

## SLAE response to Roles and Responsibilities of Luton Borough Council

SLAE acknowledge the additional submission from LR to the Roles and Responsibilities of Luton Borough Council. It is very black and white and SLAE have no comments on the document / information. SLAE appreciate that not all the evidence relates to planning matters, however they do have an influence.

However, life and humans don't work like that; human nature doesn't follow written black and whites very well. There is the grey in-between. Humans have the intelligence to understand and adhere to the black and white, but don't always and we forget and let our emotions surface that depend on the dynamics, personal beliefs, views and games people play.

Humans are fallible, we can act in what is seen to be the best of interests but get caught out by our emotions that may indicate an intended or unintended bias.

'Conflict of interest' is a term used countlessly throughout the whole Expansion process, from the Century Park applications right through the sifts, consultations and now the DCO application. LR report into the Council and councillors make up the board of LR. The Council's Exec want the expansion, but the Council are Luton Rising's bosses, who pay Luton Rising's staff their wages and pension contributions. Up until recently Luton Rising had no employees. Anne Donelan's statement provides the evidence as to how the Council's decision making really works.

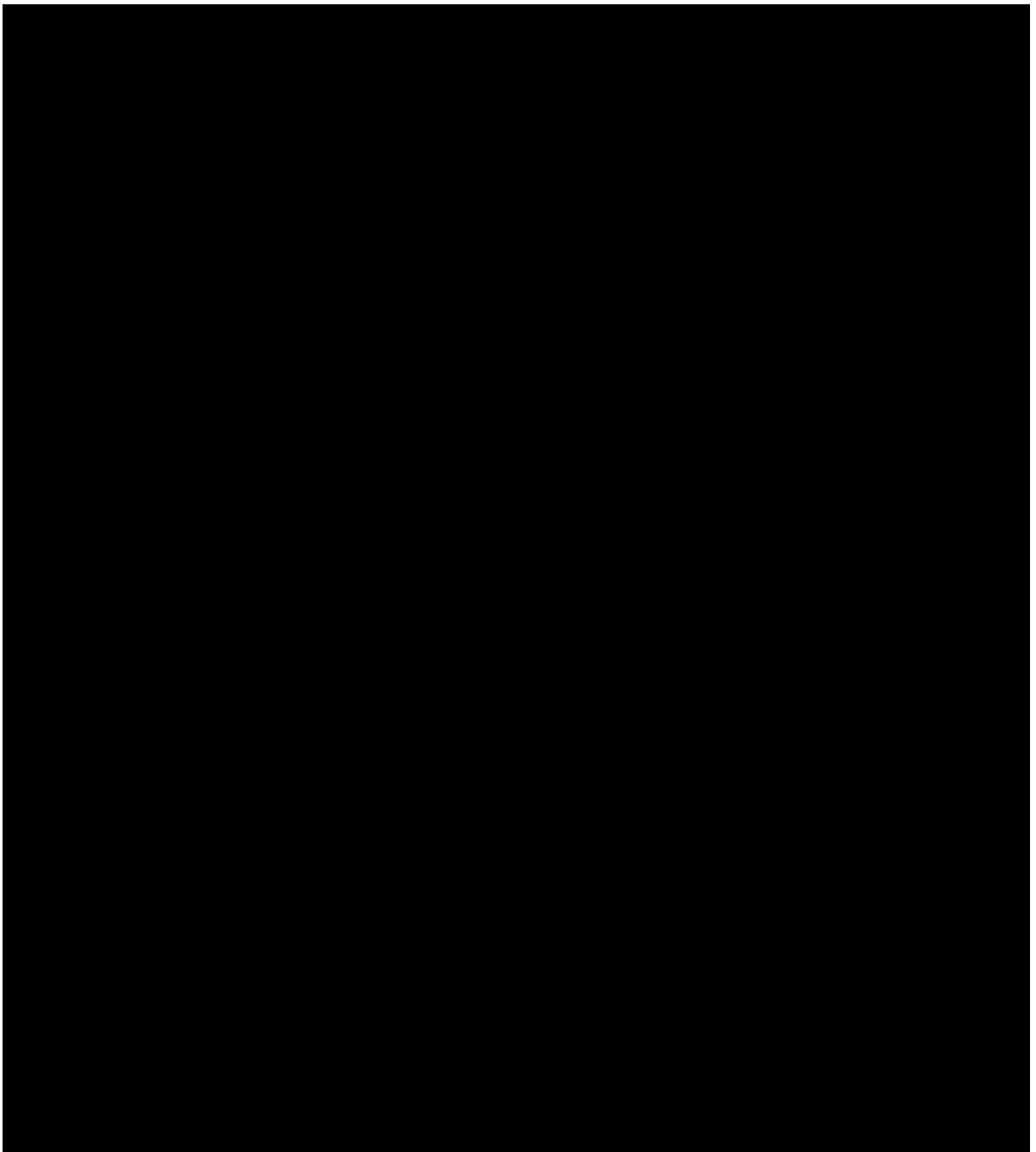
FOWP / SLAE members are members of the public; they should not have to be the subject of council politics and be the butt of councillors who don't agree with a 'no expansion' agenda. Members of the public should be able to trust those in council positions, that they will do the best for their constituents and be respected for doing so. The public should not have to spend hours researching into Council matters to understand how it works. It's shameful that residents of Luton have a Council more focused on growing the airport than maintaining the environment in which Luton residents live. There are councillors doing a great job, have a moral backbone and are operating within their legal and ethical remit. It's sad that some do not.

