PRIVATE AND CONFIDENTIAL

Report of an investigation by Wilkin Chapman LLP, appointed by the Monitoring Officer for Castlepoint Borough Council, into allegations concerning Councillor Norman Smith, a Member of Council.

22\textsuperscript{nd} February 2021
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Appendix A   Schedule of evidence taken into account and list of unused material
1. Executive Summary

1.1 Councillor Smith is the Leader of Castle Point Borough Council having first been elected in 2006.

Planning application by Luke Smith for 243 Vicarage Hill, Benfleet

1.2 On 17 June 2019 a planning application (19/0433/FUL) was received from a Mr Luke Smith, the son of Councillor Norman Smith, concerning 243 Vicarage Hill, Benfleet. The recommendation from the planning officer was refusal. The application was considered by the Development Control Committee on 3 September 2019. The application was refused.

1.3 A second application was made on 25 November 2019 by Mr Smith. Again, the recommendation from the planning officer was refusal. The application was considered by the Development Control Committee on 3 March 2020. The application was refused.

1.4 Councillor Mumford submitted his initial complaint to the Monitoring Officer on 10 August 2020. Councillor Mumford alleged that Councillor Smith had attempted to encourage support from some Conservative members, including himself, of the Development Control Committee to support Councillor Smith’s son’s planning application concerning 243 Vicarage Hill, Benfleet.

1.5 It is evident that Councillor Smith spoke to Councillor Mumford and Councillor Dick apparent that Councillor Smith spoke to Councillor Haunts regarding his application. On each occasion Councillor Smith sought support for his son’s planning application.

Planning application on behalf of Bernard Litman for 39-43 High Street, Canvey island

1.6 The Council received a planning application (19/0336/FUL) on 10 May 2019 from Mr Rahman of RD Architects in respect of 39-43 High Street, Canvey Island on behalf of the developer Mr Bernard Litman. The application was subject of delegated powers and refused by the Planning Officer.

1.7 Councillor Mumford submitted a second complaint to the Monitoring Officer on 29 September 2020. Councillor Mumford alleged that fearing the planning application would be refused by Officers, Councillor Smith tried to get Councillor Mumford to call the matter in (meaning that the application would be considered by the Planning Committee and not planning officers acting under delegated powers). Councillor Mumford has alleged that Councillor Smith’s motive to do this was to help his friend Mr Litman.

1.8 Mr Litman is a friend of Councillor Smith. It is evident that Councillor Smith spoke to the Chief Executive regarding this application and also to the Planning Officer.

1.9 It should be noted that there is no suggestion of any impropriety by Bernard Litman.

Planning Improvement Peer Challenge Report

1.10 The Council underwent a Planning Improvement Peer Challenge in April 2019. Amongst other things, that process identified: -

(a) recognition by political and managerial leaders at the Council of weaknesses in planning decision making;

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(b) a widespread perception concerning weakness in probity in relation to planning decision making;

(c) concerns as to the understanding of some members of their role and the codes of conduct and other Council policies that govern behaviour and practice.

Conclusions

1.11 We have concluded that Councillor Smith: -

(a) was acting in an official capacity in relation to the conduct alleged in both complaints;

(b) had a non-pecuniary interest in 243 Vicarage Hill, Benfleet because his son Luke Smith owned the property;

(c) by lobbying members and officers he attempted to confer on or secure an advantage for his son. That lobbying was improper and in breach of paragraph 5(a) of the Council’s code of conduct because of that non-pecuniary interest and because he failed to follow the Protocol and Code of Conduct for Planning Matters. Councillor Smith’s actions were particularly improper in the light of the findings of the Planning Improvement Peer Challenge;

(d) had a non-pecuniary interest in 39-43 High Street, Canvey Island because he was a friend and close associate Bernard Litman who owned the property;

(e) by lobbying members and officers he attempted to confer on or secure an advantage for Mr Litman. That lobbying was improper and in breach of paragraph 5(a) of the Council’s code of conduct because of that non-pecuniary interest because he failed to follow the Protocol and Code of Conduct for Planning Matters. Councillor Smith’s actions were particularly improper in the light of the findings of the Planning Improvement Peer Challenge;

1.12 However, we have also found that Councillor Smith: -

(a) did not compromise or was not likely to compromise the impartiality of Rob Davis, the Council’s Planning Development and Enforcement Officer;

(b) did not breach the Protocol on Councillor/Officer relations.

1.13 Our conclusion is that there have been two breaches of paragraph 5(a) of the Code of Conduct of the Authority by Councillor Smith.
2. **Councillor Smith's official details**

2.1 Councillor Smith was first elected to Castlepoint Borough Council in 2006.

2.2 He is a Conservative Councillor representing the Boyce Ward.

2.3 Councillor Smith last signed a declaration of Office on 11 May 2018, updating his Register of Interests on 5 March 2020.

2.4 At the time of the allegations Councillor Smith was Leader of the Council.

2.5 We understand that when Chairman and Vice Chairman of the Development Control Committee Councillor Smith received regular and routine Member training on the Code of Conduct and Planning Protocol.

2.6 More recently Councillor Smith attended Development Management Committee training on 29 and 30 September 2020 which dealt with Code of Conduct, particularly in relation to planning matters.
3. Relevant legislation and protocols

3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant authority (of which the Council is one) must promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging this duty, the Authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity.

3.2 Section 28 of the Act provides that the Authority must secure that its code of conduct is, when viewed as a whole, consistent with the following principles:-

(a) Selflessness;
(b) Integrity;
(c) Objectivity;
(d) Accountability;
(e) Openness;
(f) Honesty;
(g) Leadership.

3.3 The Authority adopted a Code of Conduct (attached at WC 1) on 15 May 2012. The following paragraphs are included:-

“2. What does the code apply to?

(1) You must comply with the Code whenever you-

   (a) Conduct the business of the Authority, or

   (b) You are acting as a representative of the Authority.

(2) This code has effect in relation to your conduct in your official capacity.

3. General obligations

(3) (d) do anything which might compromise or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.

5. Conferring an advantage or disadvantage

You must-

(a) Not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
(b) When using or authorising the use by others of the resources of the Authority-
(i) Act in accordance with the Authority’s reasonable requirements;
(ii) Ensure that such resources are not used improperly for political purposes (including party political purposes);

(c) Have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

6. Disclosable Pecuniary Interests

6.1 You have a Disclosable Pecuniary Interest in any business of the Authority if it is of a description set out in 6.2 below and is either:

(a) An interest of yours; or

(b) An interest (of which you are aware) of a spouse, civil partner or a person you are living with as a spouse or civil partner (“known as Relevant Persons”).

6.2 A Disclosable Pecuniary Interest is an interest which relates to or is likely to affect:

i. Any employment, office, trade, profession or vocation carried on by you or a Relevant Person for profit or gain;

ii. Any payment or provision of any other financial benefit (other than from the Authority) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a member, or towards your election expenses. This includes an payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992

iii. Any contract for goods, services or works which has not been fully discharged between you or a Relevant Person an the Authority or a body in which you or they have a beneficial interest;

iv. A beneficial interest in any land in the Authority’s area;

v. A licence of any land in the Authority’s area (alone or jointly with others) that you or a Relevant Person occupy for a month or longer;

vi. Any tenancy where to your knowledge (a) the landlord is the Authority and (b) the tenant is a body in which you or a Relevant Person has a beneficial interest

vii. Any beneficial interest in securities of a body where-

1. that body (to your knowledge) has a place of business or land in the area of the Authority and

2. either:

   a. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

   b. the beneficial interest exceeds one hundredth of the total issued share capital of the share capital of that body, if of more than one class, the total nominal value of the shares of any one class
8. Non-Pecuniary Interests

You have a Non-Pecuniary Interest in any business of the Authority where it relates to or is likely to affect:

i. any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Authority;

ii. any body-
   1. exercising functions of a public nature;
   2. directed to charitable purposes; or
   3. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);
   of which you are a member or in a position of general control or management;

iii. the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50;

iv. a decision in relation to that business which might reasonably be regarded as affecting our wellbeing or the wellbeing or financial position of a friend, relative or close associate to a greater extent than the majority of:-
   (a) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
   (b) (in all other cases) other council tax payers, ratepayers or inhabitants of the Authority’s area

10.2 Public Perception

If you have an interest which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement in the public interest and you are present at a meeting of the Authority at which such business is to be considered or is being considered you must:

(i) Disclose the existence and nature of the interest in accordance with paragraph 9.1 (but subject to paragraph 9.3) and

(ii) Withdraw from the room or chamber where the meeting considering the business is being held”

3.4 The Authority’s Protocol and Code of Conduct for Planning Matters (attached at WC 2) includes the following paragraphs:-

“Part 1

1.5 This Code applies to Members at all times when involving themselves in the planning process. This includes both decision making meetings of the Council and less formal, such as meeting with officers or the public and consultative meetings.
Part 2

1.1 Members' conduct is governed by the Councillor Code of Conduct and Officers' conduct is covered by the Code of Conduct for Staff contained in the Council’s Constitution.

4.5 Members should avoid becoming associated in the public mind with representatives of the development industry, such as landowners, builders, agents or planning consultants. A consistent record of supporting a particular applicant or agent, contrary to the Council’s adopted policies, could be seen as evidence of a private interest or connection.

8.1 Proposals to their own authority by Members and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for a Council’s own development. Proposals can take the form of either planning applications or Development Plan proposals.

13.2 However, such lobbying can lead, unless care and common sense is exercised by all the parties involved, to the impartiality and integrity of a Member being called into question.

Part 4

1.5 Unless care is taken, lobbying can lead to the impartiality and integrity of a Member being called into question. Members need to take account of the public’s expectation that a planning application will be processed in an open and fair manner…”

3.5 The Authority’s Protocol on Councillor/Officer Relations (attached at WC 3) includes the following paragraph:-

“Officers have a responsibility to make recommendations to Councillors in accordance with their own professional expertise. Councillors should not therefore, seek to direct the content of such recommendations. Councillors equally are entitled to reject proposals and recommendations submitted to them”
4. Evidence and facts

Our appointment

4.1 The Council’s arrangements for dealing with standards complaints state that the Monitoring Officer of the Council, in consultation with the appointed Independent Person (IP), shall decide whether or not to investigate a complaint.

4.2 In consideration with the IP, Andrew Smith, the Monitoring Officer (MO) of the Council decided on 5 August 2020 to refer for investigation allegations set out in a complaint made by Councillor Charles Mumford. He instructed Wilkin Chapman LLP on 11 August 2020 to carry out that investigation.

4.3 On 2 October 2020, following a further complaint by Councillor Mumford, the MO Andrew Smith instructed us to investigate that complaint.

4.4 Wilkin Chapman LLP is a solicitor’s firm based in Lincolnshire and East Yorkshire with a national local government legal practice. Work in relation to this investigation was undertaken by Jonathan Goolden, Gill Thompson and Dave Hayward.

The investigation

4.5 During the investigation, signed statements were obtained from:-

- Councillor Charles Mumford;
- David Marchant, Chief Executive;
- Councillor Bill Dick;
- Councillor Wayne Johnson;
- Jason Bishop, Solicitor to the Council;
- Daniela Croci, Investigation Officer, Thurrock Council;
- Councillor Pat Haunts;
- Councillor Dave Blackwell;
- Councillor Simon Hart;
- Councillor Colin Riley, Mayor;
- Councillor Jeffrey Stanley, Deputy Leader;
- Ann Horgan, Head of Governance;
- Rob Davis, Planning Development and Enforcement Officer;
- Councillor Bill Sharp;
- Diane Logue, Head of Housing (former Transformation Manager – Planning);
4.6 Councillor Smith was interviewed via Microsoft teams on 3 November 2020 and a recording was made from which a transcript was produced.

4.7 Copies of the above, together with other relevant documents are annexed to this report and listed in a Schedule of Evidence at Appendix A.

4.8 We wish to record our thanks for the co-operation and courtesy shown to us by all those we had cause to contact during the investigation.

Background

4.9 On 17 June 2019 a planning application (19/0433/FUL) was received from a Mr Luke Smith, the son of Councillor Norman Smith, concerning 243 Vicarage Hill, Benfleet. The recommendation from the planning officer was refusal. The application was considered by the Development Control Committee on 3 September 2019. The application was refused.

4.10 A second application was made on 25 November 2019 by Mr Smith and considered by the Development Control Committee on 3 March 2020. Again, the application was refused.

4.11 On 10 May 2019 Mr Rahman of R D Architecture Ltd submitted a planning application for 39-43 High Street, Canvey Island on behalf of the developer Mr Bernard Litman. The application was subject of delegated powers and refused by the Planning Officer.

The Complaints

4.12 Councillor Mumford submitted his initial complaint to the Monitoring Officer on 10 August 2020 (attached at WC 4). Councillor Mumford alleged that Councillor Smith had attempted to encourage support from some Conservative members, including himself, of the Development Control Committee to support his son’s planning application concerning 243 Vicarage Hill, Benfleet.

4.13 Councillor Mumford submitted his second complaint to the Monitoring Officer on 29 September 2020 (attached at WC 5). The complaint concerned a planning application submitted by Mr Rahman of R D Architecture Ltd on behalf of the developer Bernard Litman. Councillor Mumford alleged that Councillor Smith fearing the planning application would be refused by Officers, wanted Councillor Mumford to call the matter in. Councillor Mumford has alleged that Councillor Smith’s motive to do this was about helping his friend Mr Litman.

The Complainant – Councillor Mumford

4.14 Councillor Mumford was interviewed on 1 September 2020 and two signed statements were obtained (copies attached at WC 6 and WC 7). He stated that:-

(a) he was a councillor on Castle Point Borough Council (the Council) having first been elected in May 2015. He represented Boyce Ward. He sat on the Local Plan Delivery Board which was a new delivery mechanism to deliver the local plan at big sites as they came forward. He had been removed from/not re-selected for The Paddocks Working Group, the Canvey Island Seafront Working Group and the Town Centres Working Group;
(b) he represented the Council on the London South & Airport Consultative Committee on which he substituted for the Deputy Leader. He also represented the Council on the Essex branch of the British Red Cross;

(c) in May 2018 he had been appointed to the Cabinet by Councillor Smith. He had held the portfolio for Regeneration and Business Liaison. Apart from his Cabinet portfolio responsibilities he was also a member of the Development Control Committee (D C Committee);

(d) the main function and purpose of the D C Committee was to consider and approve/refuse planning applications. The Council's planning officers would prepare reports for applications to be considered by the D C Committee. The D C Committee was considered quasi-judicial in its function and it was an essential requirement that members of the D C Committee exercised complete independence of judgment when considering planning applications. That was to ensure there was no predetermination on planning applications and to demonstrate impartiality, transparency and probity in decision making;

(e) at D C Committee meetings, a planning officer would present their report and describe the reasons as to why that particular recommendation had been reached for that application. Members of the D C Committee could choose to support the recommendation or vote against it but only on points of planning principles, legislation and guidelines;

(f) the Council's Constitution required certain types of applications to be referred to the D C Committee including, but not limited to, applications where the Council was aware that a Member or officer or close relative of either had made the application;

(g) Mr Luke Smith had made an application for planning permission in June 2019 in respect of 243 Vicarage Hill, Benfleet. The application had come before D C Committee on 3 September 2019 because the applicant was Councillor Smith's son. There had also been a call-in request from Councillor Hart due to the possible effect of the proposal on the openness of the Green Belt. The application had been recommended for refusal by the planning officer;

(h) the property at 243 Vicarage Hill, Benfleet consisted of a fairly substantial plot of land with one house and some small outbuildings. The front of the property abutted the main road. To the rear of the existing house the land extended a considerable distance and was identified as sitting within the Green Belt. The application made in September had been to build a much larger house on the area of land identified as falling within the Green Belt;

(i) prior to the D C Committee meeting on 3 September 2019 he had become aware that Councillor Smith was attempting to encourage support from some Conservative members of the D C Committee, namely Councillor Haunts, Councillor Johnson and himself. They had later acknowledged that they had felt distinctly uncomfortable at the approaches and had considered them inappropriate from the Council Leader;

(j) Councillor Smith had said to him that in his opinion the land at 243 Vicarage Hill should be categorised as ‘previously developed land’ and not Green Belt as it had been described by the planning officer in his report. Councillor Smith went on to suggest that Council officers were being ‘difficult’ about the matter because the application was associated with him through family connections.
Councillor Smith had said that he hoped he [Councillor Mumford] would be able to support the application when it went to Committee;

(k) despite thinking that Councillor Smith’s approach to him was inappropriate he had not felt threatened in any way but he had felt he had, as Leader of the Council, exercised soft power on him and, as he had subsequently discovered, others;

(l) at the D C Committee meeting on 3 September 2019 he had felt genuinely torn before making his decision to approve the application, against the officer’s recommendation. He had considered the application had been finely balanced on planning grounds with regard to possibly being previously developed land in the Green Belt. The application had been refused on a majority vote of the committee;

(m) Mr Luke Smith submitted a revised planning application for consideration by the Council. That application had been scheduled to be considered by the D C Committee on Tuesday 3 March 2020. As with the previous application, the revised application was to be presented to the D C Committee because the applicant was the son of Councillor Smith;

(n) the application had again been recommended for refusal by the planning officer, primarily because the proposal constituted inappropriate development in the Green Belt;

(o) by way of further context he added that in April 2019 the results of the Council commissioned ‘Planning Improvement Peer Challenge’ had been received. The report had been undertaken by the Local Government Association (LGA) together with the Planning Advisory Service (PAS). Some serious issues had been identified that the Council needed to urgently address regarding planning matters, member and senior officer relationships and perceived closeness and private involvement with planning applications from some Members. The report had contained a number of key recommendations and actions the Council needed to take, together with a recommended timetable;

(p) he regretted that the full recommendations and need for an implementation action plan had not been enthusiastically embraced by the Leader and other councillors. In the Cabinet report of 22 January 2020 it had been recommended and agreed that he should chair the Peer Challenge Framework Delivery Group. Disappointingly, he did not believe he had received the expected full support of the Leader in progressing the recommendations and he had to question why this was;

(q) leading up to the meeting on 3 March 2020, he had again been aware that Councillor Smith had been mentioning that the application was coming up again and that he felt the recommendation to refuse was wrong and the only reason it had been refused previously was because Councillor Wass had voted the wrong way by mistake;

(r) the first time Councillor Smith had spoken to him directly about this application had been the morning of Friday 28 February 2020, directly after a meeting of Private Cabinet;

(s) after briefly discussing some other matters Councillor Smith moved the discussion to the upcoming D C Committee meeting on 3 March 2020. He had
asked if he was okay and would be attending the meeting. He had confirmed he would be attending. He then said “Good, the voting is tight and I don’t want a mess up like last time with the voting and I know you will be supporting”. He had been quite shocked at his directness and felt genuinely disappointed in him as the Leader, particularly in view of the work he had been authorised to do on the Peer Review. He believed he was effectively asking him to compromise his integrity and independence of judgment as a member of the D C Committee;

(t) he had told Councillor Smith that he would need to fully read the planning officer’s report and participate in the D C Committee meeting before making any decision. Councillor Smith’s face had dropped at this and he said “Oh, I was relying on you to support this. We need every Conservative member on the committee to vote for it as otherwise it won’t pass”. At that point he had suggested that he would consider abstaining. Councillor Smith had responded saying the vote could still be lost as he believed the voting numbers would not allow for that and he really needed him to vote for the application. He had added “Don’t forget how I helped you get elected into Boyce Ward”;

(u) he had got frustrated with the conversation and the fact that they were even having such a conversation. He had concluded by saying “I need to read the report in full and I’m not in a position to confirm either way how I’m going to vote”. At that point they had parted company;

(v) at that time he was clearly being put under considerable pressure, entirely inappropriately, to support the application. After talking to some other members he had discovered they had also felt under pressure to support the application. He believed there had been a problem in terms of the Leader’s integrity in respect of his son’s planning applications. Councillor Smith’s behaviour had been way beyond that which was acceptable. Members of the D C Committee had to have a completely open mind as planning was one of the most contentious areas of local government activity. There was considerable public scrutiny;

(w) on 3 March 2020, approximately two hours before the D C Committee meeting was due to start, Councillor Smith had telephoned him at home on the pretext of discussing another matter. As soon as he had heard his voice he had known the real reason he had telephoned. The conversation had quickly turned to the issue of the D C Committee meeting that evening and the Vicarage Hill application. Councillor Smith again asked him to support the application saying that he was relying on his vote and support. He had felt like giving up on the whole Council business;

(x) at the D C Committee meeting that evening he had voted against the application and for refusal. The Chairman, Councillor Dick, had also voted against the application. The application had been refused in line with the planning officer’s recommendation;

(y) since the D C Committee meeting on 3 March 2020 Councillor Smith’s demeanour towards him had been frosty. At meetings he had felt he had been reluctant to make eye contact with him or ask his opinion on topics under discussion. He believed Councillor Smith was very angry with him and he had consequently got the cold shoulder;

(z) at the meeting of the Joint Executive, on the evening of 4 March 2020 (a meeting between Cabinet members and senior officers of the Council) he had
felt that Councillor Smith had barely acknowledged his presence, despite him being a key member of his Cabinet. He had struggled to get his point across that he had wished to speak. Councillor Smith had been very dismissive and his behaviour had been witnessed and commented on by others who attended the meeting, both officers and Members. That behaviour had continued also at meetings of the Conservative Group (chaired by Councillor Smith) and at Private Cabinet;

