently the alleged behaviour. Instead it appears to have attempted to work around such alleged conduct.

It is often a simple fact that the longer you leave a problem the worse it becomes. The problems outlined to me have existed for over a decade. The failure to tackle a range of problems decisively put the Council at significant risk.

In my experience the past tolerance of the culture described in this report can lead to a form of alleged insidious intimidation where the organisation anticipates what is expected of it and acts accordingly, regardless of the principles of sound governance. There is strong evidence that has happened, and indeed in recent years. That approach has arguably normalised such behaviour. Officers became overly compliant.

That tolerance is coming to an end; Cllr Millard has been more challenging of behaviours and since the appointment last year of a new Chief Executive, Gill Kneller, there is more determination to change the culture of the Council. There has recently been decisive action.

The Council must not revert to tolerating the type of alleged conduct set out in 3.4.1.

**b) There has been an improper approach to decision taking**

This review was triggered in part by serious allegations about sound governance and the decision taking process of the Council, with regard to the Applegarth development.

Allegations were made in stark terms: **'Improper conduct ..., taking decisions improperly, deliberate concealment,** and **'lacking in full transparency'** were used. I have found nothing to support such allegations with regard to the decisions concerning the Applegarth.

However, some of those terms could be used to describe the way the Council has appeared to allow its decision taking processes to be impacted in recent years. In my opinion there appears to be a direct causal link between the alleged intimidation and the lack of robust, transparent decision taking.

As set out in 4.5.2 the most basic principles of respecting the proper roles of officers and members appear to have been ignored, the Council left itself open to allegations of bias, advice on conflicts appears to have been ignored, not all options were considered and there was a breakdown in trust. It is fortunate that the culture did not lead to more significant problems.

The 'way of working' will have become embedded and regardless of the efforts of the Leader and Chief Executive, will take some time to remedy.

More recent decisions appear to be more robust; the Council must completely eradicate former ways of working and ensure that it has strong officer support to avoid reverting to previous practices.

5.1.3 The Leader and the Chief Executive had already made a number of changes before commissioning this broader governance review.. They commenced work on my Preliminary Recommendations issued earlier this year. As a result of their efforts, members and officers have greater confidence in robustly challenging each other to improve the quality of decision-making. It is not in members, or the Council's interests, to return to a position where, for any reason, officers may be fearful of retaliation for giving advice.

5.1.4 Taking the above into account, and a number of less serious issues raised with me, I have framed the following recommendations to help the Council finalise its culture change.

## **5.2 Recommendations**

5.2.1 The Council should not be complacent and consider that issues have been resolved by the steps which have already been taken.

Based on the report above and other evidence the Council need to consider the following:

### **5.2.2 Ethical culture**

The Leader and Chief Executive need to re-build an ethical culture. High standards should be expected by them and of them and be non-negotiable or something to be worked around. They should not underestimate the positive impact they can have on both the political and managerial culture of the Council.

**Recommendation 1: Values statement** *The Leader and Chief Executive should consult upon and publish a brief statement of the values of the organisation perhaps focusing on behaviours and transparency and measure their actions and those of others against those values. **Those values should promote individual personal responsibility for challenging improper and unacceptable behaviours.***

To create ownership of these values there should be consultation within the Council with both officers and members.

It is the responsibility of all Councillors under the Localism Act to promote and maintain good standards of conduct and behaviour and therefore be willing to challenge poor behaviour by colleagues. Interaction should at all times be 'civil'; that does not mean that they should not, at times, be challenging or robust.

An ethical culture can be heavily influenced by the nature of relationships between political groups and Group Leaders. The controlling group recognise the importance of the oppositions role in Scrutiny; the Chair and Vice Chair of that Committee are drawn from the opposition. I note however that both the Chair and Vice Chair of Audit come from the controlling group. Best practice would suggest a more prominent role for minority groups in Audit, however I appreciate that the precise allocation of roles can depend upon the size of the opposition. In paragraph 2.2.6 I highlight a number of other issues concerning the relationships between political groups and the role of the opposition.