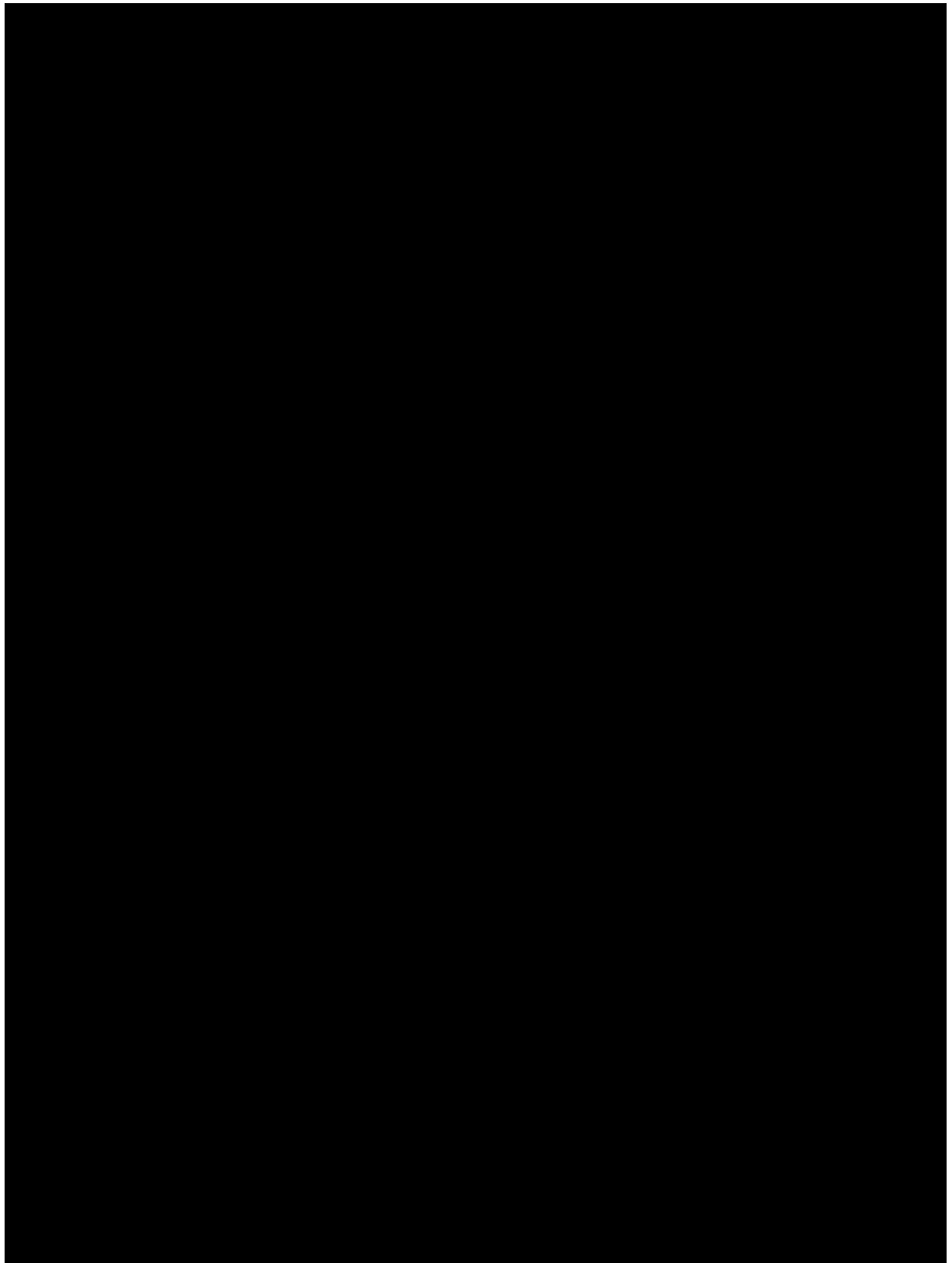
Let's look at the grey in-between evidence.

1. Anne Donelan's evidence (already evidenced in previous Written representations) into how the council works. Anne Donelan voted 'for' the Century Park (renamed Green Horizons Park) planning application in 2021.
2. The FINAL INVESTIGATION REPORT Luton Borough Council Complaint made by Cllrs Lee Bridgen, Gilbert Campbell and David Franks, against Cllrs Raja Ahmed, Kashif Choudhry, Mahmood Hussain, and Summara Khurshid (Case No. 220831/001). Mahmood Hussain had been a previous director of LLAL (renamed LR) on 3 occasions 99 – 00, 07 – 10, 11 – 12. He voted 'for' the Century Park (renamed Green Horizons Park) planning application in 2021 and Summara Khurshid voted 'for' the 19 million expansion in 2021. Appendix D.
3. The letter dated 27.09.18 from Anita Gackowska (Service Director – London Luton Airport Limited, now moved on) (submitted evidence) on behalf of the Council. Appendix A. What is interesting is that in the Statutory Consultation two, a document titled 'Pier Volume 3 Appendices -Appendix 17.1 Preliminary Risk Assessment of Land Contamination', (<https://virtualengage.arup.com/luton-airport-expansion/pei-report/25b0571566278bed84ff70396964e390/Appendix%2017.1%20Preliminary%20Ris>)

[k%20Assessment%20of%20Land%20Contamination.pdf](#) (accessed 01/11/2023)) on page 1,704, is an email from Arup assisting Luton Borough Council with possible options for the expansion of Luton Airport, dated 8<sup>th</sup> March 2016. This suggests that airport expansion was planned on Wigmnore Valley Park in 2016. Appendix B.