(aa) he was aware that senior officers of the Council were aware of the pressure Councillor Smith had exerted on some councillors to support the two applications. In the week leading up to the D C Committee meeting on 3 March 2020 he had received a call at home from a senior officer, Ann Horgan, who was Head of Civic Governance/Scrutiny Officer. Ms Horgan enquired whether he had been put under any pressure from Councillor Smith to support the application. At the time of that conversation he had not been directly put under any pressure but he had been informed other Councillors had expressed disquiet because they had been approached on that application and also the application in September 2019. He had been relieved that other councillors and senior officers also shared his concern. Ms Horgan had asked him to let her know if he was put under any pressure;

(bb) on Tuesday 10 March 2020 he was asked to attend a meeting with the Council’s Monitoring Officer and Strategic Director Corporate Services, Andrew Roby Smith and the Deputy Monitoring Officer and Solicitor to the Council, Jason Bishop, when that subject had been discussed. He had been asked if he would be willing to be interviewed by independent investigators on the matter. He had confirmed that he would;

(cc) since raising his concerns events had moved on regarding his position on Cabinet;

(dd) at the start of the new Council year in May, the Leader primarily selected his Cabinet and the people who sat on the different groups but he had not been included in the new arrangement. He felt that was an act of vengeance by Councillor Smith because he had not supported his son’s planning application;

(ee) that had also happened to Councillor Bill Dick, the Chairman. He understood he had left the Conservative Group and now stood as an Independent councillor. It was just the Chairman and him from the Conservative Group who had not supported the application;

(ff) the Council had since late 2019 until April 2020 undertaken a comprehensive review of its key functions and objectives across the range of services together with adopting a clear vision for the borough. That had been a joint enterprise between Cabinet members, led by the Leader, and the senior officer team led by the Chief Executive. As Cabinet Member for Regeneration and Business Liaison he had been fully involved with the process, playing a full part in the meetings and contributing to the development of the strategic overview;

(gg) since the imposed lockdown due to Covid-19, meetings of the Council, including Cabinet and Development Control, by necessity, had been suspended. However, meetings of Private Cabinet had continued via the ‘Teams’ app, one being held on 16 April 2020 and one on 1 May 2020;
at the meeting of Private Cabinet on 1 May 2020, following the usual reports from individual Cabinet Members, the Leader had told them the revised responsibilities for respective Cabinet members had been drafted and he would be contacting them individually to go through their roles. He had gone on to say that there were no fundamental changes to their Cabinet posts, only that they would be more focused and with a reduction of overlapping of areas of responsibility;

that assurance from Councillor Smith transpired to be unfounded because on Sunday 3 May 2020 he had telephoned him in the evening and told him that he wanted him to stand down from Cabinet. He had been shocked as he had not previously indicated that had been his intention. Also, he recalled his statement about the Cabinet roles and positions at the meeting on 1 May 2020;

Councillor Smith told him of his reasons for wanting him to stand down which he had disputed. He told Councillor Smith that he had no intention of leaving the Cabinet and so he would have to sack him. He had told him he thought the real reason was that he had not voted for his son’s planning application. He had responded by saying “I don’t want to talk about that and its not the reason”. He had told him he had discussed his decision with the Deputy Leader and Chief Executive and that they had both agreed with his decision and the reasons given;

he had followed the call with an email to Councillor Smith to put in writing the reasons he had given for asking him to stand down from Cabinet:

“Dear Norman

Thank you for your phone call this evening informing me of your decision to sack me from your Cabinet as member for Regeneration and Business Liaison.

Your opening remark to me was that you wanted me to consider standing down from Cabinet which, on reflection, would indicate a voluntary decision on my part. We need to be clear that you have decided to sack me from Cabinet as I would have no intention of leaving that position otherwise. When I asked you why, you sited various reasons that evidently compelled you to come to your decision including according to yourself: My management of the Peer Review process???, my general poor work performance?? My not being supportive of you??, you feeling I was not communicating with you, my position on the Paddocks was evidently contrary to the Corporate position and in direct conflict with the Deputy Leader???, that I had undermined you on Facebook regarding a post by Cllr Thornton and which was supported by Cllrs Sharp and Hart. I did try to make it clear that I was actually supporting you and Cabinet collective responsibility, but to no avail.

I suggest all of the above is window dressing for the real reason and as I said during our telephone conversation, the dynamic of our relationship changed suddenly after March 3rd.

Regards
Chas Mumford
Conservative Councillor for Boyce Ward
Cabinet Member for Regeneration and Business Liaison (Sacked)”
on Tuesday 5 May 2020 he had received a very supportive call from the Chief Executive. He told him that he thought Councillor Smith had made a mistake and that he and the Deputy Leader had tried to persuade Councillor Smith to keep him on the Cabinet. This was completely contrary to what Councillor Smith had said to him. The Chief Executive said "don't get too down about it, you've got a lot of support amongst fellow members and chief officers, stick with it because I'm sure one day you'll be back on the Cabinet. You've got valuable contributions to make."

he had spoken to the Deputy Leader about his concerns over the first application. He had told him he had made a mistake by voting the way he had and should have voted against, expressing his reasons why. He had spoken to the Deputy Leader since and he had confirmed to him that he had also tried to persuade the Leader to keep him on Cabinet;

he had done significant work with a whole range of officers on Paddocks and Town Centre within his Regeneration role and it was disappointing now not to have any involvement. He was sure the decision to remove him from those working groups was a political decision made out of spite;

he was disappointed, upset and angry that Councillor Smith had put him in that position. It would potentially reflect badly on the Council and his Party. As Leader, like all holders of public office, Councillor Smith had a responsibility to uphold certain values and project a positive image and reputation of the Council. He believed Councillor Smith had damaged his political career by removing him from Cabinet although that was a small price to pay compared to compromising his integrity;

a couple of weeks ago he had received a telephone call from Councillor Smith in which he had asked him to go onto the Local Plan Delivery Board. He had said “yes, okay” and Councillor Smith then said words to the effect of “We're all square then?”. He had asked what he meant and he asked him if he still had an issue. He had said “yes, I'm not satisfied with what happened and the action that you took”. Councillor Smith then said “well, I don't want to talk about that, it's all in the past, let's draw a line under it”. He had told him, “I can't, I'm not prepared to, what you did was wrong”. Councillor Smith, as Council Leader, had a role of civic responsibility and had failed to live up to the standards that the public may rightly expect of someone in that position;

he had supported Councillor Smith through a lot of things during his time as Leader. The Local Plan was very contentious and he had had to get a lot of members onside for that. He had given 100% support. Up to 3 March 2020 he believed they had had a good working relationship but because of the action he had taken in respect of his son's planning application, Councillor Smith had chosen to break that relationship;

Mr Litman was a property developer and friend of Councillor Norman Smith. Councillor Smith had made no secret of the fact that he quite regularly took holidays in Barbados, staying at a property there owned by Mr Litman. That was a well known fact amongst other Castle Point councillors;

at his request Councillor Smith had met with him on 9 July 2019 to discuss some issues covered by his portfolio as Cabinet Member for Regeneration and Business Liaison. During that meeting Councillor Smith had brought up the
matter of a planning application which he said had caused him concern and which he felt officers had tried to frustrate, in his opinion, for the wrong reasons;

(tt) Councillor Smith told him the application was for a development of residential apartments or flats on High Street, Canvey Island and that the developer was Mr Bernard Litman. Apparently the site was owned by Mr Litman and had previously been his site for his premises selling electrical and white goods;

(uu) he did not know why Councillor Smith had discussed that matter with him but he had become concerned as he was aware of a connection between Councillor Smith and Mr Litman;

(vv) the relationship between Councillor Smith and Mr Litman had been the subject of a story in the local press and on social media some time ago and it would seem was one of long standing;

(ww) Councillor Smith had always defended his relationship with Mr Litman, saying that he paid Mr Litman for the use of the property in Barbados. Whilst that may be the case, there was no mention of that arrangement in Councillor Smith’s Declarations of Interest;

(xx) at their meeting on 9 July 2019, Councillor Smith told him that he feared Mr Litman’s application would be refused by officers before it got to the Development Control Committee (D C Committee). To avoid that happening Councillor Smith had wanted him to call in the application;

(yy) Councillor Smith said that they needed to do that for ‘Bernie’, as Councillor Smith called Mr Litman, because the case planning officer had been ‘difficult’ over the plans. He had understood the proposed development had been for residential use and the planning officer had resisted because the development was situated in an area designated for retail and commercial business;

(zz) Councillor Smith had said that the planning officers had been insisting on the ground floor of the development being retained for shops and retail space. Councillor Smith had argued that they were crying out for residential development and places for people to live and that it was pointless insisting on having lots of retail spaces that would never be filled;

(aaa) he had agreed with Councillor Smith as personally he saw the future of conventional shopping areas and high streets increasingly becoming a mix of residential and commercial use. On that basis he had agreed to call in the application with a view to it being considered by the D C Committee;

(bbb) after the meeting it had become increasingly apparent that Councillor Smith’s real motive had not simply been about the dynamics of town planning but more about helping his friend, Mr Litman. He believed Councillor Smith had involved himself on too personal a level in respect of that application, over and above what would normally be expected with any other application when the developer was not a personal friend.

(ccc) a day or so later he had accessed the Council’s website to make the call in request. However, the application had already been called in by a Councillor from the Canvey Island Independent Party. He had therefore texted Councillor Smith to alert him to that and Councillor Smith had agreed with him that it was unnecessary for him to call it in also;
however, the application had been refused by officers which obviously satisfied the Canvey Island Independent councillor. That party opposed any development on Canvey Island;

Councillor Smith had been most annoyed when he realised the application had not been called in. He had asked, “why didn’t you call it in like I asked?” and went on to say “if we had got it called in, we could have got his application through for him. Its madness having to put shops there when we need flats. Bernie’s a good friend and supporter of the Conservatives and now he’s been let down” and “you need to speak to him and let him know how this happened. I was relying on you Chas. He’s now wasted a lot of money on that application and all for nothing. We’ve really let him down and now he’ll have to put in another application and that will cost him even more money”;

he must state that he hardly knew Mr Litman. He had met him briefly on two or three occasions when the Litmans had hosted a Summer Barbecue at their home;

it had been evident that Councillor Smith was embarrassed that Mr Litman’s application had not been called in as he had appeared to have promised, and so the opportunity to overturn the planning officer’s recommendations had been lost;

Councillor Smith told me that he had told Mr Litman what had happened and that he was to blame for the application not being called in. He had told Councillor Smith that he would speak to Mr Litman at the next opportunity to explain what had happened. He had done that on Saturday 7 September 2019 at the Litman’s barbecue. Mr Litman had been pretty philosophical, saying “well, these things happen”. Mr Litman had said he would probably go back to the drawing board and re-submit an application at some point. He had therefore considered that was an end to the matter;

towards the end of February or first week in March 2020 he received a call on his mobile phone from a number he had not recognised. When he answered the call, a voice said “Hello Chas, its Bernard Litman”. He thought Mr Litman had been calling from Barbados. Mr Litman had told him he had submitted revised plans to the Council and following what had happened previously Councillor Smith had suggested that he spoke directly to him to request the call in. In order to end the conversation, he had said something like “I will see what I can do”;

he had been genuinely concerned at that point as Mr Litman’s call had coincided with Councillor Smith applying pressure in relation to another application submitted by his son which had been due to be considered by the D C Committee on 3 March;

he had contacted Rob Davis, the Council’s Planning Development and Enforcement Manager to arrange a meeting with him regarding Mr Litman’s latest planning application. The meeting had taken place on 6 March 2020 in Mr Davis’ office;

he had told Mr Davis that he had been contacted about the application and asked if he could discuss it with him from a planning perspective as he had been asked, inappropriately, to call it in;
when Mr Davis had inspected the new application and compared it with the previous one he considered the applications were too similar in a lot of respects and that, in his opinion, the application could not be considered as a new application. Mr Davis said the developer would be informed of that fact and a call in was therefore irrelevant. He had been genuinely relieved at the decision as it took the pressure off him.

David Marchant

4.15 The Chief Executive, David Marchant, was interviewed on 1 September 2020 and a signed statement was obtained (copy attached at WC 8). He stated that:-

(a) he was the Chief Executive of Castle Point Borough Council (the Council). He had been the Chief Executive for the last fifteen years;

(b) the Council was made up of 41 councillors, 2 Independent, 15 Canvey Island Independent and 24 Conservatives. The Council was therefore controlled by the Conservative Group. Councillor Norman Smith was the Leader of the Council, a role he had held for the last three years;

(c) when Councillor Smith had taken over as Leader he had vacated all his other roles on the Council, putting Councillor Mumford into those roles. Councillor Mumford had become the Cabinet Member for Economic Growth & Regeneration and became the link member on the Development Control Committee (D C Committee);

(d) the D C Committee had 13 members and was politically balanced reflecting the makeup of the whole council. Members that served at that time were Councillors Sharp, Mumford, Johnson, Hart, Wass, Cutler, Haunts and Dick for the Conservatives and Councillors Blackwell, Anderson, Acott, Taylor and Fuller for the Canvey Island Independent Party;

(e) as a Regulatory committee it was required to operate within quasi-judicial procedure rules to protect the Council and others from challenge. Each member should make decisions in the public interest based on the information before them. Whilst held in public it was not a public meeting;

(f) the Peer Challenge Report had uncovered evidence that collusion amongst some members had taken place and agreements on how to determine some applications had taken place. The Peer Challenge Report had raised issues around probity as a result;

(g) the Leader told him that his son was about to submit a planning application on a site off Vicarage Hill. He had noted it at that stage but had not given a view. The application had been dealt with by planning officers. He had had no involvement in the application;

(h) he understood the property 243 Vicarage Hill, Benfleet was owned by Councillor Smith’s son, Luke Smith. It had come forward as an application dealt with by the D C Committee in September 2019;

(i) the role of the D C Committee was to consider the planning officer’s report. The planning officers report addressed all policy issues and dealt with them, giving them the weight required and then came to a recommendation. The planning
the officer's report would give the D C Committee a professional view which the committee should be guided by. Of late they had tended to dismiss the planning officer's views and had decided matters on their own, that had created considerable risk for the Council;

(j) the recommendations in the Peer Challenge Report had included a number of concerns which the Council needed to address which were concerns he had had with the D C Committee and its behaviours. How planning applications like Luke Smith's were dealt with by the committee reflected what was at the heart of those concerns;

(k) he had met with Councillor Mumford because he had been the Chairman of the working party designed to take forward recommendations in the Peer Review Report and address them on a corporate basis. Councillor Mumford expressed in different terms practices of other members of the D C Committee and wanted to address them. He was pleased that he understood the task ahead and felt confident he could introduce the changes necessary and he had told him so;

(l) planning meetings were webcast and the recordings available on the Council's website. The decision-making process would be seen by the public on the webcasts and were capable of repeated viewing;

(m) he had been very concerned about this application. It was for a new property on a Green Belt site which was very close to where Councillor Smith lived. The site would have been well known by him and he would know the potential for the site;

(n) the Leader had an interest in planning matters and had served on the D C Committee for many years. He had an understanding of the planning system and would know what would be necessary to obtain planning consent for an additional property on that site. He understood that Luke Smith was 25 years of age and he found it quite difficult to accept that he would identify that site and buy it without guidance from Councillor Smith;

(o) Councillor Smith had never registered an interest in 243 Vicarage Hill, Benfleet;

(p) the site was within the Green Belt and it was not usually the sort of site where an application would be made for a new property. Policy would nearly always result in automatic refusal;

(q) for political reasons, the D C Committee had tried to adopt and promote an argument to say that those were the types of sites that needed to be developed as it saved properties being built on very politically sensitive sites in the borough. In his opinion it was a completely false argument and they were advised against it by him and the planning officers because of the risks that it created for the Council;

(r) that planning application had clearly caused anguish amongst the members of the committee. Some had dismissed it on policy grounds others had felt beholden to the Leader and supported the applications regardless of the consequences. Some had felt they were being imposed upon unnecessarily and had reacted against that pressure particularly where it had been felt it created a personal advantage and not political gain;
he had not attended the D C Committee meetings when the applications had been considered but he had viewed them both on the webcast. He had found both very uncomfortable viewing, especially the second webcast where some members had clearly behaved in an extraordinary way;

Councillor Mumford had voted in favour of the first application. He had been slightly disappointed with him but more so with others who had spoken at the Committee as they had attempted to give arguments to overturn the officer's recommendation to refuse the application. The arguments had been very weak;

given that the application had been for the Leader's son he had hoped they would have been ultra-careful but that had not been what he had seen on the webcast. Given the recommendations the arguments by those who had spoken were particularly perverse. The Planning Officer had given a very good, strong, open, clear direction to the D C Committee members but some had chosen to ignore him;

the first application, to retain the existing property and build an additional large property, had been debated. When it had gone to the vote it had been lost because of some confusion by Councillor Mrs Wass. She had appeared to have been confused on the night and had abstained. However, she had been overheard apologising to a councillor saying that she had done the wrong thing;

he had spoken to Councillor Mumford in the period between the two applications. Councillor Mumford had clearly reflected on what he had done. He had told him he felt under pressure to support the application by the Leader. He was upset at the way he had voted and had begun to think better of it. He felt uneasy going against the Leader and knew it may be the end of his career on Cabinet;

most Cabinet members valued being part of the Cabinet. If you were a politician that was where you needed to be. Councillor Mumford had clearly felt uneasy about what he had done and about the consequences of going against the Leader. He believed Councillor Mumford to be a good, honest, sound councillor who wanted to do the right thing;

he had not had a conversation with the Leader about the application between the two meetings, indeed he had not discussed it any further with him;

a revised application had been made to demolish the existing building and replace it with a building which was significantly bigger but on a different part of the site. When he had watched the webcast of the debate of the second meeting it had been embarrassing to listen to the reasons why they were going to overturn the officer’s recommendation;

the planning officer had explained there was no objection in principle, but the building was substantially larger than the previous building, the evidence confirmed it was double the size. A number of attempts had been made to say the building wasn’t that big and clearly there had been a desire to support the overturn of the officer’s recommendation again. He had come to the simple conclusion that it had been discussed previously and it had been agreed to support the application regardless of the consequences;

Councillor Mumford had voted against the second application. The Chairman, Councillor Dick, had voted against the application on both occasions.
Councillor Dick was a very experienced Chairman who had known what was going on and he suspected he didn’t want anything to do with it;

(cc) immediately after the decision, Councillor Mumford had started to speak to others, about pressure he was under to vote in support the second time around. Councillor Mumford was clearly uneasy;

(dd) there had been similar complaints from Councillor Dick who was also put under pressure to support the application. He understood the Deputy Mayor, Councillor Pat Haunts had also come forward with similar concerns;

(ee) Councillor Stanley, the Deputy Leader, was also concerned. Whilst he was not a member of the D C Committee he had been aware of the concerns about what was going on. It had been a very unusual set of issues;

(ff) in all of his years as Chief Executive there had never been an occasion when so many members of the controlling group had gone forward and expressed their concerns about the pressure they had been put under to support a planning application. All four members had wanted to make it known that they were unhappy with the decision making at the D C Committee;

(gg) in his view that was a deliberate attempt by the Leader to use his position to gain an advantage for a member of his family;

(hh) since the meeting on 3 March 2020 Councillor Mumford had felt very ostracised and excluded. That had led to him being taken off the Cabinet;

(ii) he met regularly with the Leader and Deputy Leader. Because of the Covid-19 pandemic there had been no Annual General Meeting (AGM). That would usually be the opportunity for the Leader to change the Cabinet/roles;

(jj) during a meeting with him and Councillor Stanley, the Leader had raised the possibility of replacing Councillor Mumford. He had told him that he thought that would be a mistake, that he needed good, solid, sound members. Councillor Stanley, the Deputy Leader, also believed that would be a mistake. The Leader had also hinted that he would like to replace Councillor Dick. Again, he had told him that he thought that would be a mistake and would look vindictive;

(kk) he had not seen those changes as positive;

(ll) the reasons given by the Leader for sacking Councillor Mumford were that he had not thought his performance had been very good. Councillor Mumford could be lengthy in his delivery at Cabinet meetings but he had been willing to get actively involved in his Cabinet duties. He had not seen that as a good reason;

(mm) the Leader had subsequently removed Councillor Dick as Chairman of the new Development Management Committee and had replaced him with Councillor Cutler. He had given him the reason that his removal was due to a number of complaints he had received about how he had hurried debate and not managed proceedings correctly. He had not heard or received any complaints;

(nn) Councillor Mumford had been asked to chair the Peer Challenge Review Group. The first meeting had been arranged and he had briefed Councillor Mumford.
However, at the meeting Councillor Mumford was stopped by the Leader who had gone on to chair the meeting himself. The Leader had taken over and belittled Councillor Mumford. Councillor Mumford had been given the role but then had not been allowed to perform that role. Councillor Mumford had told him the following day that he had felt humiliated;

(oo) he believed that taking the Cabinet role away from Councillor Mumford by the Leader was a hostile act and not necessarily in the best interests of the Council;

(pp) his understanding of the present position regarding 243 Vicarage Hill, Benfleet was that there had been a pre-application meeting with the agent. There had been an amended proposal which the officer had seen, and an application was likely to come forward. He understood the agent had made it clear that he expected the application to go before the members. He was very concerned to learn that the agent had made that comment;

(qq) given the current circumstances he did not intend to allow the committee to consider the application as he could not be assured of a safe decision and he had ongoing concerns regarding probity;