**Recommendation 2: *Political conventions*** *To underpin an ethical culture the Council should consider whether to review and then formalise the types of arrangements set out in 2.2.6 and document them as 'political conventions' and consider enshrining them in the Constitution. In addition Group Leaders need to work together and consider how their actions can help promote or hinder an ethical culture and should consider targeted external support to help them embed healthy political relationships and constructive challenge.*

In my experience, members are elected with proper motives and work hard for their communities, often with little recognition. However as set out in 4.6.3 they do not hold executive roles, other than as set out in the Constitution.

**Recommendation 3: *Strengthening the officer culture.*** *Whilst recognising the democratic legitimacy of elected members the Chief Executive needs to work with staff and members to re-establish appropriate roles and change an officer culture which had become overly compliant, to one which supports an ethical culture and where officers and members can talk frankly to each other. The officer organisation must embrace the values referred to above including those dealing with transparency.*

The objective should be an officer culture strong enough to manage the Council properly, regardless of political personalities, and one which supports and assist members with their proper roles.

### **5.2.3 Decision taking and transparency**

The Council needs to re-set the way it takes decisions and I recommend the following:

- **Recommendation 4: *Re-establish proper decision taking.*** *The review of the Constitution provided an opportunity to formally document proper decision taking whether that be by officers, Portfolio Holders, Cabinet or the Council itself. That should now be supported by intensive work not just with members but also with officers who may have lost sight of proper process.. This should be externally facilitated.*

The Council should not underestimate how difficult it will be to change what will have become 'the way we work round here'.

- **Recommendation 5: *Transparency in decision taking.***

**a) *Forward Plan*** *The Council has a Forward Plan; the original statutory basis for the publication of a Forward Plan was transparency. Forward Plans may not be the most exciting of publications but in addition to enhancing transparency, used properly they*

*can aid early discussion between members and officers of significant issues. Before an item gets onto the Forward Plan the proper processes for taking the decision should be agreed. A more robust Forward Plan will allow Scrutiny to better understand issues which will be coming forward, assist in prioritising work and smooth the political management of the Council. It should be updated regularly, preferably via discussion with Cabinet and published prominently on the Council's web site. It should be a living working document. The title of the agenda items and other information provided in the Plan should be sufficient to enable members and the public to understand the issues coming forward.*

**b) Planning** *Post COVID, the Council should, as a minimum, record meetings of its Planning Committee and make those readily available to the public.*

**c) Wider member briefings** *The Council should review how confidential information on key developments or from external bodies, such as those dealing with Whitehill and Bordon, is shared within the Council (perhaps via Group Leaders meetings) and how items which are not confidential can be made more widely available.*

- **Recommendation 6 *Compromise Agreements*** *The Council should review the wording used in any compromise agreements to ensure that they positively state that any confidentiality clauses do not 'gag' employees from raising legitimate concerns about governance within the Council, whether covered by 'public interest' or not.*
- **Recommendation 7: *Scrutiny***. *The Council should consider how it can further develop and strengthen Scrutiny to ensure it is relevant and focussed, including through reviewing whether there can be some dedicated officer resources devoted to it. It should also consider whether there is scope for improving the function by some co-ordination with Havant.*

## **5.2.4 Conduct**

The expectations of the ethical culture set out above need to be encapsulated in Codes and Protocols.

The Standards Committee exists for a purpose. I would not wish to encourage tit for tat complaints or those which can best be resolved by mediation, training or development to be referred, but it is important that serious or repeated allegations are, in a timely manner with a public record of the outcome. I recommend:

**Recommendation 8: *Standards Committee***. *Officers and Members need to commit to using the Standards Committee for its stated purpose and the Council acknowledge that the joint failure to act in a timely manner in the past has exacerbated problems.*

**Recommendation 9 *Application of the Councillors' Code of Conduct*** *The Code of Conduct, which has been updated, should have a short annex as part of the Code describing how it may be applied in many of the more routine issues a Councillor may face and deal with the issues of perception, as set out in 3.2.4.*

*In the section in the 'Preamble to the Code' reference is made to the need to 'comply with Protocols contained in or linked to the Council's constitution'. In my opinion the relevant protocols should be explicitly identified, and consideration should be given as to whether any of the Codes or Protocols should form part of the Councillors' Code of Conduct.*

Action by a political group cannot be a substitute for the Standards Committee and cannot be mandated by the Council. The Committee on Standards in Public Life stated that political groups

should set clear expectations of behaviour of their members. However, until the statutory framework changes:

**Recommendation 10: *Group discipline*** *In serious cases or repeated cases, in addition to reference to the Standards Committee, Group Leaders should commit to the exercise of regulation through political groups.*

From all accounts the Council's former Monitoring Officer, David Brown, had a very positive impact upon the Council and helped improve governance. He helped bring a fresh impetus to supporting the Leader and Chief Executive tackle long standing governance problems.