4. The apparent recent family connections between the Development Control Committee and London Luton Airport Limited in 2019. Chair of DCC Dave Taylor voted 'for' the 19 million expansion in 2021. Appendix C
5. The connection between a Luton Councillor and the Facebook site called 'Friends of Terminal 2' that publicly slated individual members of FOWP / SLAE hiding under an anonymous pseudonym. It was never proven but Mark Rivers was suspected to be the councillor behind the Facebook page and Mark voted 'for' the Century Park (renamed Green Horizons Park) planning application in 2021. Unfortunately, this suggests Anne Donelan's evidence is more credible.





6. SLAE understand that the council operate the 'Luton Developments' Facebook group (20,00 followers) that openly targets the Wigmore ward, hoping to create ward division and resentment. The front page as shown below pictures Wardown Park and the statue outside the Council Town Hall. Luton Developments is administered anonymously and Facebook will not disclose those who administer groups.  
<https://www.facebook.com/profile/100063673357355/search?q=wigmore&filters=eyJycF9jaHJvbm9fc29ydDowljoie1wibmFtZVwiOlwiY2hyb25vc29ydFwiLFwiYXJnc1wiOlwiXCJ9ln0%3D> (accessed 29/10/2023)

7



8. Comments made on Twitter from the Planning Officer in charge of the Century Park application in 2021. David Gurtler Planning Officer presenting the Century Park application 2021. It is assumed that this post was aimed at the opposition to Airport expansion groups.



## Appendix A



Jeff Morgan



Complaints and Information  
Governance  
Business Intelligence Unit  
Luton Borough Council  
Town Hall  
George Street  
Beds  
LU1 2BQ

T: [REDACTED]  
E: [Feedback@luton.gov.uk](mailto:Feedback@luton.gov.uk)  
W: [www.luton.gov.uk](http://www.luton.gov.uk)

27.09.18

**Re: Stage 1 Complaint Ref: A51637**

Dear Mr Morgan

Please accept my apologies for the delay in providing you with a response. Further to my investigation of your complaint carried out in accordance with the Complaints Process, I write to advise you of the conclusions of my investigation in respect of your complaint against Luton Council and Councillor Hazel Simmons

The first part of your complaint relates to the matter of disposal of Wigmore Valley Park. LBC granted to LLAL a short-term License to occupy the park in March 2017 for one year. This was renewed for a further year earlier this year. The License does not provide LLAL with exclusive possession of the Park. This was not a disposal that would have required a public advertisement as it was not a 'disposal' as defined in legislation. Any future possible disposal will be subject to all required legal and governance procedures.

In reference to your complaint about plans for a second airport terminal on Wigmore Park we understand that the meetings you refer to took place in September 2017 in respect of the ward meeting and in September and November in respect of two other private meetings at which you were in attendance.

The officer who attended the Wigmore ward forum in September stated in that meeting in response to a direct question from a member of the Friends of Wigmore Park group that LLAL had no firm plans at that time to build a second terminal on Wigmore Valley Park but like any other organisation, was always mindful of options for how its business might grow.

In September and November members of the Friends of Wigmore Park group attended meetings with senior officers and councillors. When the question of a second terminal on Wigmore Park was raised at the September meeting, in a similar vein to the point above, officers responded that there were no plans at that time for a second terminal on Wigmore Park, those present do not recall this

**Luton**

question being raised in the November meeting and it is not reflected in an internal note of that meeting.

In July 2017 the Government announced a call for evidence on a new strategy for UK aviation. This document encouraged all airports to make best use of their existing runways and in light of this LLAL considered its position before submitting a response in October; that response included the maximum theoretical capacity of the runway at London Luton Airport and noted that LLAL would be launching its Vision for future growth of the airport in December 2017.

On 11 December 2017 LLAL launched its Vision for Sustainable Growth 2020-2050. That document confirmed LLAL's intention for an ambitious expansion program at the airport, noting the theoretical capacity of the runway and also a number of constraints which would need to be overcome to achieve this. The document noted that a team of leading technical advisers had been put together to address these and to consider a masterplan for a larger airport. It is clear from this document, published in December 2017, that officers were correct to note that there were no plans in the public domain in September to site an airport terminal on Wigmore Park. Indeed that document goes on to underline LLAL's commitment to undertake full engagement with all those with an interest in mid 2018 once it had considered masterplanning options.

In both instances I am satisfied that there has been no breach of the Council's Anti-Fraud, Bribery and Corruption Policy.

I hope you are satisfied with my response, but please contact me if you wish to discuss it further.

You can escalate your complaint to Stage 2 by contacting the Information Governance Team at [Feedback@luton.gov.uk](mailto:Feedback@luton.gov.uk) quoting the above reference number and setting out the reasons you are not satisfied the Stage 1 response has addressed all the issues. You should do this within 28 calendar days of the date of this email/letter.

Yours sincerely

A black rectangular redaction box covering the signature of Anita Gackowska.

Anita Gackowska

Service Director – London Luton Airport Limited (LLAL)

Appendix B

---

**From:** [REDACTED]  
**Sent:** 08 March 2016 10:54  
**To:** Pollution  
**Cc:** [REDACTED]  
**Subject:** Enquiry regarding Eaton Green Road Landfill

Dear Sir/Madam,

We are assisting Luton Borough Council with possible options for the expansion of Luton Airport. We are trying to obtain information on an historical landfill called Eaton Green Road Landfill which we understand from Luton Council was managed by Central Bedfordshire Council at one point in time? Attached is a map of the location of Eaton Green Road Landfill.