(rr) as the current Local Plan was well out of date it created an opportunity for someone, who knew how the process worked, to manipulate the planning process. That was a real concern and the Peer Challenge Report highlighted the concerns;

(ss) the Leader had been a member of the D C Committee and would have gained good practical knowledge about the planning process. The planning officers had delegated powers to approve certain types of planning applications. The D C Committee would consider large and potentially more controversial planning applications or matters of policy conflict which planning officers wished to see resolved. Members might ‘call in’ applications so that the committee could consider them. He believed the Call-In system had been abused in recent times in order to overturn a planning officer’s decision;

(tt) Councillor Mumford had been asked by the Leader to Call in an application submitted by Springfield Developments the company owned by Bernard Littman. Mr Littman was well known to the Leader. Mr Littman hosted annual barbeques for the Conservative Party. The Leader made no secret of his holiday trips to Barbados and was well known to have used the villa owned by Bernard Littman;

(uu) Councillor Mumford had made it known he had been uneasy about the request and had been pleased when he had been told by an officer that he did not need to call it in because it was a repeat of two other applications that had been refused. The planning officer had rejected the application. Councillor Mumford made known his concerns to him about the call in request he had been asked to make;

(vv) the developer had instructed Judicial Review proceedings against the Council as a result;

(ww) the Leader had raised that application with him during a meeting with him and the Deputy Leader. The Leader had been concerned that the developer had been forced to pursue a Judicial Review. The developer, Bernard Littman, had asked the Leader to ‘speak to the CEO’ in order to resolve the matter. Mr
Littman had wanted the committee to consider the application. He had said ‘There must be a middle way to resolve this’. The Leader had asked him, ‘Can you see if there is a way through this for me please David’;

(xx) the Deputy Leader had been extremely concerned that that conversation had taken place;

(yy) he (the Deputy Leader) had been horrified and pleaded with him saying ‘Littman is your friend, you know him we should not be having this conversation.’ The Leader had felt it was completely acceptable within the privacy of the meeting;

(zz) over the following days he had found that the Planning Officer had been put under direct pressure in a series of telephone calls from the Leader to change his decision about the application. The Planning Officer had told the Planning Manager and the Deputy Monitoring Officer about his concerns and it had been clear that the call in and the attempts to change the officer’s recommendations were to ensure a report was received by the committee where members could support the application;

(aaa) in the next meeting he had spoken to the Leader and told him that he was very concerned about what he had discovered and what he had asked him to do. To do as he requested he would have had to issue instructions to concede the Judicial Review, ask the planning officer to accept the planning application against his recommendation and accept a call in to committee knowing that it would be overturned against officer advice. He had told him he was not prepared to do any of those things;

(bbb) in his view that had been a deliberate attempt by the Leader to use his position to gain an advantage for a friend;

(ccc) the Leader had conceded that Mr Littman was his friend but that his motive was to clear up the site. The Leader had accepted his involvement was wrong and said ‘What’s done is done and I cannot change that’. The Deputy Leader had witnessed that admission and said how dangerous it was for the Leader personally as it allowed his enemies to attack him;

(ddd) he had told the Leader “you can’t do this, its outrageous”. There was huge distrust within the department and the general public around the planning system and that sort of behavior merely confirmed what people thought. He had said that if the Council was to make any progress and improve its public reputation it was imperative that he and the Leader demonstrated a clear and new direction for the planning service. He had said ‘this has to stop’;

(eee) the Leader had put him and the Deputy Leader in a very difficult position following his admission. Normally he would have spoken with the Monitoring Officer, but he had felt at that time making progress with the corporate health of the authority had been more important and that he would address his admission at a later date;

(ff) he had told the Leader that he had to lead the way in adopting the new recommendations being made by the Peer Challenge Working Party;

(ggg) the Council had now adopted a new set of procedure rules;
(hhh) he did not believe the Leader understood or accepted the seriousness and potential consequences of his actions. He could not see the problem as he mixed personal, business and political life. There was no separation.

Councillor Bill Dick

4.16 Councillor Dick was interviewed on 7 September 2020 and a signed statement was obtained (copy attached at WC 9). He stated that:-

(a) he was a councillor for Castle Point Borough Council (the Council) and had served on the Council for 40 years. He represented St Peter’s Ward. He was the Chairman of the Development Control Committee (D C Committee);

(b) the D C Committee considered planning applications. The Council’s Constitution required planning applications be referred to the D C Committee for determination in cases including, but not limited to, where the Council was aware that a Member or officer or close relation of either had made the application;

(c) D C Committee meetings were video recorded and were publicly available via the Council’s website;

(d) at the D C Committee meeting in September 2019 a planning application appeal submitted by Luke Smith, the Leader’s son, had been heard;

(e) although he could not recall the exact date, prior to the September 2019 meeting Councillor Smith appeared to have been seeking assurances from him that he was going to vote in favour of his son’s application. He could not recall where the conversation had taken place but it had most likely been at the end of a private group meeting;

(f) Councillor Smith used words to the effect of “how wonderful it would be to get it” meaning approval of the application. Despite having read the papers he had told Councillor Smith that he had not yet read the papers and would make his decision based on the information contained in them. He had then wished Councillor Smith goodnight and they had gone their separate ways;

(g) when the application had been considered in September 2019 the vote had been split 6/6. He had voted for refusal but as Chairman he had used his casting vote to reaffirm his original vote. The D C Committee decision had therefore been for refusal;

(h) Councillor Smith had approached him prior to the D C Committee meeting in March 2020. He had run after him as he had been leaving the Council offices. Whilst that would have been witnessed by others, they would not have heard what was said. He had told Councillor Smith that he had better not to try, but he did try. Councillor Smith said the same sort of thing as he had previously, along the lines of “it would be nice if my son’s application could go through”. As he had used his casting vote to refuse the application the previous September, he had believed Councillor Smith would have known better than to try to influence him again. He took things seriously and never made any comments. He always sat separately before meetings;

(i) Councillor Smith knew he was a cynical person and preferred to separate himself from other committee members prior to a D C Committee meeting. As
Chairman he liked to sit separately from the other councillors and D C Committee members who congregated in the Members’ room before meetings. He waited in the Committee Chamber before a meeting began. That way he didn’t overhear any discussions and opinions which might consciously or subconsciously lead him to make biased decisions;

(j) he had deliberately kept away because he had known something was afoot. He had had a meeting with officers prior to the D C Committee meeting on 3 March 2020. They had known there had been some form of pressure and he had discussed with officers what they would do if the vote was to approve the application;

(k) as Leader, Councillor Smith held a lot of power. All D C Committee members owed their position to the Leader of the Council. As such Councillor Smith could remove members should he wish to do so, which he did if they ‘do something wrong’;

(l) he had observed that, having voted for refusal at the meeting on 3 March 2020, Councillor Mumford had been ignored by Councillor Smith at subsequent meetings. That had been obvious to officers and he believed that was why Councillor Mumford lost his position on Cabinet;

(m) before a meeting you didn’t know which way the vote would go. That had been the same before the meeting on 3 March 2020. He had assumed that Councillor Mumford would vote as he had done previously although he seemed to be wavering during the meeting. He had been surprised when he put his hand up when he called the first vote for refusal. The vote would again have been 6/6 but Councillor Mumford voted with him and officers. He believed that was why Councillor Mumford lost his position;

(n) he had found the comments made by Councillors Sharp, Hart and Johnson during the meeting on 3 March 2020 questionable given the circumstances. He was cynical of the rationale those members had given as to why the application could or should be approved;

(o) he was concerned that those individuals could have been influenced, either directly or through their knowledge that Councillor Smith wielded power in relation to their future as members;

(p) after the D C Committee meeting on 3 March 2020, on the way out, he had briefly spoken to Councillor Tom Skipp who had also expressed surprise at some of the comments that had been made during the meeting by those appearing to want to find reasons to approve the application.

Councillor Simon Hart

4.17 Councillor Hart was interviewed on 7 September 2020 and a signed statement was obtained (copy attached at WC 10). He stated that:-

(a) he was a councillor for Castle Point Borough Council (the Council), having first been elected in 2011. He represented Victoria Ward. He was a Cabinet member and sat on the Development Control Committee (D C Committee). He had been Chairman of the D C Committee until two years ago;

(b) he represented the Council on the South East Essex Partnership;
(c) he had attended the D C Committee meetings on 3 September 2019 and 3 March 2020 when planning applications submitted by the Leader's son had been considered;

(d) he could not recall whether Councillor Smith had attended either of those D C Committee meetings but if he had been present he would not usually have sat in the public area. The D C Committee sat in the inner circle of the Chamber and Ward councillors would sit in the two outer circles;

(e) the original application that had been submitted in respect of 243 Vicarage Hill, Benfleet was to build an additional building at the rear of the plot, where the existing garage was situated. The second application had been to demolish the existing building and build a new property;

(f) he could not recall whether the Leader's son had submitted the applications or whether it had been an agent on his behalf;

(g) his understanding was that the Leader's son, owned 243 Vicarage Hill, Benfleet. He was not aware that Councillor Smith had any interest in the property;

(h) he had not spoken to Councillor Smith regarding either of his son's planning applications as they did not usually discuss things before the meetings;

(i) when the planning application had been considered at the D C Committee meeting in September 2019 the evidence from the officers had been overwhelming and the application had been refused;

(j) when the second application had been considered at the D C Committee meeting in March 2020 it had been for a replacement property. He had voted for approval in support of similar past applications and could not see a problem with a replacement property. He had therefore voted to approve the application. However, the result of the vote had been for refusal;

(k) he would not be told how to vote and voted in whichever way he thought was right. He believed that the conservative side of the Council did the same.

Councillor Pat Haunts

4.18 Councillor Haunts was interviewed on 7 September 2020 and a signed statement was obtained (copy attached at WC 11). She stated that:-

(a) she was a Councillor on Castle Point Borough Council (the Council). She served on the Council between 2003 and 2006 and came back again in 2018 and now represented Cedar Hall Ward. She was presently Deputy Mayor and would remain in that post until the elections in 2021. Her duties as Deputy Mayor did not allow a lot of time for meetings but she remained on three Policy and Scrutiny groups namely Environment, Wellbeing and Place and Community. She also sat on the Licensing Committee;

(b) she was appointed to the Development Control Committee (D C Committee) when she had become a councillor in May 2018. Since May 2020 the D C Committee had become known as the Development Management Committee.
She had been removed from the D C Committee in May 2020 and believed that was due to her role as Deputy Mayor;

(c) she understood the Leader’s son had submitted two planning applications. The first had come before the D C Committee on 6 August 2019 and the second had come before the D C Committee on 3 March 2020. Both applications concerned the building of a property at 243 Vicarage Hill, Benfleet;

(d) to the best of her knowledge, the first application left the existing house in situ but put forward that the garage and a shed in the grounds be removed and a new property built there. Officer advice had been that the proposal was on Green Belt land and their recommendation was for refusal;

(e) at the meeting in September 2019 she had voted against the officer’s recommendation for refusal of the application. Afterwards she believed she should have voted with the officers and for refusal. Councillor Mumford had voted against the officer’s recommendation at that meeting;

(f) the second application suggested that the existing house should be pulled down and a new property erected further down the garden, roughly in the same place as the previous application. The layout had changed so it was not quite so obvious to a nearby property. It was not a built up area but there was a house next door. The location had moved slightly so it was not so close and the layout was changed;

(g) at the meeting in March 2020 the officer recommendation had still been for refusal. She had listened to the officer’s report and looked at the diagrams shown. She had thought that application was perhaps passable. Again she voted against the recommendation. Again she believed that she should have voted with the officers and for refusal of the application. Councillor Mumford was the only Conservative Councillor to vote in agreement with the officer’s recommendation for refusal;

(h) the records showed that a Mr Smith had made both applications. She had known Councillor Norman Smith for many years but only as a slight acquaintance. As such she did not know if he had sons or daughters although she had heard that he had one or more sons. She had never met them and was unaware of their names;

(i) she did not know who owned 243 Vicarage Hill, Benfleet until she had heard the planning officers report which noted that the applications had come before the D C Committee because the property was owned by the son of a councillor although she had presumed that was the case following the approaches from Councillor Smith;

(j) she was approached by Councillor Smith prior to the two applications in relation to 243 Vicarage Hill, Benfleet coming before the D C Committee. Each time he had asked if she would vote against officer recommendation for a refusal;

(k) the first time Councillor Smith approached her she had been taken aback because it had been a Sunday afternoon and she hadn’t recognised the telephone number. Councillor Smith had suggested that being a parent herself she would understand he wanted the best for his son and wanted to see him get on. He had used words along the lines of “you know how it is with our
children; we like to see them successful”. She had said that she would have a
look and see what she could do;

(l) the second time Councillor Smith had approached her, he had walked her to
her car after an Association meeting the Friday before the D C Committee
meeting, although that wasn’t really necessary. Councillor Smith had taken the
opportunity to make the same request. He had said things along the lines of “I
don’t ask for anything but on this occasion I’d like you to vote for my son”. She
recalled replying to say that she would wait until the meeting, listen to everything
and then make up her mind. Councillor Smith had asked, quite sharply, “have
you been told to say that?” to which she had replied “no, that is the answer we
should give if we are approached in that manner”. With that she had said “see
you Wednesday”.

(m) as Leader, Councillor Smith often went to meetings in the Chamber. As the
Leader he should know what is going on. She could not recall if he had attended
the D C Committee meetings in September 2019 and/or March 2020;

(n) She felt that Councillor Smith had been appealing to her maternal side with the
words he had chosen when he had spoken to her about his son’s applications. She
believed that other councillors had also been approached by Councillor
Smith and that he tailored the pressure he applied to each councillor;

(o) when she had been sat in the Member’s room prior to the meeting in March
2020 Councillor Mumford had sat on one side of her and another councillor on
the other side. They had all said they had been spoken to by Councillor Smith;

(p) the application had been refused because the opposition always went against
whatever they suggested. The Conservatives had the majority on the
committee but the opposition always voted against them;

(q) she wanted to add that Councillor Smith had always been friendly and helpful
but he was the Leader and, as such, she believed he should set an example.
She wanted their Council to be, and to be seen to be, open and transparent and
a council that was, above all, honest. What Councillor Smith had done in
relation to his son’s planning applications was wrong.

Daniela Croci

4.19 Daniela Croci was interviewed on 7 September 2020 and a signed statement was
obtained (copy attached at WC 12). She stated that:-

(a) she was an Investigation Officer for Thurrock Council (Thurrock). She had
been the investigating officer in respect of a counter fraud investigation
regarding Councillor Norman Smith, Leader of Castle Point Borough Council,
and his son’s planning applications;

(b) it had been suspected that Councillor Smith had improperly used his position to
attempt to influence members of the Council’s Development Control Committee
(D C Committee) to vote in favour of his son’s, Luke Smith, planning
applications in relation to 243 Vicarage Hill, Benfleet, Essex;

(c) the Council’s Constitution required that certain types of applications were
referred to the D C Committee including, but not limited to, applications where
the Council was aware that a Member or officer or a close relative of either had made the application;

(d) Thurrock’s Terms of Reference (ToR) had been to look at the veracity of the complaint made in relation to Councillor Norman Smith’s conduct concerning the two applications submitted by Luke Smith in relation to 243 Vicarage Hill, Benfleet which were heard by the D C Committee on 3 September 2019 and 3 March 2020 and his alleged attempts to abuse his position by corrupting the process of the D C Committee by attempting to influence its members in their decision making;

(e) Thurrock’s management team agreed the ToR for each case it accepted from the Council for investigation;

(f) she was instructed by her management to examine Councillor Mumford’s initial complaint and to speak to him to gain more information regarding his complaint. From that she was to determine whether there was any substance to the complaint and then speak to others who had had similar experiences;

(g) Thurrock’s investigation determined that the owner of 243 Vicarage Hill, Benfleet was Luke Smith and that there was a mortgage on the property. Luke Smith purchased the property on 26 March 2019.

(h) She had received no information to suggest that Norman Smith had a financial interest in the property;

(i) the Thurrock investigation had considered speaking to Luke Smith and other members of the D C Committee although she had been aware that they would be seeking early advice from the Crown Prosecution Service (CPS) given Councillor Smith’s position as Leader of the Council. The early advice from CPS had been that there was insufficient evidence to suggest Misconduct in Public Office (MIPO). CPS recommended that Thurrock pass the matter back to the Council for a standards investigation. She had therefore not spoken with Luke Smith nor other members of the D C Committee;

(j) the Thurrock investigation had not pursued other lines of enquiry on the basis of the CPS advice and therefore lack of proportionality for further evidence gathering.

Councillor Dave Blackwell

4.20 Councillor Blackwell was interviewed on 8 September 2020 and 15 October 2020 and a signed statement was obtained (copy attached at WC 13). He stated that:-

(a) he was a councillor for Castle Point Borough Council (the Council) and was first elected in 1990. He was the Leader of the Opposition and represented Central Ward on Canvey Island. He had been on the Development Control Committee (D C Committee) for 25 years. He was Chairman of the Overview & Scrutiny Committee and he also sat on the Regeneration Board. He was also an Essex County Councillor and sat on their Development Control Committee;

(b) he had been present at both of the D C Committee meetings held on 3 September 2019 and 3 March 2020 when those applications had been heard;
he could not recall whether Councillor Smith attended either of those meetings. It was not usual for Councillor Smith to attend the D C Committee meetings unless it was a very controversial application or one in his Ward when he had turned up on occasion to overturn the officer's recommendation;

with regard to the planning applications, the officers were the professionals. They were planning experts. They gave advice and then their recommendation. The applications submitted by Councillor Smith's son were recommended for refusal because they were against the Green Belt policy and as soon as the application went against policy they had to vote with the officer's recommendation and for refusal. He had always suspected that what happened on the night would happen;

if the application had been made by a normal member of the public it would have been refused immediately but everyone was geared up to what was going to happen. It had been obvious;

his view was that they had to do it as they normally did, listen to the officers and vote accordingly, which was what they had done. He had voted in favour of the recommendation and to refuse the application on both occasions;

the application didn't really change from one application to the next and officers had the same recommendations;

the name of the applicant on a planning application was irrelevant, it was the application itself that was relevant. Every application was treated on its merits. Those applications were made in the name of Luke Smith but everyone knew he lived with his dad. If those applications had not had Luke Smith's name on them the members would have voted accordingly but it was obvious what had happened on the night;

what happened had been embarrassing. Everybody had known the officer's case had been strong and that similar applications had been turned down over the last couple of years. Everybody had known that application had been made by the Leader's son and that what he had wanted was to go against policy. When Conservative Members tried to give reasons why that application should be different to any other, it had been embarrassing. There had been no factual reasons why the application should not be refused like other similar applications had been;

he did not talk to anyone about planning applications. They were not supposed to discuss them with anybody until they got to the Chamber and listened to the evidence. He was a stickler for that;

in his opinion, on the night, the Leader had been silly. It had been on Facebook straight away. It was amazing how many people followed planning applications on Facebook;

it had been obvious what Councillor Smith had done to Councillor Mumford and Councillor Dick in taking them off committees and removing Councillor Mumford from Cabinet. He thought Councillor Mumford had been doing a fairly good job on Cabinet;

he believed that if Councillor Smith had delayed changing things until the next full Council meeting, at the time when things usually changed over, then nothing
would have been said. It was obvious he had done that out of spite. To remove a well seasoned Chairman and replace him with someone who had only recently been elected was ridiculous;

(n) he had been part of the Peer Review (the Review). The Review highlighted issues with councillors overturning officer recommendations for people they were deemed to know. Councillor Smith had got an awful lot of bad publicity when he had helped overturn an application for some flats for a Conservative benefactor which had followed with him going to stay at the benefactor’s villa in Barbados the following week. He thought he would have learnt from that. As Leader you had to be ‘squeaky clean’;

(o) the Review had come about because there was no trust. They were always overturning or approving applications which were not fit to be approved. He was embarrassed to be a part of it. He had been trying to instigate change and if anything came out of that it was that Councillor Smith had got to learn;

(p) in his opinion it looked as if Councillor Smith or someone had spoken to the Conservative members of the D C Committee about his son’s planning applications. When they had come to debate or vote only two or three of their side had had any debate. The others had put their hands up to approve the application without any debate.;

(q) he had a lot of respect for Councillor Mumford and Councillor Dick for standing up for what had been the right thing to do but they’d suffered the consequences;

(r) he was aware of a relationship between Councillor Smith and Mr Bernard Litman. He thought it was more of a friendly relationship than a professional one. Councillor Smith had attended several functions laid on by Mr Litman. He also understood that Councillor Smith had holidayed two or three times at a villa owned by Mr Litman;

(s) Mr Litman was a well known benefactor of the Conservative Party and held summer barbecues. All of the Conservative Councillors had declared an interest in that they had attended the barbecue;

(t) he understood Councillor Smith had holidayed in Mr Litman’s holiday home in Barbados after helping him get planning permission for development in Hadleigh. That had been all over the press at the time;

(u) you had to be so careful with relationships with people, especially developers. The easiest thing was to declare an interest and not take part. When you didn’t do that you suffered the consequences. The Council had suffered publicly because everyone thought the D C Committee was corrupt;

(v) he did not recall an application by Mr Litman in respect of flats on High Street, Canvey coming to Committee;

(w) he was not aware of Councillor Smith approaching any members or officers in respect of supporting that application.