**Recommendation 11 *Monitoring Officer.*** *Monitoring Officers have a key role in supporting the Chief Executive and members on the ethical values of the Council. Some Councils undervalue the post of Monitoring Officer. The Council should not do so and should ensure that at all times the post holder has not just the required technical skills and personality to work constructively with members but also the strength to intervene and take action when advice is not heeded.*

### **5.2.5 Other Codes and Protocols**

In 3.2.3 and 3.2.5 above I refer to the Officer/Member Protocol, Planning protocols, the Gifts and Hospitality Policy and email policy.

**Recommendation 12:** *The Council should consider the observations I make about the content of those documents. There needs to be explicit statements about members not instructing officers, and strong advice cautioning against meetings with developers/possible business partners or contractors.*

### **5.2.6 Member development and training**

Whilst the Council's training and development of members was praised:

**Recommendation 13:** *The observations from members about short refresher sessions including on conflicts of interest should be considered.*

*The Council should review how it inducts new members in particular to get them up to speed as soon as possible. If new members cannot navigate the Council properly and effectively it hampers them in their patch role.*

*Training for all members on the new Councillors' Code of Conduct and the revised Codes, Protocols and Policies should be mandatory, emphasising issues such as perception.*

### **5.2.7 Staff surveys and exit interviews**

**Recommendation 14** *The Council should re-introduce exit interviews for staff. Those exit interviews should be used along with staff survey data to assess the health of the organisation. The feedback from such interviews and the staff survey should be made available as part of the annual governance statement and reported to the Standards Committee.*

*There should be specifically worded questions in staff surveys about culture and relationships, asked on an annual basis, so the Council can track the health of the organisation.*

### 5.2.8 Appraisal and development of officers

Paragraph 5.3 of the new Councillor/Officer Protocol sets out how members should deal with complaints about officers. As far as I can assess the overwhelming number of members have had few problems with officers and where they have, have complied with that protocol.

**Recommendation 15** *Regardless of the comments in this review it is important that members do feel able to feed back to senior officers their perception of the performance of staff in accordance with that protocol. (In so doing they should recognise they may only see how an officer 'performs' in a member environment and may not be able to judge the officer's professional, technical, staff management and other skills). Senior officers should use that feedback to help with the development of staff.*

*Senior members of the controlling and opposition group should also have appropriate input into the annual appraisal of senior officers of the Council. The Council should consider how that could be structured for the Chief Executive. The Chief Executive should consider how this may be structured for direct reports and potentially Heads of Service.*

### 5.2.9 Looking Forward.

This report may have made for uncomfortable reading however the Council has already made substantial progress. The issues raised were complex and relate largely to former officers and members and have been extensively reviewed. The recommendations will require considerable efforts and joint working to help consolidate that progress and should be a priority.

**Recommendation 16** *Members should put their energies into moving forward and consolidating improvements, rather than re-investigating the past.*

### 5.2.10 Further assessment

**Recommendation 17** *The Council should consider a further assessment of its culture and progress against these recommendations in 12 months time, perhaps via a review report to Cabinet and the Standards Committee. I understand the Council is to invite the LGA to conduct a peer review next year; the Council should explore whether that process can deliver a suitable progress report on these recommendations.*

## 5.3 Acknowledgement

Because of the issues which emerged and the need to apply the principles of natural justice this final report has been issued later than intended. I want to put on record and acknowledge that both the Leader of the Council and Chief Executive have at no time sought to delay the report or minimise its impact; indeed the reverse. They have consistently sought to ensure problems the Council have experienced have been identified, in order that recommendations can be framed to assist the Council in moving forward.

Finally, I would like to thank those members and officers who participated in this review for their open, honest and frank contributions, and thank those officers who provided significant assistance and support, including with document retrieval and arranging meetings.