We are looking to obtain copies of any records of site investigation reports, gas and groundwater monitoring for the landfill which you may have. In addition any closure reports or other information relating to the condition of the landfill.

Many thanks,

Best regards,

[REDACTED]

[REDACTED]  
Senior Contaminated Land Specialist 1 Geotechnics  
BSc MSc MPH MCIWEM C.WEM CSci CEav

[REDACTED]  
[REDACTED]  
[REDACTED]  
T +44 (0) 121 213 3001  
[www.arup.com](http://www.arup.com)



Appendix C.

**From:** Jeff Morgan  
**Sent:** Wednesday, March 13, 2019 4:38 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Request for investigation of Councillor James Taylor

Notice to members

A petition and a letter of complaint has been sent to the Council's Standards Committee from residents of Crawley Ward regarding the conduct of Councillor James Taylor who is Ward councillor for Crawley and who is the deputy chairman of London Luton Airport Ltd. The complaint was organised by a local Ward resident and reads as follows:

We the undersigned are members of the public who live in Luton Borough Council's Crawley Ward. We believe that we represent the majority view of Crawley Ward and call for an investigation of Ward Councillor James Taylor for the following reason:

That he has broken the Guide to the Code of Conduct for members of Luton Borough Council Appendix A: Section III.6

**Public Duties of Members**

**Members have an overriding duty to act in the interests of the Borough of Luton as a whole, but also have a special duty to represent the views of the residents and communities of their Ward.**

Crawley Ward would be heavily affected by planned expansion of London Luton Airport to 32 million passengers, loss of most of Wigmore Valley Park and the whole of its County Wildlife Site.

Luton Borough Councillor James Taylor is Deputy Chairman of London Luton Airport Ltd. Councillor Taylor is a very public supporter of the planned airport expansion with the associated destruction of Wigmore Valley Park, the County Wildlife Site and impact on local roads. James Taylor has compromised his position by taking a pro-airport stance. As a Ward Councillor he has been unable to remain unbiased on issues which adversely affect his constituents.

Councillor Taylor has broken his special duty to represent the views of the residents in his Ward and as such should have his position of Councillor removed.

**From:** Jeff Morgan  
**Sent:** 05 February 2022 18:06  
**To:** [REDACTED] >  
**Subject:** RE: Standards Committee meeting held 3rd February 2022

[REDACTED]

Thank you for your interest.

I have been the subject of truly shocking treatment by LBC. When I first wrote to Hazel Simmons and copied you in regarding my original complaint, I found my full

email published on Friends of Terminal 2's Facebook account after just 4 hours, which transpired was a criminal act, that broke data protection laws.

I asked for the Council to contact FoT2 to get the post taken down, which was refused and was informed to do it myself. Eventually after I had to make some threats the Council did contact FoT2 where the post was then deleted.

A Council investigation found that the email had been forwarded to Robin Porter and Laura Church before it was published and to no one else. At my meeting with Angela Claridge and Zoe Bulmer I informed them of my reasons for suspecting Cllr Mark Rivers was the publisher. I then sent clear evidence to Robin Porter that Cllr Mark Rivers was indeed the publisher including screen shots of him mistakenly using his Mark Rivers Facebook profile picture on a FoT2 post. Robin dismissed the evidence and did nothing. The Monitoring Officer refused to interview Cllr Mark Rivers.

On the day Mark River left the council he confessed on Facebook that he was indeed FoT2, as he was annoyed that FoWP had made a complaint about him. Many of his posts were personal insults directed at me or directed at residents of Wigmore. Some were of a sexual nature. I still have the screen shots. On the day it was announced at full council that Mark had left he received warm tributes yet he used his position as a councillor to undermine the council. If you remember I have screen prints of an alleged conversation where you and Hazel are in some sort of relationship.

I then requested compensation from the Council for the criminal act and was refused, as someone sent Mark a copy and I know it wasn't me.

I then spent possibly a year chasing Angela Claridge and sometimes Zoe Bulmer regarding the progress of my complaint, as I wanted a hearing regarding the directors breaching the Code of Conduct. With one exception I never received a reply to any emails. The one email I did receive was from Zoe informing me I would be informed at a later date. I never was, which is why I got the Ombudsman involved. The Ombudsman was then given false and misleading information which I had to challenge.

I now have a situation where the new Monitoring Officer is also refusing to follow the complaints procedure.

I would like my case and letter put on as an agenda item at the next Standards Committee meeting so is this something the Lib Dems on the committee can do? If the Monitoring Officer still refuses to take action then he should be forced to do so. All I am looking for is for the complaints procedure to be started and allowed to run its course. After nearly 2 years it has not been started, which is a disgrace.

I would email the independent members and send them a copy of my letter but I have no email addresses for them. I don't know if this is something Dianne can do by forwarding a copy to them?

Finally there is the issue of the Code of Conduct for directors. This is a whole new separate can or worms that the Council hasn't dealt with either so I have copied in legal to the email.

Please feel free to share my comments with anyone you think would take an interest.

Jeff

Appendix D.