_Councillor Wayne Johnson_

4.21 Councillor Johnson was interviewed on 8 September 2020 and a signed statement was obtained (copy attached at WC 14). He stated that:-
(a) he was a councillor for Castle Point Borough Council (the Council) and was first elected in May 2018. He represented Appleton Ward. He was a Member of the Cabinet, his portfolio being Health and Wellbeing and he was a Member of the Development Control Committee (D C Committee);

(b) he represented the Council as a Trustee of Wyvern Community Travel, a local charity;

(c) he had been present at both of the D C Committee meetings held on 3 September 2019 and 3 March 2020 when those applications were heard;

(d) he believed that Councillor Norman Smith, the Leader of the Council, had been present at both of these meetings in the Council chamber. He had certainly been there in March 2020 and he believed that he would have been present in September 2019 as well. It was quite normal for a Councillor who was not a member of the D C Committee to be present at those meetings in the Council chamber if, for example, an application in their Ward area was to be considered. It was also quite normal for Councillor Smith, as Leader, to be present in the Council chamber at those meetings;

(e) at the D C Committee meeting on 3 September 2019 a planning application in relation to 243 Vicarage Hill, Benfleet, had been heard;

(f) the application had been submitted by Luke Smith, who he understood was the owner of the property;

(g) Luke Smith was also the son of the Leader of the Council, Councillor Norman Smith, and all members of the D C Committee were made aware of that in the documentation that related to that application. The Chair of the D C Committee would also have made Members aware prior to hearing the application;

(h) the application that had been considered in September 2019 was for the demolition of the existing property at 243 Vicarage Hill, Benfleet and for a new build property to replace it. The plans for the new property, however, had a larger footprint than the one that it was intended to replace and the Council Officer responsible for the matter had recommended that the application be refused. The footprint of the new property would also extend into the Green Belt;

(i) the application had been refused by the D C Committee;

(j) a revised application for the property at 243 Vicarage Hill, Benfleet, was submitted to the Council by Luke Smith and had been due to be heard on 3 March 2020;

(k) he had not had any conversation with Councillor Smith about the application being made prior to the September meeting although they had spoken briefly about it prior to the meeting held in March 2020;

(l) he had had a meeting the previous evening, 2 March 2020, with the Leader, Councillor Smith, in relation to his portfolio, which at that time was Youth and Tourism. He recalled that at the conclusion of that meeting Councillor Smith had mentioned that the application was back up before the Committee and that he felt that his son had done enough. He might have commented something
like that we would have to see how it goes tomorrow night. At that point the conversation had faded and nothing further had been said;

(m) he had felt no pressure following that brief conversation nor had he felt that there had been any expectation upon him;

(n) he was aware that the revised application had also been recommended for refusal by the Committee and he believed that Councillor Smith would also have been aware of this.

\[\text{Jason Bishop} \]

4.22 Jason Bishop was interviewed on 8 September 2020 and a signed statement was obtained (copy attached at WC 15). He stated that:-

(a) he was employed by Castle Point Borough Council (the Council) as Solicitor to the Council. He was also the Council’s Principal planning lawyer. He was appointed to his role on 1 January 2020. He had been a qualified solicitor for 25 years and prior to working at the Council he had been a civil servant;

(b) after his appointment to the Council he became involved in the Planning Improvement Peer Challenge Delivery Group which was a review of the Council’s Development Control Committee (D C Committee). That followed a review of the D C Committee undertaken by the Local Government Association (LGA) in co-operation with the Planning Advisory Service (PAS). The final report had been issued in May 2019 and their findings had not been complementary of the D C Committee;

(c) the report identified a number of failings and made 10 recommendations for improvements to be made;

(d) in view of his involvement on the Peer Challenge review team, he had viewed a webcast of the first planning application submitted by the Leader’s son as he had become aware that there had been possible issues relating to probity arising from that application and that the application was to be re-submitted;

(e) from viewing the webcast of the meeting, he observed that the majority of conservative members voted against the officer recommendation for refusal of the application. The recommendation for refusal had only been passed due to the Chairman, Councillor Dick, using his casting vote. On that occasion Councillor Mumford voted against the officer recommendation and so in support of the planning application;

(f) the second application submitted by the Leader’s son had come before the D C Committee on 3 March 2020. The revised application was to demolish the main house and build over the garage plot. The proposed development was more than twice the size of the original development, situated in the green belt and was against planning policy;

(g) due to his involvement on the Planning Improvement Peer Challenge group and the issues that had been discussed in that group’s meetings, together with issues he had become aware of in relation to the first application, he had decided it would be prudent to email Councillor Smith and advise him strongly against attending the D C Committee meeting or being present in the Council building on the night of the D C Committee meeting when his son’s application
was to be considered. There would then be no question of any prejudice to the public perception of members judgment;

(h) he had sent the email to Councillor Smith on 27 February 2020 together with a proposed member interest statement which he proposed would be read at the beginning of the D C Committee meeting. The email was sent to both Councillor Smith's Council email address and his personal/business email address. Given that Councillor Smith was the Leader of the Council he had expected him, at the very least, to have acknowledged the advice given. However, no response was received;

(i) he forwarded the email to Councillor Dick as Chairman of the D C Committee, so he was aware of the advice given to Councillor Smith and so that he had the members interest statement to read at the beginning of the D C Committee meeting. Councillor Dick acknowledged receipt of the email;

(j) as the D C Committee meeting in September 2019 which had considered the first application of the leader’s son was prior to his appointment he did not know whether Councillor Smith had attended that meeting or was present in the building. In relation to the meeting on 3 March 2020 he did not believe that he was present in the building at the time of the D C Committee meeting. He had been the legal adviser to the D C Committee meeting on 3 March 2020;

(k) at the D C Committee meeting on 3 March 2020 the Leader’s son’s planning application was the third and final item on the agenda. During the debate of the planning application Councillors Sharp, Johnson and Hart all spoke in favour of the development and, in his legal opinion, wrongly interpreted the exceptions contained in paragraph 145 of the National Planning Policy Framework (NPPF) which related specifically to proposals affecting the green belt in which the planning application related in order to justify their support for the proposal;

(l) given their apparent experience of being members on the D C Committee he found what they had said very difficult to listen to, even embarrassing. In his view, any reasonable observer, with knowledge of the facts could only have concluded that either they had been influenced to support the application or they were not competent to sit on the committee if they honestly believed what they were saying. Their interpretations of paragraph 145 of the NPPF were not legally sustainable given the nature of the development proposed and were perverse. The proposal was not permitted infill, nor was it a replacement building of a similar size;

(m) he did not believe they would have made similar comments if the application had been submitted by someone else. Whilst they were of course entitled to have their view, he did not believe that their arguments would have been sustainable at any appeal;

(n) Councillor Mumford and Councillor Dick voted in favour of the officer recommendation. The application was again refused;

(o) had the application been approved, against officer recommendation, he would have asked the chairman to stay the application on his advice (as the Solicitor to the Council and legal advisor to the Committee) on the basis that the Members of the Committee had been unable to put forward valid and material planning reasons for not supporting the recommendation in the report and as the application could not be determined it would be stayed. In the absence of a
proper and lawful decision being made by the Committee, the applicant would have been advised to take the opportunity of referring the application to the Planning Inspectorate for further consideration. As legal adviser to the Committee he could not have permitted the Committee to proceed to make a decision which could be determined as ultra vires;

(p) the reason his advice would have been to stay the application instead of deferring it to another committee was due to the issues of probity that had arisen in the September D C Committee together with his concerns of probity issues in respect of the application on the night. Given those issues and concerns he had not been satisfied that deferring the application to another meeting would have been the appropriate course of action;

(q) he was aware that since the D C Committee meeting on 3 March 2020 Councillor Mumford had subsequently been removed from the D C Committee, removed from the Peer Challenge Review in which he had been chairman and was also removed as a Cabinet member. Councillor Dick was also removed from the D C Committee and was therefore no longer Chairman.

Councillor Jeffrey Stanley

4.23 Councillor Stanley was interviewed on 10 September 2020 and a signed statement was obtained (copy attached at WC 16). He stated that:-

(a) he was the Deputy Leader of Castle Point Borough Council (the Council). He represented Boyce Ward. He had been a councillor for 21 years and had been Deputy Leader of the Council since 2003;

(b) he had intended to resign from his role as Deputy Leader and councillor by not seeking re-election in May 2020 and had given notice to that effect earlier in 2020. However, due to the Covid-19 pandemic the May elections had been cancelled. He now intended staying in post until the next election in May 2021;

(c) he had never sat on the Development Control Committee (D C Committee) but had attended a couple of meetings as an observer;

(d) the role of Leader was one that was elected yearly;

(e) as Leader, Councillor Smith appointed the members of his Cabinet. The process was that, following the yearly local elections each May, the Leader of the ruling political party, in consultation with the Deputy Leader, decided which of the councillors would come into Cabinet, who would sit on the various committees and who would be the chairmen of the various committees. The Leader had de facto say in those decisions. Whilst in theory the decisions could be challenged, in all the years he had served on the Council he had not known that to happen;

(f) in his role of Deputy Leader, he had been approached by a couple of councillors who were concerned about the recent applications and subsequent D C Committee meetings relating to applications by Luke Smith and the conduct of the Leader, Councillor Smith;

(g) the first planning application relating to 243 Vicarage Hill, Benfleet was heard in or around September 2019. Following that meeting he had had a conversation with Councillor Mumford who had told him that Councillor Smith
had asked him to vote to approve Luke Smith’s planning application. He said that had made him feel very uncomfortable;

(h) the report submitted to the Committee by the Planning Officer had recommended refusal of the application. Although Councillor Mumford had voted in favour of the application he had told him that he felt uneasy about having done so;

(i) the overall vote had not supported the planning application which had been decided by the casting vote of the Chairman of the D C Committee, Councillor Bill Dick, a Conservative;

(j) his advice to Councillor Mumford had been to vote with his conscience in future on the basis of the evidence, regardless of any perceived political pressure;

(k) Luke Smith made a second planning application in 2020. The ruling Conservative group held regular group meetings to discuss positions on upcoming Council business. At the conclusion of such a meeting, prior to the D C Committee meeting in March 2020 where the second application was to be heard, Councillor Smith said to him something along the lines of “I must go and talk to Bill about Luke’s planning application”. He had been referring to Councillor Bill Dick who was Chairman of the D C Committee. He saw the two of them leave the room at the end of the group meeting and observed them in discussion. Councillor Dick had not discussed that with him or approached him about any conversation he had had with Councillor Smith that day;

(l) at the D C Committee in March 2020 Councillor Mumford voted against the application as had Councillor Bill Dick and the application was refused. Councillor Mumford had since confided in him several times that he felt that Councillor Smith’s behaviour towards him changed from that time;

(m) he had noticed that the relationship between Councillor Smith and Councillor Mumford had cooled considerably;

(n) at the beginning of April 2020, he had had a conversation with Councillor Riley, the current Mayor. They spoke about it being an open secret that Councillor Smith had been canvassing support in relation to his son’s planning application. Being a close friend of Councillor Dick, Councillor Riley had stated that Councillor Dick was fearful of his position as Chair of the D C Committee for having been instrumental in the refusal of permission for the application;

(o) Councillor Bill Dick had said the same to him;

(p) in the May 2020 consideration of positions on the Council, Councillor Smith removed Councillor Mumford from his Cabinet position. His experience was that it was unusual for a Cabinet Member to be removed from that office other than on a change of Leader;

(q) at the same time Councillor Smith had removed Councillor Dick from his position of Chairman of the D C Committee and had appointed Councillor Cutler in his place;

(r) in 2019 the Local Government Association (LGA) conducted a review of the planning application process at the Council. As a consequence of the review a report had been produced making a number of recommendations for changes
to the way the Council operated their planning matters. That report was quite critical in its judgment of the decision-making process for planning applications and called for wide ranging improvement. Councillor Smith had resisted the full implementation of recommendations and the subsequently adopted procedures were less stringent than the original proposals;

(s) since the Covid-19 restrictions, members of the Cabinet had held a meeting via TEAMS a few days before each Cabinet Meeting actually took place in order to discuss matters that were to be brought forward. At one of those pre-meetings, Councillor Smith announced to Cabinet Members that he was being investigated over his son’s planning applications and that that was to do with him approaching Members of the D C Committee;

(t) Councillor Smith was friends with a businessman, Mr Bernard Litman, to the extent that Councillor Smith stayed at Mr Litman’s villa in Barbados, although he paid a rent. Mr Litman was a supporter of the Conservative Party, had made donations to it and hosted social functions at his home;

(u) Mr Litman had recently submitted a series of planning applications in respect of building flats on an old retail site on Canvey Island. He understood that the officer report on the applications was to refuse permission due to non-compliance with the existing planning policies;

(v) during the Covid-19 crisis Councillor Smith, himself and the Chief Executive, David Marchant, had had regular meetings in the Council offices. On two of those occasions Councillor Smith tried to suggest that David Marchant instructed planning officers to look favourably on the planning application submitted by Mr Litman. His advice to Councillor Smith at both meetings was that he should immediately cease to talk about that as it was improper;

(w) his view was that Councillor Smith did not always recognise the significance of his position as Leader, did not recognise the restrictions to his actions that the role imposed and did not appreciate that everything he said was perceived as said by ‘the Leader’ rather than Norman Smith. He had said as much to him directly.

*Ann Horgan*

4.24 Ann Horgan was interviewed on 14 September 2020 and a signed statement was obtained (copy attached at WC 17). She stated that:-

(a) she was employed by Castle Point Borough Council (the Council). She had been appointed as Head of Democratic Services in 2006 when she had joined the Council. She had held the same role since then, albeit with a change of title. Before her employment with the Council she had carried out a similar role at another local authority;

(b) she had attended the D C Committee meeting on 3 September 2019 as the legal adviser. She had been covering for a colleague who had since left the Council. The legal adviser for the meeting on 3 March 2020 had been Jason Bishop. Councillor Smith had not attended the meeting in September 2019;

(c) her understanding of the applications was that the first application had been to build an additional building on another part of the land (within the green belt), leaving the existing building in place. The second application had been to

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demolish the existing building and build another property on the site, within the green belt. Her understanding was that the new building was not to be built on the footprint of the existing property and that the proposed new building was considerably larger;

(d) Councillor Dick approached her prior to the meeting in September 2019 to say he had been under pressure from Councillor Smith to vote in a particular way. She had also spoken with Councillor Mumford who had suggested there would be pressure to make a decision in order to retain his position on Cabinet;

(e) before the meeting in September 2019 she had attended a pre-meeting with Councillor Dick, Chairman of the D C Committee. They had discussed that councillors would need to give reasons for approving the application. They had anticipated that they would have difficulty coming up with valid reasons given the site. They had been going to defer the item for a further report to test and discuss the reasons, had that been the case;

(f) the Planning Advisory Service guidance said that where there was concern about the validity of reasons, the matter should be deferred to another meeting to have the putative reasons tested and discussed. The Chairman would have been asked to defer the item and the Chairman would have said *“In accordance with best practice the item is deferred for a further report to test and discuss the reasons”*. As that was to be the last item on the agenda, the Chairman would then have closed the meeting;

(g) it had been notable that all the Conservative Group entered the Chamber together, late, just before the start of the meeting. The Conservative Group avoided eye contact during the meeting and were clearly uncomfortable. The voting at the meeting would have led anyone observing the meeting to conclude that clearly they had been ‘got at’ before the meeting;

(h) only Councillor Sharp and Councillor Hart had spoken on the application for the Conservative Group. Councillor Sharp had made the comment that the application was from the leader’s son but should not be treated any differently. That only served to highlight that the application was being treated differently;

(i) based on the report and the plans displayed at the meeting of the proposed development showing the impact on the openness of the Green Belt for neighbouring properties, it had been difficult to see how anyone could have voted against the recommendation. Indeed, there had been an audible gasp in the Council Chamber when the plans had been displayed showing the particular effect on 241 Vicarage Hill and it had been difficult to reach any other conclusion than that pressure had been applied;

(j) Councillor Wass had not voted and following her confirmation that the vote was 6/6 the Chairman had quickly exercised his casting vote. It had been clear to her that Councillor Wass had been led but had not known what to do;

(k) there had been an incident at the end of the D C Committee meeting in September 2019. As Councillor Wass and Councillor Sharp were leaving the Chamber she had overheard Councillor Wass ask Councillor Sharp, “*will I be in trouble?*” as she had not known what to do. Councillor Sharp had put his arm around Councillor Wass and drawn her away;
as Cabinet Members’ appointment was in the Leader’s gift, it had been disappointing but not surprising that Cabinet members appeared to have put their own positions first;

she had spoken with Councillor Dick following a Group meeting on 25 February 2020 when he had informed her that he had been approached by Councillor Smith in respect of his son’s planning application. She had spoken with Councillor Mumford on 27 February 2020, asking him to let her know if he was put under any pressure to vote in a particular way at the forthcoming D C Committee meeting;

Councillor Mumford had been Chairman of the working group dealing with the peer challenge, so she had dealt with him a lot on briefings. She had anticipated that pressure would be put on members of the Committee and after Councillor Dick had come forward she had spoken to Councillor Mumford;

as Chairman of the working group on the peer challenge Councillor Mumford had been closely involved in and supported the work to tighten up procedures and processes on the D C Committee. That had put him in a very difficult position in light of such a strong officer report recommending refusal;

Councillor Mumford had clearly been put under pressure and repeatedly said that he felt his Cabinet position was at risk. Following the D C Committee meeting in March 2020 Councillor Mumford had been removed from his position on Cabinet;

in a conversation following the D C Committee meeting in September 2019 Councillor Haunts confirmed to her that she had also been approached by Councillor Smith to vote in a particular way. Councillor Haunts had also confirmed that she had been put under similar pressure prior to the D C Committee meeting in March 2020;

the Peer Challenge Report had been presented to Council in April 2019. Councillor Smith consistently had not wished to have the report brought forward to Cabinet. It had been in the Cabinet’s Forward Plan to come forward in June 2019, but it had been deferred several times by Councillor Smith and had finally been dealt with in January 2020. As Leader Councillor Smith was Chairman of Cabinet and he decided what items were on the Cabinet agenda;

there were a few councillors who dominated the D C Committee meetings. They thought they knew best and didn’t follow officer advice;

following consideration of a report to Cabinet in July 2020 revised processes and procedures had been agreed to take forward the recommendations from the Peer Challenge. Council had appointed a new Development Management Committee with a reduced membership and a new chairman. The Committee was due to meet formally from December 2020. Councillor Smith continued to oppose reducing the number of Cabinet Members sitting on the committee from three to reflect statutory guidance that there should be one liaison member from the Executive;

she believed Councillor Smith had abused his power. He mis-used his position and not necessarily just in relation to his son’s planning applications;
(v) being interviewed and giving a statement against the Leader of the Council did not assist the relationship between members and officers. She was deeply concerned and upset about the damage that would cause to the reputation of the Council and to member/officer relations;

(w) she believed that what Councillor Mumford had done was an incredibly difficult thing to do, but he had been right to do so.

Councillor Bill Sharp

4.25 Councillor Sharp was interviewed on 29 September 2020 and a signed statement was obtained (copy attached at WC 18). He stated that:-

(a) he had been a Councillor for Castle Point Borough Council for 34 years. He represented St James Ward. As he will be standing down from the Council in May 2021 he had informed the Leader that he did not wish to be considered for any committees although in the past he had been Leader of the Council and Chairman of 95% of the old committees. He had been Deputy Leader, Chair of planning, Chair of Recreation and Chair of Health;

(b) he could not recall the dates but did recall the planning applications in relation to 243 Vicarage Hill, Benfleet when they had been considered at the Development Control Committee. He had attended the D C Committee meetings in September 2019 and March 2020;

(c) the first application for that address had been for Councillor Smith’s son. There had been much made of that but they had looked at it as a planning application which was what they were supposed to do. He believed it had been rejected on the basis that the application was for two for one that they had felt would much better support one for one;

(d) he was unaware of matters regarding the ownership of the property as ownership was not a planning matter;

(e) Councillor Smith had not spoken to him about the application that had come before the D C Committee in September 2019. One of the principle rules was that talking to somebody about an application that was associated with them was not acceptable either as a councillor or as a resident unless it was a resident of your ward and they were explaining the situation;

(f) he was unaware whether Councillor Smith had approached other members of the D C Committee to support that application;

(g) he believed the officer recommendation for that application had been for refusal. He had voted to approve the application which had been against the officer’s advice.

(h) he had been known to vote against officer’s advice in the past. He did not believe they were always right;

(i) he believed there were decent reasons that that area in the green belt could be developed. He had been a bit concerned that it had been two for one. Next door on both sides were huge homes and in his opinion this was an infill according to the latest local planning authority guidance;
(j) he could not recall whether Councillor Wass had abstained from the vote nor that she had apologised for doing the wrong thing;

(k) Councillor Smith would have spoken to him before the D C Committee meeting in March 2020 but certainly not about that application. They had conversations quite regularly as they had been colleagues for fifteen years;

(l) Councillor Smith had not asked him to support that application and was unaware whether Councillor Smith had spoken to any other members of the D C Committee to support that application;

(m) the application had been refused again in March 2020 although he had voted in support of the application because it had been reduced from two to one and that had been the only issue he had had;

(n) he still believed that the right thing to do was to have supported the application because the place that was there needed to be demolished, it was uninhabitable. It was a site that had a house so it could be rebuilt. He had been quietly impressed with the planning side of it. Because it was on green belt was not a simple reason for refusing because there was previously developed green belt and that was exactly that.

Diane Logue

4.26 Diane Logue was interviewed on 15 October 2020 and a signed statement was obtained (copy attached at WC 19). She stated that:-

(a) she had been employed by Castle Point Borough Council (the Council) for approximately 18 years. She had held various roles including Transformation manager - Planning. She was currently Head of Housing;

(b) she had been heavily involved in the Planning Improvement Peer Challenge. She had done a lot of the preparation work for that including the co-ordination, dealing with them on site, providing the documentation that was necessary and commenting on the report itself;

(c) there was an underlying current of a culture that was uncomfortable in relation to planning at times and comments that sometimes came across at Committee indicating relationships with developers, applicants or agents and perverse decision making. The Peer Challenge Report reflected, quite heavily, members’ behaviours;

(d) the planning application with regard to 243 Vicarage Hill, Benfleet had on it that the applicant was a relation of Councillor Smith but she was first alerted to the link when Councillor Dick, the Chairman of the Development Control Committee (D C Committee), asked to speak to her about it;

(e) she was not a planner and did not deal directly with planning applications. Planning Officers were responsible for determining applications. She had managed the call in process and was responsible for determining if they were valid or not. A call in was made by Councillor Simon Hart on that application for the reason of ‘possible effect on the openness on the Green Belt’ but she had rejected it on the grounds that policies safeguarded Green Belt land from development, therefore his call in was not valid;
she had discussed the application with Councillor Dick and he had approved the application being considered under delegated authority in light of the peer review findings and maintaining probity in decision making prior to any improvement plan being put in place;

she understood from the Monitoring Officer (MO) that he had also spoken to Councillor Smith to discourage the application reaching the D C Committee for the same reasons and particularly in light of the findings of the Peer Review. The MO had explained to Councillor Smith that it would safeguard him and that the Council would be able to show absolute impartiality. However, Councillor Smith disagreed and, she believed, he had been quite forceful in his insistence that in line with the Constitution the application should be considered by the D C Committee;

the MO had a role to protect the members and had Councillor Smith allowed that particular decision to be determined under delegated powers the Council could have shown that it had been in the interests of protecting probity in the planning system;

she had not personally observed or witnessed any pressure that might have been exerted on any members of the D C Committee prior to the meetings in either September 2019 or March 2020;

the Leader would not have approached her. If he had wished to speak with an officer he would have approached her colleague Rob Davis. There was an awareness in officers that Councillor Smith might attempt to intervene in applications he had some knowledge of. When an application was received from certain applicants or agents the MO was alerted as experience had shown that they would likely receive interference in terms of a visit or a call in request;

when an application was received from certain applicants or agents, officers could usually predict how that application would go if/when it was considered by the D C Committee;

she was aware of a planning application in respect of flats on High Street, Canvey by Mr Bernard Litman as she believed Councillor Smith had spoken to Mr Davis about it. Whilst she was aware of the application she had not dealt with the determination. Her role had been to manage the service;

she had been made aware of a relationship between Councillor Smith and Mr Litman and that Councillor Smith had holidayed at Mr Litman’s holiday home. Councillor Smith had received correspondence regarding that previously but asserted that he paid for the use of the holiday home. She was also aware that Councillor Smith attended garden parties given by Mr Litman.

Rob Davis

4.27 Rob Davis was interviewed on 21 October 2020 and a signed statement was obtained (copy attached at WC 20). He stated that:

he was the Planning Development and Enforcement Manager for Castle Point Borough Council (the Council). He had held that role since 1 March 2016. The purpose of his role was to lead and manage the day to day operation of the development management and enforcement service, ensuring high standards and continuous improvement was delivered;
(b) the majority of planning applications were determined at officer level. However, a planning application could be heard by the Development Control Committee (D C Committee) if one of the following criteria was met:-

- applications where the officer recommendation would be contrary to Council policy or which raise significant policy issues for the Council;
- applications which are related to possible legal proceedings by the authority (e.g. prosecution or enforcement action);
- applications where a Section 106 obligation would be involved or where there are justifiable planning reasons for seeking contributions from developers;
- applications relating to Council owned land or applications by the Council on private land;
- applications where the Council is aware that a Member or officer or a close relative of either has made the application;
- where a Member requests an item be brought to Committee using the “call in” procedure as outlined in the Council’s Constitution. There is further guidance and criteria laid out for the circumstances this should, and should not, be used in;

(c) the D C Committee was made up of councillors appointed by the Leader. Councillors were entitled to discuss applications with him but could only call them in to D C Committee if they either sat on the D C Committee or if the application was for property/land within their Ward. There must be reasonable grounds to call in applications, as set out within the guidance (i.e. the reasons must be relevant and material planning considerations);

(d) in September 2019 an application for 243 Vicarage Hill, Benfleet had gone before the D C Committee. The property was owned by Councillor Norman Smith’s son, Luke Smith. Councillor Hart had called in the application and Diane Logue, Transformation Manager, initially sought to decline it on the basis of transparency and probity. It had eventually been decided that the application would go to D C Committee for a decision;

(e) the D C Committee had rejected the application and a revised application had been made for the same property in March 2020. He didn’t recall the exact date but around that time he had had an informal chat with Councillor Smith when he had made an unscheduled visit to his office. He had explained to Councillor Smith that he was unable to support his son’s application, giving him the reasons why (that the land was in the green belt and the application was not consistent with national green belt policy). He had initiated that meeting because he had wanted to maintain a good relationship with Councillor Smith and had not wanted him thinking the impending recommendation of refusal was personal;

(f) the meeting had been informal and unscheduled and as such he had not made a written note of it. However, in the course of that meeting Councillor Smith had told him that his son had a mortgage on the property and that it was costing
his son a lot of money in agency and application lodging fees to keep submitting applications;

(g) he had concluded the meeting saying that if the members of the D C Committee took a different view from officers that was up to them, but he could not justify a recommendation of approval. They had shaken hands and gone their separate ways on seemingly good terms which had been the whole point of having an informal meeting;

(h) on the day of the March 2020 D C Committee meeting he had received telephone calls from three councillors, Councillor Mumford, Councillor Haunts and, he thought, possibly Councillor Johnson to understand the issues that had been raised when he had been considering the planning application;

(i) it was extremely unusual to receive such calls, but he had explained the rationale behind the recommendation to each of the councillors. Despite the Members appearing to understand the reasons behind the recommendation for refusal he had been disappointed to see some of them voted to approve the application at the D C Committee meeting;

(j) on 17 July 2019 Councillor Greig had advised him that the applicant for 19/0336/FUL in relation to 39-43 High Street was known to the Leader;

(k) Councillor Greig had told him that he had been considering calling in the application because of the connection but he had advised him against that and explained that it could be determined independently under delegated powers. The application was determined by officers on 7 October 2019;

(l) on 5 March 2020 a call in request had come in from Councillor Hart regarding a re-submitted application 20/0107/FUL although there had been no previous discussion about it. Councillor Hart had been very active in referring applications to the D C Committee and many, such as that one, were not in areas of the borough he represented;

(m) on 6 March 2020 he had received an email from Councillor Mumford seeking advice. He had arranged to meet with him later that morning. When they met he had asked him if he could discuss an application with him first as he was Cabinet Member for Regeneration and Business and it would be useful to have Member input about the future applications for development in Canvey Town Centre. When he had advised Councillor Mumford of the address (39-43 High Street) he had been surprised as that was the same application he had wished to discuss with him;

(n) he had given Councillor Mumford some background as to why previous proposals had been refused and explained his concerns that nothing had changed with the current application;

(o) Councillor Mumford told him he had been advised that the ground floor of the development was now going to be commercial as opposed to residential and that his objections to the proposal had been addressed;

(p) they had sat and gone through the proposal and he had found the supporting letter on his iPad confirming the ground floor was not for commercial use as he had been led to believe;
(q) at some point during their meeting Councillor Mumford said he had been ‘leaned on’ to call in the application and that had put him in a very difficult position. He had told Councillor Mumford that Councillor Hart had already called it in and Councillor Mumford had replied, saying, “well, perhaps they think I am unreliable after what happened at Vicarage Hill.” That had been a reference to Councillor Smith’s son’s application being refused after he had voted against approving it, contrary to his party colleagues;

(r) at that point it had been clear to him that Councillor Mumford had been put under pressure to get the application to the D C Committee to enable a different decision to be made. He had felt he should do everything in his ability to help prevent such an inappropriate course of action taking place. He had told Councillor Mumford he would look into declining to determine the application and he had thanked him as that had helped him avoid the issue of a call in;

(s) Councillor Mumford had emailed later to thank him for the meeting, advising that the shop “Something Different” was closed as he had thought when they had met. That had been a reference to the fact that he had advised him the development was contrary to the Development Plan and had to be refused unless other material circumstances indicated otherwise. The inability to let a retail premises over an extended period of time would have been a material consideration. However, the applicant had not submitted any such supporting statement;

(t) on 11 March 2020 he had received an email from Mr Maz Rahman of RD Architecture Ltd, the agent, about his letter declining to determine the application. He had responded to Mr Rahman. He had received a further email to which he had responded on 13 March 2020 advising that he had been unable to accept amended plans as the application had already been declined and the inclusion of a commercial element at ground floor meant it was a different form of development to that originally submitted;

(u) around midday on 13 March 2020 he had received an email from Bernard Litman, the developer, querying the advice he had given to the agent that the development would be liable to a S106 contribution of at least 10% for affordable housing and requesting that he called him.

(v) before replying to Mr Litman, he had decided to check through the fee regulations as he had known the matter would be discussed. However, before he had had time to do so he had received a call from the Leader chasing him to respond to Mr Litman. He had explained to the Leader what he had been doing and was asked to call Mr Litman ‘within the hour’;

(w) after a less than cordial conversation with Mr Litman, in which he had clearly been exasperated with what had happened and his decision not to refund the application fee, he had received a further call from the Leader;

(x) he did not recall the exact detail of what had been said but he did recall the Leader had tried to argue the merits of the case saying that the Council did not want empty shops. He had explained to the Leader that it was for the applicant to justify the departure and losing such active frontages had the potential to undermine the vitality of the shopping centre and the future regeneration plans for the town centre being drafted by Ian Butt, Head of Place and Policy. Although Councillor Smith had been polite and had not raised his voice it had been clear he was being pressed over that matter;
it was clear that Councillor Smith had not learnt to stand back from applications where he knew the applicant. Whilst he might be trying to be helpful it was not right.

Councillor Colin Riley

4.28 Councillor Riley made contact with us and provided information to the investigation. A signed statement was obtained (copy attached at WC 21). He stated that:-

(a) he was a councillor for Castle Point Borough Council (the Council), having first been elected in 1999. He was now in his twenty first consecutive year. He represented Victoria Ward. He was the current Mayor. During his first few years as a councillor he had sat on the Planning Committee. Like most members, he had attended Development Control Committee (D C Committee) meetings to speak on Ward applications, as appropriate;

(b) he had been the Leader of the Council between 2014 and 2017. In that role he had attended nearly all D C Committee meetings and took an active part. He had also introduced substitutes to ensure political representation could be maintained;

(c) there had been a Group meeting on 25 February 2020, the week prior to the D C Committee meeting on 3 March 2020 when the Leader’s son’s planning application was to be considered;

(d) at the end of that meeting he had witnessed Councillor Smith remind Councillor Wass that his son’s amended planning application (19/0861/Ful) was to be considered at the D C Committee meeting on 3 March 2020. He had asked her if she would be attending that meeting and whether she would be supporting the revised planning application. The webcast of the meeting showed that Councillor Wass voted against the officer’s recommendation;

(e) Councillor Smith had also approached Councillor Dick at the end of the Group meeting on 25 February 2020, as they all left the building. It had been at the exit door, which had restricted his exit, that Councillor Smith made a direct approach to Councillor Dick, attempting to persuade him to change his mind. As he had had to wait to exit, he heard Councillor Smith confront Councillor Dick;

(f) Councillor Smith had openly said that he expected Councillor Dick, as Chairman, to vote for the revised application. Councillor Dick had responded to say “I will look again at the application, but I will, as I always do, be guided by officer recommendation”. The webcast showed Councillor Dick listening to all of the statements made by councillors during the debate, allowing officers to respond and guide him. The Chairman, along with six other members, including Councillor Mumford, supported officer recommendation for refusal of the application;

(g) Councillor Mumford's vote in support of officer recommendation meant that Councillor Dick had not needed to use his casting vote as he had done when the first application was considered in September 2019;

(h) following the outcome of the March D C Committee meeting Councillor Smith had made it very clear following a private Cabinet meeting that Councillor
Mumford would be removed from his Cabinet position and, more importantly, removed from the D C Committee;

(i) Councillor Smith had also made it known to private Cabinet and close colleagues that Councillor Dick would be removed from his position as Chairman of the D C Committee, moving Councillor Cutler into that role;

(j) at the time none of the lay Conservative councillors had been made aware of Councillor Smith’s intended changes.

_Councillor Norman Smith_

4.29 Councillor Smith was interviewed on 3 November 2020 and a signed interview transcript was obtained (copy attached at WC 22). He stated that:-

(a) he was a councillor for Castle Point Borough Council and had been a councillor for fourteen years;

(b) he had come into the Council under the leadership of Pam Challis and was a new councillor. He had made his way onto Cabinet when the Cabinet system had been adopted and had become Leader a few years ago;

(c) he had entered politics to see what he could do for the local area. He was a successful businessman running two companies locally;

(d) he was relatively wealthy and felt quite fortunate for that and it gave him a chance to give a little back to the community. He had never had thoughts of becoming Leader but that had happened naturally over time;

(e) he hadn't wanted to become Leader but had decided to do so because the Council needed to get the local plan through and he felt he had the ability to speak to both sides and that was possibly the best way he could serve the Council;

(f) he had been successful in speaking to all elements of the party to get them to understand the local plan;

(g) he had worked with officers so they understood member's issues regarding the local plan and then adapting that local plan to take on some of the concerns;

(h) the Council had to produce three hundred and forty two homes per year which meant a release of green belt land across the borough. This caused some real issues especially for councillors in quite marginal seats;

(i) it had taken a lot of work and the party felt he was the best person to do that and so he had taken on the leadership role. He was not sure that he would keep his role once the local plan had been adopted as it took up an awful lot of time and stress;

(j) 243 Vicarage Hill, Benfleet was a property owned by his son, Luke Smith. He had no financial interest in the property at all;

(k) he did not know why the planning application had been called in to be considered by the Development Control Committee in September 2019;
(l) he did not know which councillor had called it in. He had stood away from the application and he had not seen the need for it ever to be called in. The application would take its natural course;

(m) the fact that he was the Leader of the Council meant it was going to go before the committee anyway;

(n) he had not encouraged conservative members to support the application despite officer advice;

(o) Councillors would speak to him and say ‘I see your son’s application’s in’, ‘we’ve been to have a look at it and I see there’s absolutely no reason why that’s being recommended for refusal’. He had always said ‘look, it’s your decision, you must discuss it and I appreciate your comments’.

(p) one of those comments had actually come from Councillor Mumford which surprised him in that he was supportive of the application and had supported on its first application but not on the second application;

(q) he had not sought assurances from Councillor Dick with regard support of the application. Councillor Dick had subsequently left the party;

(r) there was politics involved in a lot of what was being said and having read through the papers he could see exactly the line of politics that was being played out and support had been gained for the report that he was upset about having to deal with it;

(s) he had not telephoned Councillor Haunts on a Sunday afternoon to ask her to support the application, stating ‘you know how it is with our children, we like to see them successful’;

(t) Councillor Mumford had spoken to him about the application on many occasions and he thought he was obviously gaining his support in another area;

(u) he had not told Councillor Mumford that he believed the land should be considered previously developed and not green belt, Councillor Mumford had said that to him;

(v) in the first application Councillor Mumford had been very supportive and promoted that supporting attitude to others. That changed for another reason later on which he was disappointed about but that was politics and he was beginning to understand that support has been gained for this complaint by Councillor Mumford;

(w) he had not said to Councillor Mumford that he hoped he would be able to support the application. In fact it had been the reverse;

(x) Councillor Mumford always promoted himself by saying he was going to support the application. He had never asked for his support, it had been the reverse;

(y) Councillor Mumford may have spoken to Councillor Stanley to say that he had also wanted him to support his son’s application;
(z) in respect of the second application brought before the Development Control Committee on 3 March 2020 the officer recommendation had again been for refusal;

(aa) he had been called into the office by a senior planner who had said ‘just to let you know, I cannot be recommending your son’s application’. He had said ‘Robert, you’ve got to do what you’ve got to do. I fully understand. You make your application, your recommendation to this application the way you feel it’;

(bb) he could not recall the exact conversation with Rob Davis but may have mentioned the cost of the application and agency fees and that he would probably sell the property on and move to a different location;

(cc) his son’s view was that he had wanted to live in the old house and build a new one and then knock the old house down. He had told him ‘that’s a chance you take. I can’t be part of that’;

(dd) there was a political group within their group that were supporting each other in this claim and were people who, for whatever reason, as Leader he’d moved aside into other positions or moved aside from senior positions so there was always a political game of football and unfortunately he was tied up in that and they had grouped together and he could see how that had manifested itself;

(ee) he had not spoken to Councillor Wass following a group meeting on 25 February 2020 as her whether she would be supporting the revised application;

(ff) he had not spoken to Councillor Dick and stated ‘it would be nice if my son’s application got through’;

(gg) he did not recall speaking to Councillor Haunts and saying ‘I don’t ask for anything, but on this occasion I’d like you to vote for my son’;

(hh) he did not recall speaking to Councillor Stanley after the group meeting, saying ‘I must go and talk to Bill about Luke’s planning application’;

(ii) he had not spoken to Councillor Mumford prior to the Development Committee Meeting to ask if he would be attending. He had not said, when Councillor Mumford had confirmed he would be attending, ‘good, the voting is tight and I don’t want a mess up like last time with the voting and I know you will be supporting’;

(jj) Councillor Mumford had had another issue elsewhere which was being played out and it was almost tit for tat, you support me, I’ll support you. He was determined not to let that happen;

(kk) he had been put in a very awkward position with Councillor Mumford regarding a project on Canvey Island which was a community hall called The Paddocks.

(ll) Councillor Mumford had invited him to a meeting which he had found out was not a constituted meeting and was with a particular individual he had known from a previous job;

(mm) Councillor Mumford had wanted that person to be employed by the Council as a consultant to deal with the re-design of The Paddocks community hall. Councillor Mumford had wanted that hall to be more of a stage setting for shows
and things like that and that had not been the Council’s view. He thought that had become an issue.

(nn) subsequently Councillor Mumford had asked him if they could employ that person to work on the project and he had told him ‘you can’t just pick a person and employ them. There is a procurement rules and we have to go through those procurement rules’;

(oo) it had been suggested by Councillor Mumford that they had to do that in that instance as that person was very professional. He had said ‘No, I’m sorry, there is a procedure we have to go through’. They had gone through the procedure of interviewing prospective consultants and Councillor Mumford had tried to be very influential in that decision, asking officers how they would employ that particular person and what criteria they would be using. They had not employed the particular consultant Councillor Mumford had wanted and it had gone on from there;

(pp) he had received a message from the Chief Executive to speak to him about Councillor Mumford’s conduct with regard to what was going on. Councillor Mumford had gone to the consultant behind his back, not telling him or any officers what was going on. He had subsequently found out that there was a reason Councillor Mumford had wanted that consultant suffice to say there were other reasons;

(qq) from early in the year he had sensed that had been an issue with Councillor Mumford so when it had come to him re-employing Cabinet for the forthcoming year he had taken a view, for several reasons, that he would not re-employ Councillor Mumford as a Cabinet member;

(rr) he had moved Councillor Mumford to something different where he felt he would still serve the Council with his ability but not be involved in something that he felt he had an interest in. He had stood Councillor Mumford down from the Cabinet and moved somebody else into that job;

(ss) he had received some complaints about Councillor Mumford’s presentation at committees anyway but had always chosen to ignore that because it was a personal way that you presented things. People used to accuse him of reading reports verbatim rather than putting some sort of feeling into it;

(tt) that was not and had never been a reason to stand him down. The reason he had stood him down was purely because there had been another interest which had been pointed out to him, not only by other councillors in the party, but by officers as well;

(uu) he thought there was a view against him subsequent to that and that was where the complaint had come from. All the way through the first application and second application Councillor Mumford felt he had lost his support trying to get what he had wanted with regard to the consultant;

(vv) Councillor Mumford completely supported the application in its first round and made it evident to everybody that he was doing that and actually promoted the reasons for that to other people;

(ww) in the second application it was reduced in size and mitigating measures had been put in but it was said that Councillor Mumford would not support that. He
had to ask, why he would support something in the first instance and not in the second instance? He would have to say there had been a reason and thought he’d given the reason in that he had lost his support in what he had been trying to do;

(xx) he could never quite understand it and he had asked him a couple of times, ‘are you alright Chas?’ ‘you don’t seem very happy’ but he never got anything other than ‘oh, no, I’m fine, I’m fine’ but never understood the rationale behind why he had been so negative;

(yy) he had not said to Councillor Mumford ‘oh, I was relying on you to support this, we need every conservative member on the committee to vote for it otherwise it won’t pass’;

(zz) when Councillor Mumford suggested he would abstain from the vote he had not said to him that the vote could still be lost and believed the voting numbers would not allow for that and that he really needed him to vote for the application;

(aaa) he had not got Councillor Mumford elected to Boyce Ward, the constituents were the people that got you elected, not him;

(bbb) Councillor Dick had been stood down at the end of the year because he was suffering from health issues and he had received three complaints from members of the Development Control, from both sides of the chamber, stating that they hadn’t been given time for them to be able to present to committee as they thought they should and that he had tried to rush the meeting through;

(ccc) Councillor Dick would leave their own group meetings early because of his health. He had subsequently left the party because he had felt he had made the wrong decision and had said ‘o, well, that’s only because I didn’t support your son’s application’ which had been months and months before that. He could stand somebody down at any time. If that had been the case he would have done that at the time;

(ddd) the complaints he had received from his own party were from Councillor Simon Hart and Councillor Wayne Johnson. There was a complaint from a member of the opposition but did not believe it was fair to name them;

(eee) the complaints had been that his illness had been affecting the way he was conducting the meetings;

(fff) he had attended many meetings after that and could see that Councillor Dick wasn’t allowing debate and was shortening debates. He wasn’t allowing people to fully say what they felt about their constituents’ issues. On one occasion he’d said ‘we’ll get this meeting over by a certain time’.