**Luton Borough Council**

**Complaint made by Cllrs Lee Bridgen, Gilbert Campbell and David Franks  
against Cllrs Raja Ahmed, Kashif Choudhry, Mahmood Hussain, and Summara  
Khurshid (Case No. 220831/001)**

**Kenyon Brabrook Limited**

**Report prepared by Melvin Kenyon for the Monitoring Officer,  
Luton Borough Council – 4<sup>th</sup> July 2023**

# **Investigation Report – Luton Borough Council**

## **Complaint by Cllrs Lee Bridgen, Gilbert Campbell and David Franks against Cllrs Raja Ahmed, Kashif Choudhry, Mahmood Hussain, and Summara Khurshid**

### **1. EXECUTIVE SUMMARY**

#### **1.1 BACKGROUND**

In early March 2023, Melvin Kenyon, of Kenyon Brabrook Ltd, began the investigation of a Standards Complaint that had been made about alleged breaches of the Luton Borough Council Code of Conduct for Members. He had been commissioned to carry out the investigation by the Monitoring Officer of Luton Borough Council, Mark Turner, who asked him (informally) to conduct a thorough and rigorous investigation.

This report (the “Report”) deals with the investigation (the “Investigation”) of that Standards Complaint (the “Complaint”) which was assigned Case No. 220831/001. The Complaint was made by (i) Cllr Lee Bridgen, (ii) Cllr Gilbert Campbell and (iii) Cllr David Franks (together the “Complainants”), all of whom were members of Luton Borough Council, though Gilbert Campbell is no longer a serving councillor.

The Complaint was made against Cllr Raja Ahmed, Cllr Kashif Choudhry, Cllr Mahmood Hussain and Cllr Summara Khurshid (the “Subject Members”), all of whom were members at the time of Luton Borough Council (the “Council”), though at time of writing only Mahmood Hussain remains a member.

#### **1.2 BRIEF SUMMARY OF THE INVESTIGATION**

On 28<sup>th</sup> August 2022, Cllr David Franks submitted a Standards Complaint to the Council on behalf of himself, Cllr Lee Bridgen and Cllr Gilbert Campbell. The Complaint was about proceedings at the meeting of the Council’s Development Management Committee which took place on 23<sup>rd</sup> August 2022. Complainants and Subject Members were, at the time, all members of the Development Management Committee (the “DMC”).

The Complaint alleged that the Subject Members should have disclosed a personal and prejudicial interest in a planning application, reference 21/01769, for the development of a four-bedroomed house on land to the rear of 68 -76 Wardown Crescent, Luton. The planning application had been deemed for refusal on various grounds by the planning officer under authority delegated to the Head of Planning by the Council’s Constitution and had been called in for determination by the DMC.

The planning application had been submitted by the son of a local imam, Imam Chishti, a very well-known and very well-respected figure in the local community. The Complaint also suggested that the Subject Members may have come to the meeting having pre-determined their decision on the planning application.

A member of the public had also submitted a complaint by email to Cllr Dave Taylor, Chair of the DMC, on 24<sup>th</sup> August and on 29<sup>th</sup> August Cllr Franks submitted a statement to the Monitoring Officer that had been made by an observer of the 23<sup>rd</sup> August meeting.

We examine the Complaint in greater detail in Section 5 below.

### **1.3 CONCLUSIONS AND RECOMMENDATIONS**

We conclude, based on the balance of probabilities and the evidence available to us, that:

- (i) The Subject members were acting in their individual capacity as Luton Borough Councillors when attending the Development Management Committee on 23<sup>rd</sup> August 2022. The Code is therefore engaged.**
- (ii) The Subject Members did not have a prejudicial interest at the meeting of the Development Management Committee on 23<sup>rd</sup> August 2022.**
- (iii) There was no compelling evidence to suggest breaches of any of the General Obligations of the Code.**
- (iv) Whilst it appears likely that the Subject Members went into the meeting with a predisposition to support the planning application and thus go against the planning officer's recommendation for refusal, there is no compelling evidence of predetermination.**
- (v) There were questionable behaviours and a lack of probity in the making of certain decisions at meetings of the Development Management Committee in the recent past.**
- (vi) There was no pattern of questionable behaviour and a lack of probity at meetings of the Development Management Committee in the more distant past, though isolated examples may have occurred.**
- (vii) Pressure was brought to bear on officers to look favourably on the Wardown Crescent planning application, though this does not appear to have been brought to the attention of the Chief Executive at the time. The interest shown by some councillors in the planning application went beyond what was normal and that interest probably stepped over the boundaries of propriety.**
- (viii) It appears very likely that the Subject Members and others were lobbied and put under some pressure, whether directly or indirectly, with a view to assuring a favourable outcome for the planning application when it was considered by the DMC.**

On the basis of the conclusions above we make the following recommendation:

- (i) That, having received the Report, the Monitoring Officer should act in accordance with Paragraph 7 of the "Arrangements for Dealing with Standards Allegations under the Localism Act 2011" and "decide whether to take no further action, to refer to a Sub-Committee (a "Local Adjudication Panel") or .... decide on other action in relation to the case. The Monitoring Officer will need to consult with the Independent Person when making this decision." Should the matter be referred to the Local Adjudication Panel it must be with the clear understanding that findings can only be made about serving councillors.**

We believe that it is imperative that, going forward, the Development Management Committee should operate and be seen to operate openly, transparently and with probity. We therefore make the following further recommendations:

- (ii) That future appointees to the Development Management Committee be carefully chosen with a view to ensuring that members behave with the probity appropriate and necessary**

for those serving on a planning committee. (In making this recommendation we note that none of the Subject Members now serves on the DMC).