(ggg) you couldn’t ask for someone with a better knowledge of planning than Councillor Dick. He stood him down from the position but at the same time had asked him to become a member of the local plan delivery board which, to him, was the most important job. They had a separate delivery board which would decide the future of the sites, how they would be developed, the style, the master planning of sites. Then that board would make a recommendation to the Development Control Committee to ultimately make the decision. Those meetings would be during the day/early evening which he had felt would be a lot better for him, still giving the ability that he undoubtedly had from his
planning background to feed into that committee so he had offered him that and he had accepted that job;

(hhh) within three days of talking to other councillors he then turned the job down and resigned from the party. He had also offered the same job to Councillor Mumford who had accepted that job and was part of that committee now. So, he had not tried to push Councillor Mumford out of the way, he was offered a very senior position on a very influential committee which he had wanted him to do because of his background as well;

(iii) he was not taking it out on somebody because of a decision they’d made with regard to his son’s application many, many months ago, that was not the way he worked;

(jji) removing Councillor Mumford from Cabinet was not an act of vengeance by him because he had not supported his son’s planning application. That was not the way he worked;

(kkk) he looked at peoples’ ability and within the party he had to look at the best people to do the job and that’s exactly what he had done. He had felt Councillor Mumford’s position was being looked at by other people, there had been a lot of feed back from officer and member level and he had moved him aside but still given him a job somewhere else that had nothing to do with redevelopment of The Paddocks and still for him to use his ability for that;

(III) it was not a vengeance thing, that would be very short sighted because there is a lack of good councillors who could take up a senior role and you only had a certain amount of people, ten Cabinet members, you had to try and choose the best people and put them in the best positions and that is what he had done;

(mmm) he had not told Councillor Mumford that he had spoken to the Deputy Leader and Chief Exec with regard to removing him from Cabinet. He did not need to;

(nn) if he asked someone to stand down from Cabinet he did not use others to back up his position;

(oo) if there had been a complaint about his conduct why wasn’t that complaint made nearly a year before if he felt all the things he said in the report. Why had the complaint not been made then if he had felt so put out by everything. Why had the complaint only been made after he had stood him down from Cabinet? To him that clearly stated the reasoning, because he had been stood down. The vengeance was the other way round;

(ppp) it was not the Chief Executive who had told him that replacing councillor Mumford would be a mistake and that replacing Councillor Dick would also be a mistake and would look vindictive. That had actually been said by the Deputy Leader who had said ‘you know how this will be seen’;

(qqq) he had said ‘well, yes, probably’ but had then said ‘at the end of the day I’ve got to do what is right and I’ve got to stand back and look at it in the way that I have to look at this’. The decision had already been made regarding his son’s property. Nothing he could ever do was ever going to change that so what was the point. That was not his nature. He was not that type of person;
(rrr) he did not look back six months and think they had done that therefore I will do
this. He could make changes at any point in time. He could change a Cabinet
Member any day of the week, he did not have to wait to a certain point in time
so it was a ridiculous argument;

(sss) he would never have stood Councillor Mumford down for the reason that he
read reports almost verbatim. He had been getting better and some people
take time to be able to speak publicly in a way that is interesting to others but it
had been part of his thinking when it was added to other reasons that were a
lot more major;

(ttt) the Chief Executive and Deputy Leader were aware of The Paddocks as a
reason for standing Councillor Mumford down. They had said to him ‘you know
how this will be seen’ and he had said ‘I’m sure people will want to see it the
way they want to see it’. When you’re in politics and you in a role as Leader
sometimes you had to stand back and make a decision and think you’re not
there for any other reason than to do the best thing for the Council. That’s all
he’s ever done;

(uuu) he did not care really what people thought of him personally, he had to stand
back from criticism sometimes and think get the best person into the best role
and that was what he’d done. He had been proven right and people had said
to him subsequently to what he had done, the new person in that role was doing
a fantastic job and the way they had taken on the job and grown into it was
fantastic. That was from both officer and member level;

(vvv) he had got to know Mr Litman through the conservative party and there had
been garden parties held by the conservative party at his garden to raise
money. He had got to know Mr Litman through that. He had not known him
previously to that and had known him about five years maximum;

(www) subsequently he had become friendly with him and had used his holiday villa.
He had hired his holiday villa and taken his family to his holiday villa, at his cost.
He had offered the Monitoring Officer proof of that;

(xxx) he found allegations that he had got it for nothing because of what he’d done
for him quite laughable. He was fortunately in a financial position in life that he
certainly did not need to take things for nothing. He could certainly afford to
pay for his holidays;

(yyy) when he had met with Councillor Mumford on 9 July he had told Councillor
Mumford that he had been approached by Bernard Litman with regard to him
wanting the committee to hear him speak, which he was entitled to do, at
committee and asked if he could make sure it came to committee;

(zzz) he had said he could not do that, he was his friend and if he wanted to get a
councillor to give that view or hear that view he needed to speak with a ward
member and that his other ward member was Councillor Mumford who sat on
the committee. He had said he would ask Councillor Mumford to speak to him
regarding that and then it was up to him to decide if he felt that was the choice
he wanted to make. He had said to Councillor Mumford that Mr Litman would
like to speak to the committee for the committee to understand that putting
shops at the bottom of that development would end up with two more empty
shops on a street full of empty shops already and therefore he would like to
have made them residential to help put people in there to help feed the rest of the shops;

(aaaa) he had said that the only way he could say that to the committee was for it to come before the committee but he could not call it in as he was his friend but he could speak to his other councillor. He had said he would ask Councillor Mumford to call him as he was his ward member;

(bbbb) he had not said at that meeting that he feared Mr Litman’s application would be refused by officers before it got to the Development Control Committee and before that happened he wanted councillor Mumford to call it in;

(cccc) he had explained Mr Litman’s view to Councillor Mumford and suggested they had a conversation and that he made his decision from that. He was fully aware of the planning laws. He had sat as vice chairman of the planning committee and chairman of the planning committee;

(dddd) he was fully aware of how it worked and that he could not influence. He understood that he could not ask for something to be called in to committee on the basis that he had subsequently become friends with Mr Litman after the conservative party garden party, which Councillor Mumford had also attended;

(eeee) Councillor Mumford was also a friend of Mr Litman, perhaps not such a close friend as him but he was also an associate;

(ffff) he had not said to Councillor Mumford ‘we need to do this for Bernie’ because the case officer was being difficult over the plans. He had asked them to have a conversation together and then it was up to Councillor Mumford if he had felt it was a way forward for him to call it in to give Mr Litman the voice he had wanted to speak to the committee;

(gggg) his motive had not been about helping his friend Mr Litman. He represented Boyce Ward. Mr Litman had come to him as his councillor and he would also go to Councillor Mumford as his councillor. He was entitled to do so;

(hhhh) he had put Mr Litman straight in that he could not call it in but that he had another ward member who sat on the committee and suggested they had a conversation together and give him his argument. If he had wanted it called in to be able to speak to the committee he would have to convince Councillor Mumford that that was the right thing. He was not sure whether that conversation had ever happened;

(iiii) he had not been annoyed when the application had been refused by officers prior to being called in. It had been up to Councillor Mumford, hopefully he had spoken with Mr Litman and they had worked their way forward. He did not know what had happened after that, he did not think it had ever gone to committee but was not sure;

(jjjj) it was ludicrous for Councillor Mumford to have alleged that he had said ‘if we had got it called in we could have got his application through for him. Its madness having to put shops there when we need flats. Bernie’s a good friend and supporter of the conservatives and now he’s been let down and you need to speak to him and let him know how this happened. I was relying on you Chas. He’s now wasted a lot of money on that application for nothing, we’ve
really let him down and now he’ll have to put in another application and that will cost him even more money.’ He had not said that;

(kkkk) he had not wanted to be part of the conversation between Councillor Mumford and Mr Litman and had therefore suggested they spoke together. He is his ward member as was he. There were three ward members to each ward, as he could not become involved and because Councillor Mumford was his ward member and sat on the committee he had told Mr Litman he was the obvious choice if he wished to convince him of his view with regard to trying to get the application called in;

(llll) he had spoken to the Chief Executive in a meeting with him and the Deputy Leader about Mr Litman’s application. He had said ‘there must be a middle way to resolve this, can you see if there is a way through this for me please David?’;

(mmmm) he had said to David Marchant that it was becoming awkward for everybody because so many people were known to him because of the conservative party having garden parties there;

(nnnn) that was why he had spoken to David Marchant, to see if there was a way through without having that awkward situation. Some councillors knew him and had been to his garden parties and felt in a very awkward precarious position. Many of them had known him for many years. He had not known him for as long as a lot of people but had felt very awkward over it. He asked if there could be a meeting with officers and Mr Litman’s team to see if there was a way through without involving councillors;

(oooo) he had hoped it would have been dealt with under delegated powers. If they could have talked to Mr Litman they could have come up with a scheme that worked for him and worked for them. He had just wanted to take it away from members and the awkward situation members had felt themselves in;

(pppp) he could not recall phoning Rob Davis and asking him to call Mr Litman within the hour following a call from Mr Litman to Rob Davis querying advice Mr Davis had given to his architect;

(qqqq) he tried not to get involved in planning applications and in this instance had tried to push conversations he had had with Mr Litman on to other people saying that he could not deal with it and he needed to speak to his ward member and that is what he had done;

(rrrr) he had tried to resolve an issue that had been concerning members of the Council who sat on the committee and also tried to see if they could get the best development for the borough;

(ssss) he did not hold vendettas against people. He liked Councillor Mumford and his wife, they were a nice couple who had recently got married and he had congratulated them. He wasn’t the kind of person to hold grudges;

(rrrr) he took his job very seriously and put the right people in the right place at the right time and while he was Leader he would continue to do that. He had done it for three years and he would just like to see the local plan through to its fruition and then he would probably stand aside. We will hopefully deliver the local plan for this council and then he would let someone else have a go.
4.30 The Council was subject to a Planning Improvement Peer Challenge in April 2019 (attached at WC 23). The aim of the peer challenge is set out in chapter 3 of the report. It states:

"3.0 Background and Scope of the Peer Challenge

3.1 This peer challenge is intended to put in place stronger mechanisms to support quality of Committee decision making in place in advance of the adoption of a Local Plan. This should provide the Secretary of State with at least some greater confidence that Castle Point Borough Council is serious about change and modernisation in the delivery of its planning functions.

3.2 This report summarises the findings of a planning improvement peer challenge, organised by the Local Government Association (LGA) in cooperation with the Planning Advisory Service (PAS) and carried out by its trained peers. Peer challenges are managed and delivered by the sector for the sector. They are improvement orientated and are tailored to meet the individual council’s needs. They are designed to complement and add value to a council's performance and improvement. They help planning services review what they are trying to achieve; how they are going about it, what they are achieving; and what they need to improve.

3.3 The aims of the peer challenge were to review decision making including the balance of delegations and pragmatism and scrutiny within the decision-making processes. The Council asked the peer team to look at the role of the Development Control Committee in decision making and public engagement and the relationship between Members and Officers generally.

You asked us specifically to focus on:

- Whether members of the Committee fully understand their purpose and role in particular consideration of private proposals vs wider public interest when making decisions for the public;
- Whether members making best use of their time and looking at the right applications;
- How applications are debated, including the rationale applied, the adherence to key policy requirements, the consistency of the decision making, consideration of relevant material planning considerations, rules of debate and voting on applications;
- The working processes including Protocol and Code of Conduct for Planning Matters, call in procedures, report structures, presentations of reports, code of conduct for members;
- Officer/member relations and how the committee is viewed from a "users" viewpoint;
- General communication between members and officers;
- How well the two elements pull together to support the council's growth, regeneration and housing agendas;
• Development Control Committee (DCC) Member training; and
• Committee attendance and use of substitutes.

In delivering this focus the peer team explored the Planning Improvement Peer Challenge core components of:

• Vision and leadership - how the authority demonstrates leadership to integrate planning within corporate working to support delivery of corporate objectives;
• Management - the effective use of skills and resources to achieve value for money;
• Community engagement – how the authority understands its community leadership role and community aspirations, and uses planning to help deliver them;
• Partnership engagement – how the authority works with partners to balance priorities and resources to deliver agreed priorities; and
• Achieving outcomes - how the authority is delivering sustainable development outcomes for their area.”

4.31 The executive summary of the report sets out the findings and recommendations. It states:-

“1.1 The Council finds itself in an incredibly challenging position in relation to the future of plan making and planning decision making in Castle Point. While the political leadership at the Council clearly want to retain self determination and control of its own planning destiny, the Council’s actions in consistently failing to produce a Local Plan find it awaiting what form of Government ‘intervention’ the Secretary of State might take. Community leadership in ensuring that locally elected Members make sure they remain at the heart of plan making and decision making has therefore been weak.

1.2 Without a Local Plan, growth, and especially the development of new homes has fallen well behind the numbers needed to meet identified housing need. At present the area is producing less than half of the homes required. Without the adoption and development of large scale master planning sites in the Local Plan, the planning system is not able to deliver on meeting identified corporate priorities such as affordable homes, new schools, better integrated health facilities, enhanced access to green space, safe [sic] walking and cycling routes and improved highway infrastructure. Currently while approximately 100-150 homes are built each year the Borough is missing out on integrated co-ordination and delivery that can lead to wider community gain and is essential for building sustainable communities.

1.3 Castle Point Borough Council (CPBC) urgently needs a Local Plan put in place. We recommend that the Council continue to press the Secretary of State for clarity on what form of intervention will occur and when this is likely to happen. If intervention does not occur in a timely manner we recommend that the Council takes the Local Plan back through Full Council at the earliest opportunity.
1.4 Political [sic] and managerial leaders at the Council recognise weaknesses in planning decision making. We agree. We would go much further and say that dysfunctional relationships between some Members and officers are seriously impeding the work of the Council. In some other instances clarity of the Member/officer roles have been unhelpfully blurred. It is vital that these breakdowns in trust and confidence, so crucial in promoting collaboration and a ‘one team’ approach, are healed. Our report contains some recommendations in this area.

1.5 In addition, we found a widespread perception concerning weaknesses in probity in relation to planning decision making. Such is the level of concern amongst the Executive Management Team (EMT) that two statutory letters have been sent to Members concerning inappropriate behaviour. It is vital that Members act in accordance within acceptable standards in public office as set out in the well respected Nolan principles. Failure to do so places Members and the Council at serious risk of legal action and its planning decisions in disrepute.

1.6 Significant weaknesses exist in the operation of the Development Control Committee (DCC). Key concerns include chairing, respect for the Chair, clarity of stages of decision, weighting of appropriate planning considerations, consistency, probity and consistent referencing of non-planning matters in planning decision making, and over dominant members. We also found a very weak understanding amongst some members and substitutes on DCC of their role and the Codes of Conduct and other Council policies that govern behaviour and practice. Developers and house builders, we spoke to told us that presently they are avoiding investing in Castle Point despite what they saw as the area’s obvious locational advantages. They saw making large scale investment decisions in Castle Point just too risky based on this situation. This is of significant concern and of reputational damage to CPBC and needs to be address urgently.

1.7 There are significant opportunities for the Council to address these issues and recast the DCC to a Strategic Planning Committee with potentially a smaller more focussed group of well-trained Members with key competencies and behaviours to judge development against the development plan and material planning considerations. Our detailed recommendations in this area seek to support the Council in preparing for the eventual adoption of a Local Plan when the number and complexity of large planning applications will increase. We also recommend a stronger focus on the delivery of growth moving forward as the area seeks to deal with meeting the need for far more houses under the Government’s Housing Delivery Test (HDT). To achieve this Cabinet members will also need to strengthen their leadership role, including working with officers to articulate and communicate the vision for Castle Point, the benefits of the Local Plan in delivering the Council’s strategic priorities and the subsequent benefits of growth to its local communities and businesses.

1.8 We do recognise, and it was encouraging to see, that the Development Control Service performs well in relation to many performance measures concerning speed of decision-making. We also found a good focus on efficiency and accessibility.

1.9 The Council has also shown strong leadership and partnership work with the Association of South Essex Local Authorities (ASELA). The Government has recognised the importance of this work in its recently published
This collaborative work in South Essex has also included working with neighbouring authorities to put a Joint Spatial Plan in place for South Essex. CPBC have been at the forefront of this work.

1.10 Developers and agents spoke highly of the professionalism and dedication of planning officers, feeling they were very accessible. Members also commented how positive and helpful planning officers within the service are. This is a key strength that CPBC has, and will need to continue, to build upon as it moves forward to deliver its growth agenda.

2.0 Recommendations

R1 Urgently adopt a Local Plan, continue to ensure sufficient resources are allocated to taking it through to adoption, and develop stronger internal processes to secure deeper cross-party ownership to the commitments it contains on housing, employment and infrastructure. The political leadership should ensure they provide the political guidance necessary to ensure the Local Plan is agreed by Council.

R2 Address the issues identified and reconstitute a new modernised strategic Development Management Committee with a strategic focus – including a review of size, composition, behaviours, skills and complete modernisation of processes. Political leaders from all parties should ensure that Members with the appropriate skills and behaviours are appointed to the Committee.

R3. Adopt set of cultural behaviours across the Council that seek to build trust and confidence among officers and Members with support from the LGA, with collective agreement of how the behaviours will translate into actions. The political and managerial Leadership sets the example and demonstrates support for those with the appropriate skill sets fitting the relevant person specifications to sit on committee.

R4 Ensure the new Local Plan is promoted corporately and politically as the primary tool to drive housing and regeneration delivery in Castle Point. Political leaders from all parties should ensure that all members understand that the Local Plan is the delivery tool for growth.

R5 Proactively use the development of a housing trajectory and delivery action plan immediately. This must be embedded in Local Plan to provide further certainty.

R6 Develop an agreed stronger corporate narrative around the necessity and benefits of growth, and pivotal role of the Local Plan in shaping this, supported by a resourced and shared Communications Strategy to secure balanced communities for the longer-term future of all citizens and to add and build upon the strengths and delivery ambitions of the Association of South Essex Local Authorities (ASELA).

R7 Review the scheme of delegation so that the new strategic Development Management Committee focuses on delivery of the substantially higher number of projected major planning applications required to meet the housing delivery test.
R8 Officers and Members to co-design with external support, a more targeted and structured planning training programme with RTPI/PAS expert led input where necessary and with a stronger focus on probity and compliance with codes of conduct.

R9 Ensure that the new strategic Development Management Committee owns its own performance and sets key performance indicators in relation to speed, quality and delivery, regular performance reports should be presented and planning performance should form part of the Council’s wider communication strategy for growth and planning to help build confidence that Castle Point is open for business.

R10 Establish a structured developer/agent forum with the Planning Service at cabinet member level.”

4.32 We note that the findings of this report, certainly regarding weaknesses in probity in relation to planning decision making are subject of critical commentary and recommendations.

4.33 We also note that at the time of the report, such was the level of concern by the Executive Management Team that two statutory letters had been sent to Members concerning inappropriate behaviour. The report identified that Members and the Council were at serious risk of legal action and its planning decisions in disrepute.

4.34 Despite these findings, the behaviours and conduct identified in this report would indicate that the recommendations from the peer challenge are still not fully understood by the political leadership of the Council.
5. Summary of the material facts

243 Vicarage Hill, Benfleet

5.1 243 Vicarage Hill, Benfleet is owned by Luke Smith, the son of Councillor Norman Smith.

5.2 On 17 June 2019 Mr Smith submitted a planning application concerning 243 Vicarage Hill, Benfleet. The planning officer recommended refusal. It is evident that prior to the application being considered by the Development Control Committee, Councillor Smith sought support for the application from both Councillor Mumford and Councillor Dick.

5.3 On speaking to Councillor Dick, Councillor Smith said:

"how wonderful it would be to get it"

5.4 The application was considered by the Development Control Committee on 3 September 2019. The application was refused by the committee.

5.5 A second application was made on 25 November 2019 by Mr Smith. Again, the recommendation from the planning officer was refusal. It is evident that prior to this application being considered by the Development Control Committee, Councillor Smith was again seeking support from Councillor Mumford and Councillor Dick.

5.6 Councillor Smith initially asked if Councillor Mumford was attending the D C Committee meeting and then said:

"Good, the voting is tight and I don't want a mess up like last time with the voting and I know you will be supporting".

5.7 When Councillor Mumford replied that he would need to fully read the planning officer’s report and take part in the D C Committee meeting, Councillor Smith said:

"Oh, I was relying on you to support this. We need every Conservative member on the committee to vote for it as otherwise it won't pass"

"Don't forget how I helped you get elected into Boyce Ward"

5.8 Speaking to Councillor Dick, Councillor Smith said:

"it would be nice if my son's application could go through".

5.9 The application was considered by the Development Control Committee on 3 March 2020. The application was refused.

5.10 It is also evident that Councillor Smith spoke to Councillor Haunts prior to both applications. On both occasions Councillor Smith was seeking support for his son's applications. On the first occasion that Councillor Smith approached Councillor Haunts she had been taken aback because it had been a Sunday afternoon and she had not recognised the telephone number. Councillor Smith had suggested that being a parent herself she would understand he wanted the best for his son and wanted to see him get on. He had used words along the lines of:
“you know how it is with our children; we like to see them successful”.

5.11 On the second occasion Councillor Smith said:

“I don’t ask for anything but on this occasion I’d like you to vote for my son”.

5.12 Councillor Smith also spoke to the planning officer Rob Davis prior to the second application raising the issue of his son’s finances. He stated that his son had a mortgage on the property and that it was costing his son a lot of money in agency and application lodging fees to keep submitting applications;

39-43 High Street, Canvey Island

5.13 On 10 May 2019 Mr Rahman of R D Architecture Ltd submitted a planning application for 39-43 High Street, Canvey Island on behalf of the developer Mr Bernard Litman.

5.14 The recommendation from the planning officer was refusal.

5.15 Despite a request to call in that was later withdrawn, the application was subject of delegated powers and refused by the planning officer.

5.16 It is evident that Councillor Smith approached the Chief Executive David Marchant regarding this application, stating:

“There must be a middle way to resolve this”

“Can you see if there is a way through this for me please David’

5.17 It is also evident that Councillor Smith intervened regarding email communication between the planning officer Rob Davis and Mr Litman. Councillor Smith telephoned Mr Davis and asked him to reply to Mr Litman within the hour.

5.18 Mr Litman is a friend of Councillor Smith a fact that Councillor Smith does not deny. It is evident that Councillor Smith does use Mr Litman’s holiday home and this has been the subject of commentary by the local press in the past.

5.19 The Council underwent a Planning Improvement Peer Challenge in April 2019. Amongst other things, that process identified: -

(a) recognition by political and managerial leaders at the Council of weaknesses in planning decision making;

(b) a widespread perception concerning weakness in probity in relation to planning decision making;

(c) concerns as to the understanding of some members of their role and the codes of conduct and other Council policies that govern behaviour and practice.
6. **Councillor Mumford’s and Councillor Smith’s additional submissions**

6.1 The following comments were received from Councillor Mumford on the draft version of this report

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NS suggests I said I was supportive of the first application having been on a site visit with other members of the D C Committee and planning officers on Monday 2nd September 2019 (The day before DC Committee). This is not strictly accurate, what I did say was that it seemed to me it could be considered previously developed land in the green belt. This was my response to Councillor Smith when he was waving the site plans and drawings around in the members room trying to garner support for the application on 3rd September 2029, the night of the D C Committee. After the D C Committee, he was angry that planning officers had introduced an artistic impression of how the scale of the proposed house would dominate the surrounding area. I must say when the drawing was introduced by the presenting planning officer, it also persuaded me to think the officers were perhaps over egging the argument to have application turned down hence it was tipping me towards voting for it.

NS would have been acutely aware that the application for Luke Smith would have been called in and why. He would have been well aware of who had called it in and also because it was an application by a family member hence, he had an interest. Irrespective of that it would have been before the D C Committee anyway due to the Leader being the father of applicant.

Strange that NS has not named the ‘many’ councillors who incidentally mentioned ‘oh, I see your son’s application is in’. I presume they were other members of the D C Committee or why would they bother to mention it or even be aware? He then says that councillors’ said ‘we’ve been to have a look at it, and I see no reason why this is recommended for refusal’. Again, which councillors and when did they say that? There was an official site visit officiated by planning officers to 243 Vicarage Hill for members of the D C Committee at 3 pm on Monday 2 September 2019, this included me and was the day before the D C Committee meeting. The only time NS could have had that conversation with me was on the evening of 3 September when he came into the members room lobbying for support.

It was then that I felt he was exerting soft power on me and he said the site looked like previously developed land and was mindful to support the application. He had drawings of what the proposed building would look like and was trying to argue that it wouldn’t overlook other properties and was proportionate etc. I confirm I was of the opinion that the land could be designated or described as previously developed land.

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NS said that I had spoken to him on many occasions about the application. – absolutely not.

I was most certainly not promoting my support to others, indeed there were others of us who felt distinctly uncomfortable at such an inappropriate approach by the Leader.
DH asks if Cllr Smith spoke to me prior to the D C Committee meeting on 3 March.

NS replies that he didn't attend the D C Committee meeting.

NS first spoke to me about the second application on 28 February 2020 at the Council offices after Private cabinet, as per my statement, when he asked if I would be attending the D C Committee. He followed up with a call to my house number on 3 March, an hour or so before the meeting, again to lobby for my support, again, as per my statement.

NS then goes on about The Paddocks:

Firstly, a bit about my background. Before retirement and before I decided to enter local politics, I had a successful 40-year career in local government including 38 years in theatre and leisure management. I was on Chief Officer grade at Southend Borough Council and managed the towns two theatres, the Cliffs Pavilion and the Palace Theatre. I was responsible for programming and staffing, amongst other things. I had a staff structure of approx. 200 full, part time and casual staff. I oversaw the successful modernisation and enlargement of the Cliffs Pavilion and also the refurbishment of Palace Theatre. The Cliffs Pavilion scheme involved a 2 year closure period for the rebuild. That was in 1990/92 at a cost then of £6m. When I took retirement in 2008 the Cliffs Pavilion had an annual turnover in excess of £7.5m and it remains the number 1 touring theatre in the south east. I have great experience and knowledge in this field which would hopefully have been of benefit to CPBC and the Paddocks project.

I was first elected to the Council in 2015 for Canvey Island East Ward. When Norman Smith became Leader in 2018, he asked me to join his cabinet and to take on his then Cabinet responsibilities for Regeneration and Business Liaison, a very wide brief that has, incidentally, since my being dropped from cabinet, been divided amongst 3 other cabinet members. NS had said to me that one of the first projects he wanted to see achieved was the building of the new Paddocks on Canvey Island. The existing Paddocks is a fairly large facility built to a not very high specification back in the early 1970s. NS said my experience from my time at Southend was invaluable and just what was needed to push the scheme forward. The issue of the Paddocks is highly sensitive and political with a great groundswell of local opinion on Canvey Island for the existing building to be retained but modernised. I had attended a public meeting at the Paddocks (prior to my appointment to cabinet) at which Cllrs Smith was attempting to convince several hundred people that no decision had been made on the Paddocks as yet. The meeting was extremely hot and bad tempered and very hostile to Councillor Smith despite Councillor Smith giving them assurances that nothing was set in stone and that residents would of course have their say over the future of the Paddocks. When I took up my cabinet position, I was rather concerned to discover that plans for a new building had already been commissioned, together with an outline business case prepared by our officers. On inspection it was obvious to me that the new proposed building was on a much smaller scale than the existing building and a design that would inhibit its position both commercially and limit it in scope of events and presentations. I explained my concerns at private cabinet and my concerns were also shared by others including Councillor Paul Varker, who as at that time the Cabinet portfolio holder for Environment and Leisure with responsibility for...
operation of our halls and leisure facilities. I recall Cllr Varker was keen to explore the possibility of retaining the existing building if that was possible. I then suggested to cabinet that I would contact an architect who was the architect for the Cliffs redevelopment, someone I knew would give us unconditional and unbiased advice. It was important that we as a cabinet were as one if we were to decide to either build a new facility or refurbish. It was agreed with the Leader, Cllr Smith, I would unofficially contact the architect, which I did. I contacted the architect, as agreed, in July 2018 and he duly attended the Paddocks where he met Cllr Smith, Councillor Varker and myself.

In his recorded interview NS attempts to create a narrative that I had some sort of personal interest in employing this architect. That is wrong and disingenuous. My sole motive was confined to getting the right outcome for the Council and our residents. Of course, I understand contract procurement rules, I have been in local government most of my life. It was no secret that I wished for this architect to be considered when we went out to tender. NS agreed that it would be beneficial to have someone of that calibre included if at all possible. To suggest it was possible to engage someone unilaterally without due process is laughable. All my dealings with other members and officers (Including: The Chief Executive, the Strategic Director for Transformation & Resources (sec151 officer), The Head of Environment, and Head of Law with regard to the Paddocks have been open and transparent.

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Councillor Smith states the Chief Executive wanted to speak to him about my conduct. This is news to me. At no time has Councillor Smith said anything to me about conduct. Also, if the CEO had a problem with me I rather like to think we have a good enough working relationship that he would jolly well tell me himself.

Reading presentations at committee and alleged complaints from other members, well, again this is beyond a joke. Some of the reports I had to present were very technical and with legal implications for the Council requiring comprehensive explanation. Officers take great pains to compile these reports and their presentation requires more than a flippant skip through. All of the above, on examination, is nothing more than a feeble attempt to deflect away from the fact that Councillor Smith is very economical with the truth and has been found out with regards to his attempts to influence planning applications for a family member and a friend.

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NS criticises Councillor Dick, saying there were complaints about Councillor Dick as chairman of the D C Committee. Councillor Dick, when chairman, was following recommendations from the Peer Review which had criticised the previous chairman for permitting dominant councillors to take over the proceedings. Cllr. Dick was attempting to get members of the DC committee to focus on legitimate planning principles rather that subjective opinion.

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NS says he felt my position was being `looked at by other people` and there was `lots of feedback as far as what was happening with me at both officer and member level`? I must ask from whom, when and where is the evidence? At no time during my position on cabinet has a member or officer said anything
derogatory or expressed criticism of me. I would have thought that if this were true then any Leader with any gumption would bring the matter to my attention as a matter of some urgency at a one-to-one meeting. Without names or examples, I can only conclude that Councillor Smith is making this up to cover his own obvious failings as Leader.

DH asks NS the name of the consultant that I was trying to get a job for! I was not trying to get him a job, but I wanted him, and his practice included when we went out to tender. This is common knowledge and I have emails to back that up. CPBC operates a system of using companies from a closed list. As this is a specialist area, I was keen we opened opportunities to the wider market which I believe is what eventually happened.

NS says he can’t recall the name of the consultant and goes on to imply that he didn’t realise we were going to have an informal look round the venue. He knew perfectly well and in fact it was he who didn’t want any officers present. It’s really no skin of my nose if officers were there or not as it was not an official visit. The meeting was at 2pm on Wednesday 1 August 2018. (clearly a couple of years before all this)

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DH asks if because of the meeting with the architect was that why I was dropped from cabinet. NS says we interviewed several companies. No, we did not unfortunately. I recall there were 3 or perhaps 4 companies that responded and one was chosen because of price factors. In the tender documentation the greatest weighting was given to cost. We only had a meeting with the company that had been chosen. I was subsequently asked by Trudy Bragg (Head of Environment) if I could work with the consultants regarding contacts in the area for entertainment, art groups etc., as she knew I had experience in that area and I wanted very much for the development of the project to be a team effort and I think overall that was accepted and even appreciated. No one ever told me any different, in particular the Leader of the Council. The Chief Executive did confide in me at one stage that he and other officers were somewhat disappointed with the quality and volume of work the consultants were producing. They had eventually produced a draft report but for some reason I was prevented from seeing it. To this day I don’t know why.

NS says he took the decision to drop me from cabinet many months after the application by his son, so it has nothing to do with that. What nonsense, the D C Committee was 3 March 2020, and I was sacked only nine weeks later. NS is incorrect when he says I complained only after he dropped me from cabinet. Again, this is incorrect. The first investigation was carried out in March 2020 by Investigation officers from Thurrock Council following concerns raised about Councillor Smith putting pressure on some members of the D C Committee to influence planning decisions on his son’s planning applications. Castle Point Borough Council officers had serious concerns and I was interviewed by the MO and Borough Solicitor. I was subsequently interviewed by Thurrock investigation officers on 19 March 2020 and gave a signed statement. This was before I was dropped from cabinet so Councillor Smith’s contention that it is an act of vengeance on my part is unfounded.
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I really do not need advice on how to present reports as I have been preparing and presenting reports all my professional life including up to board level when I was managing director of Southend Theatres Ltd. The reports produced at Castle Point Borough Council are invariably written by officers and sometimes, depending on the content of the paper, with input from the cabinet member. As stated earlier, some of the reports are very technical and as the cabinet meetings are webcast for the public and also viewed by local press and media some reports need contextual detail hence some passages are read out for accuracy. If the Leader considers the reports are boring, perhaps the Leader needs to speak to those that compose them.

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This is all lies; the truth is in my statement.

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I am not a friend of Mr Litman, I met him briefly 2 or 3 times as mentioned in my statement.

The rest is inaccurate, my statement is the true account.

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NS contradicts himself by saying he wanted to take the Litman situation away from members but then says he wants me and Mr Litman to talk about it. My statement reflects exactly what happened.

6.2 The following comments were received from Councillor Smith on the draft version of this report:-

"May I thank you for allowing me the additional time to prepare a response in light of the Two complaints made against me by Cllr Mumford, it has not been easy for me to deal with this issue throughout this incredibly difficult time Exacerbated by the death of one of my counsellors and two very good friends to Covid.

With reference to the first complaint regarding my sons application I have read the report several times and have noted a number of politically motivated mis truths which I admit upset me for some days, although I don't agree with many statements I have decided (against my legal advice) not to challenge the findings as I believe this will prolong the process and bring the Council further issues. I have therefore decided that I will not resign as a councillor and I am willing to face the findings of the standards committee, the monitoring officer Andrew Roby Smith has been very helpful in explaining the processes and giving valuable un bias advice which has also shaped my decision.

With regards to the second complaint which was lodged a period after the first complaint ?? I would respectfully ask you to re visit your recommendation on the basis that I stood to gain absolutely nothing from helping Mr Litman and certainly tried my very best to resist anything that would do so especially due to my friendship of his family."
As Leader and Ward member representing Mr Litman I found myself in an impossible position knowing that the vast majority of my leading group knew Mr Litman well and had been to several of his fund raising events held in his garden along with the Member of Parliament.

During the said period I did my very hardest to try to deflect decisions on Mr Litman's application site away from my members so as officers could negotiate directly with the applicant and stop the conflicts of interest and the outcome would be the outcome, I also told Mr Litman directly in a phone call from him that I would not speak in approval of his application and suggested that if he wanted to make his case to the committee he had other ward members he could contact and I suggested Cllr Mumford as he sat on the committee, I informed Councillor Mumford of the call and gave him the outline of what the likely request would be.

The allegations I have read do not reflect what really happened, I am sure they are politically motivated or are in retaliation to my replacing Mr Mumford for other reasons highlighted by the CEO to me which I was previously aware of and was causing a relationship issue with Cllr Mumford.

If I am guilty then it would be for trying to protect my councillors from awkward conflicts of interest plus trying to uphold the name of the Council, not forgetting the very vocal opposition making further damaging allegations against me and decisions my party made.

If I was guilty of trying to undermine the process then why on earth would I speak to officers with a view of trying to get them to negotiate or intervene directly thus taking the decisions away from my party.

I please urge you to re consider the outcome of this second complaint as it is grossly unfair on me and reflects badly on my group who are completely innocent.

Thank you again for your patience and understanding especially through these unprecedented times.

I look forward to your thoughts on the second complaint....."

Response to Comments

6.3 Councillor Mumford has provided a detailed response to the report and in part has focused on issues concerning the Paddocks and matters raised by Councillor Smith concerning his conduct. In addition to this Councillor Mumford has commented on what he believes are inaccuracy’s within responses by Councillor Smith when interviewed, including when he was asked to step down from Cabinet.

6.4 Having considered all of Councillor Mumford’s comments we have not found anything which would change the conclusions in our report.

6.5 Councillor Smith has provided comments regarding both matters and has requested that we again consider our findings in relation to High Street, Canvey Island and his relationship with Bernard Litman. His request is based on the fact that, in his view, he stood to gain absolutely nothing from helping Mr Litman.
6.6 It is clear from the narrative in the report concerning High Street, Canvey Island, that we have reached a conclusion based on the balance of probabilities. This is not a matter which requires us to prove beyond reasonable doubt the evidence on which we base our conclusions.

6.7 We agree that Councillor Smith did not have a pecuniary interest in High Street, Canvey Island but it is evident that he did have a non-pecuniary interest through his friendship with Mr Litman, this friendship being clearly made out in the evidence. In addition to this, his actions and contact with Officers and Councillor Mumford leaves little doubt that Councillor Smith's actions were done to further the interests of his friend Mr Litman.

6.8 Having considered all the comments made by Councillor Smith we have not found anything which would change the conclusions in our report.
7. Reasoning as to whether there have been failures

Capacity

7.1 Section 27(2) of the Localism Act 2011 requires the Authority to adopt a code of conduct "dealing with the conduct that is expected of members of the Council “when they are acting in that capacity”.

7.2 The Council’s Code of Conduct reflects the requirement of Section 27(2) of the Localism Act.

7.3 The Authority’s code is expressed to apply whenever a member is acting in their capacity as a member of the Council. We therefore first have to consider whether Councillor Smith was acting in an official capacity at the time of the alleged incidents.

7.4 Though relating to the former 2007 model code of conduct, the Upper Tribunal decision in MC v Standards Committee of the London Borough of Richmond [2011] UKUT 232 (AAC) is a helpful distillation of the previous High Court cases on capacity – Livingstone v Adjudication Panel for England [2006] EWHC 2533 and R(Mullaney) v Adjudication Panel for England [2009] EWHC 72. The principles stated in MC are:-

(a) was the councillor, as a matter of ordinary English, actually conducting the business of their authority, including the business of the office of councillor?
(b) a fact sensitive approach is required to the above;
(c) the question is one for the tribunal to determine, not a reasonable observer.

7.5 In McTigue v Middlesbrough Council (2009) APE 421 (a decision of the former Adjudication Panel for England), Councillor McTigue made a series of postings on the forum of the Middlesbrough Evening Gazette related to wheelie bin collections and were alleged to be insulting of a local resident. Councillor McTigue argued that she was not acting in her official capacity as all her comments on the forum were made in her private time and all using the pseudonym “Indie”. The tribunal:

“...accepted that even if it became clear from the forum that an individual who was posting on the forum was a councillor, the Code of Conduct would not automatically be engaged. The question was whether in the postings on the forum the councillor was deemed to be, or gave the impression that he or she was, “acting in the role of councillor”. This was fact-sensitive and would very much depend on the content of the postings.”

7.6 The tribunal concluded that Councillor McTigue had given the impression that she was acting as a councillor, giving examples of a number of posts where she had referred to her work as a ward member.

7.7 Care must be taken in applying a tribunal case from a period when the relevant code of conduct (that set out in a national model) was expressed to apply not only when a member was carrying out their role as such but also when they gave that impression. However, McTigue is helpful in providing an example of how the principles of MC can be applied. When Councillor McTigue posted on the forum as “Indie” she was not acting as a Councillor when commenting about matters in general. Despite the lack of
identification as a Councillor in her user name, she was acting as a Councillor when the content of her posts concerned ward matters.

7.8 As MC states, the question is whether as a matter of ordinary English was the Councillor actually conducting the business of their authority, including the business of the office of councillor? The substance of an interaction, rather than outward appearance, is decisive.

7.9 In this case it is evident that Councillor Smith was directly talking to Members of the D C Committee concerning his son's planning applications both in September 2019 and again in March 2020. Despite Councillor Smith not being a member of the D C Committee, it is clear that these discussions were entered into in his capacity as a Councillor and Leader of the Council.

7.10 In the second matter it is evident that Councillor Smith discussed Mr Litman's application with Councillor Mumford, the planning officer Rob Davis and the Chief Executive David Marchant. It is without doubt that these discussions were again in his capacity as a Councillor and Leader of the Council.

7.11 We therefore conclude that in respect of both applications, Councillor Smith was acting in an official capacity and was subject of the Code of Conduct.

Complaint 1 - 243 Vicarage Hill, Benfleet

7.12 There are three issues to consider regarding Councillor Smith's conduct in this complaint:-

(a) whether Councillor Smith had a pecuniary interest by view of his son's ownership of the property;
(b) whether he attempted to improperly confer an advantage on Luke Smith;
(c) whether his conduct compromised or was likely to compromise the impartiality of those who work for, or on behalf of, the Authority.

Disclosable Pecuniary Interests

7.13 Paragraph 6.1 of the code states that you have a Disclosable Pecuniary Interest in any business of the Authority if it is of a description set out in 6.2 below and is either:

(a) An interest of yours; or
(b) An interest (of which you are aware) of a spouse, civil partner or a person you are living with as a spouse or civil partner (“known as the relevant person”).

7.14 Paragraph 6.2 of the code states that a Disclosable Pecuniary Interest is an interest which relates to or is likely to affect:

“iv. A beneficial interest in any land in the Authority’s area.”