- (iii) That a structured programme of training be made available so that future appointees are furnished with the necessary skills and knowledge to carry out their roles effectively. That training should be delivered on appointment to the DMC and at least annually thereafter. Attendance at that training should be mandatory for members of the DMC and members should not be eligible to take up seats on the DMC until they have attended the training. That programme of training should have a specific focus on the declaration of interests.
- (iv) That, notwithstanding the changes to the Constitution of November 2022, careful consideration be given to whether the rules for the call-in of planning applications to the DMC should be further amended to ensure that opportunities to subvert or otherwise manipulate the proper correct operation of the DMC are kept to a minimum.
- (v) That the Monitoring function should remain active in ensuring that any future perceived shortcomings in the proper operation of the DMC are addressed soon after they arise and without the need to resort to Standards Complaints.
- (vi) That members of the DMC should be reminded of the need to discuss any concerns they have about the declaration of interests (or any other similar matters) with the Planning Solicitor in advance of DMC meetings rather than at the meetings themselves.

## **2 OFFICIAL DETAILS OF SUBJECT MEMBERS AND MEMBER TRAINING**

### **2.1 OFFICIAL DETAILS**

#### **2.1.1 CLLR RAJA AHMED**

Cllr Raja Ahmed told us that he had been elected in May 2019 as a Labour Member for the Dallow Ward. He said that he had joined the DMC at the end of March 2022 and appears to have attended his first DMC meeting on 29<sup>th</sup> June 2022. Cllr Ahmed stood unsuccessfully as a Labour candidate in the Wigmore Ward on 4<sup>th</sup> May 2023 and is no longer a member of the Council.

Cllr Ahmed also told us, “Whilst I have attended various other essential training courses in relation to the Code of Conduct and the various committees of which I am a member, I do not recall attending any training that was specific to my role on the Development Management Committee (DMC). I haven’t been a member of the DMC for very long and I don’t believe any training has been scheduled.

“I understand the Nolan Principles. I understand the need to declare personal and prejudicial interests. I understand what is meant by predetermination, the need to listen to both sides of the argument and to ask questions if I have any before making a decision about a planning application. I need to be independent and behave like a judge.”

#### **2.1.2 CLLR KASHIF CHOUDHRY**

We did not speak to Cllr Kashif Choudhry but the Council website tells us that he was elected in May 2019 as a Labour Member for the Biscot Ward. He too appears to have attended his first DMC Meeting on 29<sup>th</sup> June 2022. He did not stand in the Council elections on 4<sup>th</sup> May 2023, and is no longer a member of the Council.

Cllr Choudhry told us by email that he had received training specific to the DMC.

#### **2.1.3 CLLR MAHMOOD HUSSAIN**

Cllr Mahmood Hussain told us that he was first elected to the Council in May 1999 but lost his seat in 2003. He became a councillor again in 2005 and had served as a Labour member for the Farley Ward since then. Cllr Hussain told us that he had “served on various planning committees for roughly 20 years”. He was re-elected unopposed on 4<sup>th</sup> May 2023.

When we spoke to him Cllr Hussain told us, “I understand the importance of declaration of interests and the need not to be predetermined. I have attended many, many training courses on planning matters of various kinds over that period – maybe as many as three a year – both internal and external. The Authority will have a record of those courses.

“I am responsible in the Labour Group for the training and development of all Labour councillors. I have always insisted that new members of the DMC must receive the required training because of the statutory duty around planning matters. The training is mandatory because members are sitting in a quasi-judicial capacity. I understand the importance of this because I was a magistrate for ten years.”



#### **2.1.4 CLLR SUMMARA KHURSHID**

Cllr Summara Khurshid told us that she had been elected in May 2019 as a Labour member for the Saints ward. She had, she said, joined the DMC on 28<sup>th</sup> September 2021 but left the committee on 20<sup>th</sup> March 2023. Around the same time she left the Labour Party and stood unsuccessfully in the Saints ward as a candidate for the Liberal Democrat Focus Team at the election in May. She is, therefore, no longer a serving councillor.

### **2.2 TRAINING**

We requested and were supplied with the training records of the Subject Members that are held by the Council going back to the beginning of 2020. Those records which appear relevant to membership of the DMC show that:

- Cllr Ahmed attended Code of Conduct Training on 28<sup>th</sup> September 2021 and 26<sup>th</sup> September 2022. He attended a session entitled “Planning Principles” on 25<sup>th</sup> May 2022.
- Cllr Choudhry attended Code of Conduct Training on 28<sup>th</sup> September 2021 and the “Planning Principles” session on 25<sup>th</sup> May 2022.
- Cllr Hussain attended Code of Conduct Training on 28<sup>th</sup> September 2021. He also attended a session entitled “Keep Luton Moving (Planning)” on 9<sup>th</sup> September 2020, a further committee-specific session on the Development Management Committee on 14<sup>th</sup> June 2021, and the “Planning Principles” session on 25<sup>th</sup> May 2022.
- Cllr Khurshid attended Code of Conduct Training on 28<sup>th</sup> September 2021.

When we spoke to Steven Sparshott, Senior Solicitor (Planning) he told us, “I have been involved in training members over the years but more recently the Head of Planning has tended to source training from outside the Council. Of course, planning is a very complex,— so training can only go so far. Both I and the Head of Planning attend training sessions when they take place, which is probably not much more frequently than every two or three years. Training sessions for members of the planning committee cover, amongst other matters, declaration of interests as well as the Local Plan, principles of development, S106 legal agreements, and Code of Conduct. Unless members are very new they would already have had training from the Monitoring Officer, which would cover interests anyway (they are obviously important whichever committee or Council body members are sitting upon).”