7.15 Part 1 paragraph D (General Provisions) states:-

“….. “Beneficial Interest” means having an economic benefit as a legal owner or holding it on trust for the beneficial owner, having a right to the income from
the land or securities or a share in it or the right to the proceeds of sale or share of part of the proceeds of sale”

7.16 In this case 243 Vicarage Hill, Benfleet is owned by Councillor Smith’s son, Luke Smith. This ownership is confirmed by Land Registry (Land Registry Certificate attached at WC 24). Councillor Smith has stated that he had no personal interest financial or otherwise in the property. There is no evidence to suggest that this is not the case. As such, we are satisfied that Councillor Smith has no beneficial interest in the property.

7.17 In addition to this, Luke Smith is not a ‘relevant person’ and therefore we have concluded that paragraph 6.1 does not apply.

Non-Pecuniary Interest

7.18 Part 2 paragraph 8 iv of the code states:-

“You have a Non-pecuniary interest in any business of the Authority where it relates to or is likely to affect-

a decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing or financial position of a friend, relative or close associate to a greater extent than the majority of:-

(a) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
(b) (in all other cases) other council tax payers, ratepayers or inhabitants of the Authority’s area.”

Well being

7.19 The meaning of “wellbeing” was considered by Keith J in Murphy v ESO [2004] EWHC 2377. He said:-

“Cllr. Murphy argued that the aim of para. [7(1)] of the Code was to stop Councillors misusing their position to promote an interest which was clear, substantial and significant. To hold otherwise, Cllr. Murphy said, would result in a councillor being treated as having a personal interest in anything in which he might get pleasure or might cause him displeasure, provided that the pleasure or displeasure which the councillor would get would be greater than the pleasure or displeasure which other local people would get.

In my opinion, it would be unwise to try to encapsulate the meaning of the term “well-being” into a single phrase or sentence. The scope of the terms “well-being” is to be defined by the context in which it is to be applied. This is well illustrated by what the Case Review says about it at p. 79:

‘The use of the term “wellbeing” is a good example of the very broad drafting of the [relevant] paragraph… “Wellbeing” can be described as a condition of contentedness, healthiness, and happiness. Anything that could be said to affect a person’s quality of life, either positively or negatively, is likely to affect their wellbeing. It is not restricted to matters affecting a person’s financial position. The range of personal interests is, accordingly, likely to be very broad.’
I agree with that. Someone can have a sense of well-being without having benefited in a material or financial way. Otherwise there would have been no need to include “or financial position” in para. [8(1)] of the Code. The true aim of para. [8(1)] of the Code was simply to prevent councillors from misusing their position for their own personal interests.”

Financial position

7.20 This is straightforward in that if the business considered related to or was likely to affect the financial position of, in this case a relative, then it would come within the definition of the code.

7.21 The above definitions, especially the very wide interpretation which has been given to the term “well-being”, can be applied to the allegations. The issue of actively seeking support for Luke Smith’s planning applications would in our opinion, bring it within the definition of well-being or financial position. The approval of planning permission would certainly have increased the value of the property.

7.22 Although denied by Councillor Smith, on balance it is evident that he did actively seek support from Members of the Development Control Committee for his son’s applications.

7.23 Although we are satisfied that Councillor Smith did not have a disclosable pecuniary interest in the property we consider that he did have a non-pecuniary interest by virtue of his son’s ownership of the property.

Public Perception

7.24 Paragraph 10.2 of the code states:

“You have an interest which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement in the public interest and you are present at a meeting of the Authority at which such business is to be considered or is being considered you must:

(i) Disclose the existence and nature of the interest in accordance with paragraph 9.1 (but subject to paragraph 9.3) and

(ii) Withdraw from the room or chamber where the meeting considering the business is being held.

7.25 The term meeting is defined in part 1 of the code (General Provisions). It states:-

“meeting” means any meeting of:

(a) The Authority
(b) The Executive of the Authority
(c) Any of the Authority’s or its Executive’s committees, sub-committees, joint committees, joint sub-committees or areas committees, whether or not the press and public are excluded from the meeting in question by virtue of a resolution of Members
(d) Any briefings by officers and site visits organised by the Authority”
7.26 Councillor Smith is not a member of the Development Control Committee and was not present when the matter was debated in September 2019 and March 2020 and therefore we have concluded that paragraph 10.2 does not apply.

Protocol and Code of Conduct for Planning Matters

7.27 Part 1 paragraph 1.5 states:

“The code applies to Members at all times when involving themselves in the planning process. This includes both decision making meetings of the Council and less formal, such as meeting with officers or the public and consultative meetings”

7.28 Part 2 paragraph 1.1 states:

“Members conduct is governed by the Councillor Code of Conduct and Officers conduct is covered by the Code of Conduct for staff contained in the Councils Constitution”.

7.29 Part 2 paragraph 8.1 states:

“Proposals to their own authority by Members and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed, can proposals for a Council’s own development. Proposals can take the form of either planning applications or Development Plan proposals”

7.30 The protocol applies to all Members who involve themselves in the planning process. Although ‘all Members’ is not defined, it is our view that the protocol is not limited to members of the D C Committee.

7.31 Equally the term ‘involving themselves’ is not defined within the protocol. The Oxford English Dictionary defines the term ‘involve’ as to have or include (something) as a necessary or integral part or result or cause to participate in an activity or situation.

7.32 Although we have established that Councillor Smith was not present at the D C Committee meetings it is evident that he did involve himself, by discussing and seeking support from members of the D C Committee for his son’s planning applications. It is our view that Councillor Smith’

Improperly securing an advantage

7.33 Paragraph 5 (a) of the Code states:-

“You must not attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage”

7.34 The issue here is whether Councillor Smith’s discussions with members of the D C Committee can be considered to be an attempt to improperly confer an advantage for himself or some other person, in this case Luke Smith.

7.35 The relevant paragraph of the code states you must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else.
7.36 The guidance issued by the Standards Board provides very little clarification on this part of the code. It merely states "your behaviour would be improper if you sought to further your own private interest through your position as a member."

7.37 Similarly the Case Review 2010 (2011 edition) has scant reference to this area of the code. Question 46 on page 75 sets out where it will be proper for a member to seek code thus ensuring that the scope of the provision is not unnecessarily limited. The most relevant section states:-

"A member’s conduct would be improper if they were to use their public position to further private interests of themselves or associates, or to settle old scores with enemies, to the detriment of the public interest. Any conduct that unfairly uses a member’s public position to promote private interests over public interest will be improper."

Was Councillor Smith’s conduct improper?

7.38 There are two factors which would determine whether Councillor Smith’s conduct was improper. First, if he had an interest in the matter then any involvement in an official capacity might be judged to be improper. Second, did he otherwise conduct himself in an improper manner?

7.39 Having concluded that Councillor Smith did have a non-pecuniary interest it follows that any participation in the consideration of the matter would be improper in that respect. In this case we have established that Councillor Smith’s actions were in breach of the planning protocol. In addition to this although Councillor Smith was not party to any formal meetings where his interest should have been declared it is the covert manner of his involvement that we consider is improper.

7.40 Councillor Smith’s actions were particularly improper in the light of the findings of the Planning Improvement Peer Challenge:

(a) recognition by political and managerial leaders at the Council of weaknesses in planning decision making;

(b) a widespread perception concerning weakness in probity in relation to planning decision making;

(c) concerns as to the understanding of some members of their role and the codes of conduct and other Council policies that govern behaviour and practice.

7.41 We have therefore considered Councillor Smith’s comments in discussions with members of the D C Committee. On balance it is evident that Councillor Smith did approach and discuss his son’s planning applications with members of the D C Committee in an effort to gain support for the applications to be approved. The approach to Councillor Dick made a direct reference to “my son’s application”. The approach to Councillor Haunts refers to “our children” and “on this occasion I’d like you to vote for my son”.

7.42 Despite one reference to the ‘previously developed land’ and the green belt policy the evidence from both the complainant and witnesses leaves little doubt that Councillor Smith was attempting to seek an advantage for his son Luke Smith.
7.43 Having considered the provisions of the Code of Conduct and the reasoning set out in the paragraphs above we consider that Councillor Smith attempted to use his position to improperly secure an advantage for Luke Smith.

Compromising or likely to compromise the impartiality of those who work for, or on behalf of, the Authority

7.44 Paragraph 3 (3)(d) of the code of Code of Conduct states:

“You must not:

    Do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority”

7.45 The SBE Case Review provides guidance on what activities would 'compromise the impartiality of those who work for, or on behalf of, your authority'. Q27 of the Case Review 2010 advises that:-

    “Paragraph 3(2)(d) is directed at any activity that seeks to put pressure on officers to carry out their duties in a way that is biased or partisan. This may include direct or indirect coercion to favour a particular person, group or organisation, whether commercial, political or voluntary. This is contrary to officers obligations to act independently and in the public interest.”

7.46 In this case it is evident that Councillor Smith met, although informally, with the planning officer Rob Davis regarding his son’s planning application. Although the meeting was instigated by Rob Davis it is suggested that Councillor Smith told him that his son had a mortgage on the property and that it was costing his son a lot of money in agency and application lodging fees to keep submitting applications. This conversation is not denied by Councillor Smith.

7.47 Rob Davis has stated that he concluded the meeting stating that if the members of the D C Committee took a different view from officers that was up to them, but he could not justify a recommendation of approval. Rob Davis also stated that the meeting ended with both parties shaking hands and going their separate ways on seemingly good terms which, in his view, had been the whole point of having an informal meeting.

7.48 In this case it is whether the comments made by Councillor Smith in the meeting with Rob Davis, compromised or was likely to compromise his impartiality.

7.49 It is evident that the meeting was instigated by Rob Davis; Rob Davis did not waiver from his recommendation of refusal and both parties left on good terms. Although, in our view, to raise issues regarding his son’s finances was unnecessary and inappropriate it did not appear to put any undue pressure on Rob Davis. There was certainly no direct approach by Councillor Smith to seek a change of recommendation by Rob Davis. As such we do not consider that Councillor Smith's actions compromised or were likely to compromise the impartiality of Rob Davis.

Conclusions

7.50 Councillor Smith did not have a disclosable pecuniary interest in 243 Vicarage Hill, Benfleet, but he did have a non-pecuniary interest because the property was owned by his son.
7.51 Councillor Smith's actions were a breach of the Council’s Protocol and Code of Conduct for Planning Matters.

7.52 Councillor Smith did attempt to confer on or secure an advantage for Luke Smith. His actions were improper because he had an interest in the property and because he failed to follow the Protocol and Code of Conduct for Planning Matters. In addition to this Councillor Smith’s actions were particularly improper in the light of the findings of the Planning Improvement Peer Challenge.

7.53 However, Councillor Smith’s actions did not compromise or were not likely to compromise the impartiality of Rob Davis.

Complaint 2 – High Street, Canvey Island

7.54 This complaint concerns Councillor Smith’s relationship with Mr Bernard Litman a property developer and a proposed development on High Street, Canvey Island. Unlike complaint 1 there is no suggestion that Councillor Smith had a disclosable pecuniary interest in the development itself. However, what must be determined is whether Councillor Smith had a non-pecuniary interest and attempted to improperly confer or secure an advantage on Bernard Litman.

Non-Pecuniary Interest

7.55 Part 2 paragraph 8 iv of the code states:-

“you have a Non-pecuniary interest in any business of the Authority where it relates to or is likely to affect-

a decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing or financial position of a friend, relative or close associate to a greater extent than the majority of:-

(c) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

(d) (in all other cases) other council tax payers, ratepayers or inhabitants of the Authority’s area.”

Well being

7.56 The meaning of “wellbeing” was considered by Keith J in Murphy v ESO [2004] EWHC 2377. He said:-

“Cllr. Murphy argued that the aim of para. [7(1)] of the Code was to stop Councillors misusing their position to promote an interest which was clear, substantial and significant. To hold otherwise, Cllr. Murphy said, would result in a councillor being treated as having a personal interest in anything in which he might get pleasure or might cause him displeasure, provided that the pleasure or displeasure which the councillor would get would be greater than the pleasure or displeasure which other local people would get.

In my opinion, it would be unwise to try to encapsulate the meaning of the term “well-being” into a single phrase or sentence. The scope of the terms “well-being” is to be defined by the context in which it is to be applied. This is well illustrated by what the Case Review says about it at p. 79:
The use of the term “wellbeing” is a good example of the very broad drafting of the [relevant] paragraph… “Wellbeing” can be described as a condition of contentedness, healthiness, and happiness. Anything that could be said to affect a person’s quality of life, either positively or negatively, is likely to affect their wellbeing. It is not restricted to matters affecting a person’s financial position. The range of personal interests is, accordingly, likely to be very broad.

I agree with that. Someone can have a sense of well-being without having benefited in a material or financial way. Otherwise there would have been no need to include “or financial position” in para. [8(1)] of the Code. The true aim of para. [8(1)] of the Code was simply to prevent councillors from misusing their position for their own personal interests.”

Financial position

7.57 This is straightforward in that if the business considered related to or was likely to affect the financial position of, in this case a close associate, then it would come within the definition of the code.

7.58 The above definitions, especially the very wide interpretation which has been given to the term “wellbeing”, can be applied to the allegations. The issue of actively seeking support for Bernard Litman’s planning applications would in our opinion, bring it within the definition of well-being or financial position. The approval of planning permission would certainly have increased the value of the property. The definition of the term “close association” therefore has to be considered.

Close association

7.59 The guide for members in the 2007 Code of Conduct sets out the following:-

“A person with whom you have a close association is someone that you are either in regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts.”

7.60 The Case Review 2007 does, however, provide guidance on how the term “close association” should be defined. It states at page 89:-

“It may be a friend, a colleague, a business associate or someone whom the member knows through general social contacts. A closer relationship is implied than mere acquaintance.

Members and monitoring officers might wish to consider the following questions when deciding whether a close association exists;

How many times do the two people meet?

Where do they meet?

Do they regularly attend the same social events?
Do they know each others families?

Do they visit one another’s homes?

Do they have regular business dealings?

Do they work for the same organisation?

Are they close or connected in other ways?

These questions should never be taken in isolation. It is cumulative evidence of these factors and others like them that will establish a close association.”

7.61 In addition to this the definition given in guidance published by the Welsh Ombudsman on the meaning of "close personal associate" in the Code of Conduct for Members of Local Authorities in Wales is: -

“Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as member or your work in the local community. Close personal associates can also include someone with whom you have been in dispute, or whom you may be regarded as having an interest in disadvantaging. For example, being a member of the same golf club as another person would not of itself constitute a close personal association but having that person as a weekly golf partner might well do”

7.62 In contrast, paragraph 31 of guidance by the Standards Commission for Scotland on similar provisions in the Scottish Code of Conduct for Councillors states:-

“When considering whether to declare the financial interests of other persons (paragraph 5.10 of the Code) or the non-financial interests of other persons (paragraph 5.12 of the Code) councillors must consider all the circumstances. The Code does not attempt the fraught task of defining “relative”, “friend” or “associate”, but councillors should consider the nature of their relationship with the person (e.g. whether they are a close family member or more distant relation). The key test is whether the interest might be objectively regarded by a member of the public, acting reasonably, as potentially affecting his/her responsibilities as a councillor”

7.63 From this it is evident that “close association” is not intended to cover situations where there has been brief and infrequent contact between the individuals, nor even where there had been some commercial transactions between them.

7.64 In this case there are several references to the fact that Bernard Litman is Councillor Smith’s friend a fact that Councillor Smith does not deny. It is also evident that Councillor Smith does use Mr Litman’s holiday home and we note that this has been the subject of commentary by the local press in the past.

7.65 The use of the term “friend” in our experience is usually subjective in nature. People who have a wide range of contacts with others in their working and personal life frequently use a variety of terms such as “friend” “acquaintance” or “colleague”. Some people would reserve the term “friend” for those people they have known for many years and using the definition in the Concise English Dictionary as “a person with whom
one enjoys mutual affection and regard”. Others would use the term for those people they have met over a relatively short period and respect through work or social interests.

7.66 Although we accept that as Council Leader with many business interests Councillor Smith clearly comes into contact with large numbers of people and has a very wide circle of contacts. The relationship with Bernard Litman goes over and above this. It is our view that Councillor Smith is a friend and close associate of Bernard Litman.

7.67 Although we are satisfied that Councillor Smith did not have a disclosable pecuniary interest in the property we consider that he did have a non-pecuniary interest by virtue of his close association with Bernard Litman.

Improperly securing an advantage

7.68 Paragraph 5 (a) of the Code states:–

“You must not attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage”

7.69 The issue here is whether Councillor Smith’s discussions with Councillor Mumford, the Chief Executive and the planning officer Rob Davis can be considered to be an attempt to improperly confer an advantage for himself or any other person, in this case Bernard Litman.

7.70 The guidance issued by the Standards Board provides very little clarification on this part of the code. It merely states “your behaviour would be improper if you sought to further your own private interest through your position as a member.”

7.71 Similarly the Case Review 2010 (2011 edition) has scant reference to this area of the code. Question 46 on page 75 sets out where it will be proper for a member to seek an advantage. It also highlights the fact that the term “improperly” is not defined in the code thus ensuring that the scope of the provision is not unnecessarily limited. The most relevant section states:–

“A member’s conduct would be improper if they were to use their public position to further private interests of themselves or associates, or to settle old scores with enemies, to the detriment of the public interest. Any conduct that unfairly uses a member’s public position to promote private interests over public interest will be improper.”

Was Councillor Smith’s conduct improper

7.72 There are three factors which would determine whether Councillor Smith’s conduct was improper. First, if he had a non-pecuniary interest in the matter which he should have declared then any involvement in an official capacity might be judged to be improper. Second, did he otherwise conduct himself in an improper manner? And third, whether Councillor Smith was motivated by his association with Bernard Litman.

7.73 Having concluded that Councillor Smith did have a non-pecuniary interest which should have been declared it follows that any participation in the consideration of the matter might be judged to be improper in that respect. In addition to this the close association between Councillor Smith and Bernard Litman is clearly made out in the evidence. The evidence from Councillor Mumford leaves little doubt that Councillor Smith’s actions were done to further the interests of his friend Mr Litman.
7.74 Although Councillor Smith suggests otherwise the evidence from Rob Davis does support the fact that Councillor Smith was assisting his friend Mr Litman in his application. In addition to this the conversation with the Chief Executive provides further supporting evidence that Councillor Smith’s involvement was about his friendship with Mr Litman and not wider planning issues concerning High Street, Canvey Island.

7.75 Having considered the provisions of the Code of Conduct and the reasoning set out in the paragraphs above we consider that Councillor Smith attempted to use his position to improperly secure an advantage for Bernard Litman.

Protocol and Code of Conduct for Planning Matters

7.76 As stated above part 1 paragraph 1.5 states that the code applies to Members at all times when involving themselves in the planning process. This includes both decision making meetings of the Council and less formal, such as meeting with officers or the public and consultative meetings.

7.77 In this case it is evident that Councillor Smith spoke to Councillor Mumford regarding the planning application.

7.78 In addition to this it is evident that Councillor Smith spoke to the Chief Executive David Marchant regarding the application and also the planning officer Rob Davis.

7.79 The follow up phone calls by Councillor Smith to Rob Davis following contact by Bernard Litman leaves little doubt that Councillor Smith had involved himself in this planning application. As stated above the protocol applies to all Members who involve themselves in the planning process. Equally the term ‘involving themselves’ has been discussed above.

7.80 Although Councillor Smith was not present at the D C Committee meetings it is evident that he did involve himself, by discussing and seeking certain actions regarding Bernard Litman’s planning applications. It is our view that Councillor Smith’s actions were in breach of the protocol.

Conclusions

7.81 Councillor Smith did have a non-pecuniary interest in the planning application; High Street, Canvey Island by reason of a close association with the developer.

7.82 Councillor Smith did attempt to confer on or secure an advantage for Bernard Litman. His actions were improper due to his interests.

7.83 Councillor Smith’s actions were a breach of the Council’s Protocol and Code of Conduct for Planning Matters.

Protocol on Councillor/Officer Relations

7.84 Paragraph 5.3 of the Protocol on Councillor/Officer Relations states:-

“Officers have a responsibility to make recommendations to Councillors in accordance with their own professional expertise. Councillors should not therefore, seek to direct the content of such recommendations. Councillors
equally are entitled to reject proposals and recommendations submitted to them”

7.85 We have therefore considered whether at any point Councillor Smith sought to direct the content of recommendations made, in this case by Rob Davis.

7.86 The meeting between Councillor Smith and Rob Davis concerning Luke Smith’s planning application has already been discussed above. There is no evidence that Councillor Smith sought to direct the content of the recommendations by the officer.

7.87 Likewise, the involvement of Councillor Smith in Bernard Litman’s planning application has been discussed above. Again, there is no evidence to suggest that Councillor Smith sought to direct the content of the recommendations made by Rob Davis.

7.88 We have therefore concluded that Councillor Smith did not breach the above protocol.

Other matters considered

7.89 We have considered whether Councillor Smith’s actions regarding both Councillor Mumford and Councillor Dick could be seen as conferring or securing a disadvantage.

7.90 It has been established that both Councillors were moved by Councillor Smith from their respective portfolios. The inference being that these moves were as a result of their failure to support Luke Smith’s planning applications, and in relation to Councillor Mumford alone his failure to call in Mr Litman’s planning application.

7.91 Councillor Smith as Leader of the Council has the authority to move Councillors from their posts. It is this and the fact that he has provided a rationale for these moves which is not connected to the planning applications that we have not sought to follow this matter any further.
8. Conclusion

8.1 Our conclusion is that there has been a failure to comply with the code of conduct of the authority concerned.

Wilkin Chapman LLP Solicitors

22\textsuperscript{nd} February 2021