Sunny Sahadevan, Head of Planning told us, “Training is another aspect of this. We have done training sessions but sometimes they are not well-attended. We should be looking at making training mandatory for Members of the DMC. I had to train a new Member of the DMC around a year ago and I was surprised at how little she knew about the planning process. It is really important that members of the committee have the skills and knowledge to perform their roles effectively and with probity and transparency. “

### **3 RELEVANT LEGISLATION AND PROTOCOLS**

#### **3.1 LOCALISM ACT 2011**

Under section 27(1) of the Localism Act 2011 (“the Act”) a “relevant authority” (which includes a local council) is placed under a statutory duty to “promote and maintain high standards of conduct by members and co-opted members of the authority”.

Under section 27(2) of the Act a relevant authority “must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity” (see 3.4 below).

Under section 28(1) of the Act a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with prescribed Principles of Standards in Public Life – the so-called “Nolan principles”.

The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level which endangers public confidence in democracy.

Under section 28(6) of the Act, principal authorities must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. By section 27(7), arrangements put in place under subsection (6)(b) must include provision for the appointment by the principal authority of at least one “independent person” whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.

Section 28(11) of the Act provides that if a member or co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take.

#### **3.2 LUTON BOROUGH COUNCIL’S CODE OF CONDUCT**

Under Section 27(2) of the Localism Act, on 22<sup>nd</sup> March 2022 the Council adopted the current Code of Conduct for Members (the “Code”) which can be found in the Council’s Constitution Section 4: members and standards Part 4 A: code of conduct for members. This part of the Constitution also sets out at Appendix A the “Arrangements for dealing with standards allegations under the Localism Act 2011”.

The Code deals with the conduct that is expected of members and co-opted members of the Council when they are acting in that capacity as required by Section 27 of the Localism Act.

The Code is intended to be consistent with the Seven Principles of Public Life – the Nolan principles – and these are included in Part 1. General provisions of the Code at paragraph 1.4.

The Code applies whenever a person is acting in their capacity as a member or co-opted member of the Council. Paragraph 3.1 says, “... all Members must comply with this Code whenever they: (1) conduct the business of the Authority (which in this Code includes the business of the office to which the Member is elected or appointed) or (2) act, claim to act or give the impression that the Member is acting as a representative of the Authority.” Paragraph 3.2 reads, “... this Code does not have effect in relation to a Member’s conduct other than where it is in his/her official capacity.” Please also see Section 3.4 below.

### **3.3 HOW MIGHT THE CODE BE ENGAGED IN THIS CASE?**

In making the Complaint Cllr Franks referred in general terms to failure to declare a prejudicial interest. The person who observed the meeting and submitted a statement to Cllr Franks also referred to prejudicial interest. See Section 5 below.

On 31st August 2022 the Monitoring Officer, Mark Turner, wrote to the Subject Members and said, amongst other things, "The complaint is against you all and refers to [a] failure to disclose an alleged prejudicial interest." He went on to say, "These complaints raise serious concerns that must, in my view, be considered by Standards Committee through a Local Assessment Panel. The Panel will need to consider whether, on the face of it, there is sufficient evidence to suggest that there may have been a breach of the Code of Conduct for Members on the following grounds (the numbers refer to the general obligations in the Code of Conduct):

- 4.1 provide leadership to the Authority and communities within its area, by personal example
- 4.6 not conduct himself/herself in a manner which could reasonably be regarded as bringing his/her office or the Authority into disrepute
- 4.7 not use or attempt to use his/her position as a Member improperly to confer on or secure for himself/herself or for any other person, an advantage or disadvantage
- 4.9 exercise his/her own independent judgement, taking decisions for good and substantial reasons:
  - (a) attaching appropriate weight to all relevant considerations including, where appropriate, public opinion and the views of political groups
  - (b) paying due regard to the advice of officers, in particular to the advice of the statutory chief officers and specifically the Chief Finance Officer and the Monitoring Officer in fulfilling their roles and
  - (c) stating the reasons for decisions where those reasons are not otherwise apparent."

### **3.4 WHEN DOES THE CODE OF CONDUCT APPLY?**

Under section 27(2) of the Act a relevant authority "must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity". This section of the Act narrowed the remit of the previous national Code of Conduct with the result that a council can only investigate matters where a member was acting as a councillor or as a representative of the council at the time of the alleged incident.

Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by the code; a link to that person's membership of their authority and specifically their role as a councillor is needed.

Some activities clearly have no link with the council such as a purely domestic matter or something that a member may do while employed in work completely unrelated to the council. Councillors must actually be engaged on council business or commenting on council business or acting as a representative of the authority to be deemed "within capacity".

#### **4**      **CONTEXT**

Wikipedia tells us that “Luton is a town and unitary authority with borough status in Bedfordshire .... At the 2021 census, the Luton/Dunstable urban area, including the adjacent towns of Dunstable and Houghton Regis, had a population of 286,540. The town is situated .... about 30 miles north-north-west of London .... Transport is provided by London Luton Airport, which .... is now one of Britain’s major airports .... The town is situated within the ceremonial county of Bedfordshire but, since 1997, Luton has been an administratively independent unitary authority, administered by Luton Borough Council.”

Wikipedia further tells us that “The council has been under Labour majority control since 2007, with Hazel Simmons being leader of the council since then.... Elections are held every four years. Since the last boundary changes in 2023 [the council has been made up of] 48 councillors elected from 20 wards. Following the 2023 election, the composition of the council was Labour 30 councillors, Liberal Democrats 15 councillors, Conservative 3 councillors.”

## 5 SCOPE OF THE INVESTIGATION

We used the Complaint and the Monitoring Officer's email to the Subject Members dated 31<sup>st</sup> August 2022 to define the scope of the Investigation. Counter-allegations of racism and Islamophobia made by the Subject Members against the Complainants which arose out of the wording of the Complaint were considered to be outside the scope of the Investigation and were, we understand, dealt with separately.

The Complaint is set out below along – for completeness - with the complaint sent by a member of the public to Cllr Dave Taylor, Chair of the DMC on 24<sup>th</sup> August and the statement submitted to Cllr David Franks by an observer of the 23<sup>rd</sup> August meeting.

Excerpts from the Subject Members' formal statements made in response to the Complaint are referred to in Sections 7 and 8 below.

### 5.1 COMPLAINT

The Complaint came to the Council in the form of "**A note on the proceedings at the Development Management Committee meeting on 23rd August**". It read (the italics are our own):

*"Members present at the meeting were Councillors Taylor, Agbley, R. Ahmed, A. Ali, Bridgen, Campbell, Choudhry, Franks, M. Hussain & Khurshid. Councillor Taylor took the Chair. Councillor Masood sent apologies.*

*Officers present included: Nicola Monk, Sue Frost, Sunny Sahadevan, Steven Sparshott, Mark Turner, Matt Hussey and Bert Siong.*

*The first item of business was to consider the officer's report on an application, reference 21/01769, for the development of a four bedroomed house on land to the rear of numbers 68 to 76 Wardown Crescent, land which is part of a Designated District Wildlife Site.*

*Councillors R. Ahmed, Choudhry, M. Hussain & Khurshid said they knew the applicant but this did not amount to a prejudicial interest.*

*The application form gives the name and address of the applicant as Mr Hussain of 9 Chatsworth Road.*

*The meeting was addressed by Mr Terry Qazi who said he was the proxy applicant. He went on to say he was the owner of the land and wanted the house as a home for himself and his family.*

*It was stated that an adjacent plot was also being prepared for development.*

*The land is part of a Designated District Wildlife Site. The meeting was repeatedly advised by officers and by some members that granting planning consent for this application would set a precedent which would make it impossible to resist other applications for development on the Designated District Wildlife Site. There would therefore be no way the Council could prevent the whole of the Designated District Wildlife site from being lost to development.*

*The Head of Development Management went so far as to say a consent would seriously damage the value of the Luton Local Plan and make it difficult to rely on the Local Plan to justify decisions on planning applications, making it much more difficult, for example, to resist conversions of industrial buildings in designated employment areas to other uses.*

*The land has been the subject of four refusals of planning consent with two of these refusals being subject to appeals which were rejected by government Planning Inspectorate.*

*Councillor Taylor moved that the officer recommendation of refusal be agreed, this was seconded by Councillor Bridgen.*

*Voting against the refusal: Councillors R. Ahmed, Choudhry, M. Hussain & Khurshid.*

*Voting for the refusal: Councillors Bridgen, Campbell, Franks & Taylor.*

*Abstaining from voting: Councillors Agbley & A. Ali.*

*In the Chair Councillor Taylor declared the refusal was carried by virtue of his casting vote.*

***A comment from us:***

*The voting pattern at this meeting demonstrates an extremely dangerous position for the Council. As was made very clear by the Head of Development Management a grant of planning permission for development in the Designated District Wildlife Site would fatally undermine the adopted Luton Local Plan to the extent that it could not be relied upon to justify planning decisions and would make it impossible to defend the Designated District Wildlife Site from further development.*

*Further, he stated that the Local Plan would be so weakened that it would no longer protect areas designated for other uses such as employment.*

*Yet four Councillors voted to torpedo the key document which governs development in the town. Not only that, but if Councillor Masood had been present, and had he followed his colleagues the damage would have been completed by a vote of five to four.*

*Further, after this first item of business had been dealt with three of those who voted against the refusal motion left the meeting and did not return. Having completed their attempted assault on the Luton Local Plan they considered they had no further reason to remain.*

*Is it reasonable, in all of the circumstances, to accept that the four members who voted against the refusal had no reason to declare a prejudicial interest? Is it reasonable, in all of the circumstances, to accept that the four members who voted against the refusal did not arrive at the meeting having already made up their minds to support the application? If they had 'pre-determined' the application they may well have committed a criminal offence.*

*What we have is the return of tribal voting which many of us thought had passed into history. It is an extremely dangerous position for the Council to be in, opposition members have no wish to be associated with it and we need to understand exactly what is to be done about it.*

*This note is being sent to Councillor Hazel Simmons Leader of the Council, Robin Porter Chief Executive, Nicola Monk Corporate Director, Sue Frost Service Director, Sunny Sahadevan Head of Development Management, Steven Sparshott Planning Solicitor, Mark Turner Monitoring Officer, Debbie Janes Democracy Manager.*

*Cllr. Lee Bridgen, Cllr. David Franks, Cllr. Gilbert Campbell.*

*27th August 2022."*

When we spoke to Cllr David Franks he told us, "When I sent my memo to Council officers it was not intended to be a complaint. It was meant to reinforce the conversations we had had previously that we had serious concerns about behaviours in DMC meetings and did not want to get tarred with the same brush. We were adamant that it should be dealt with by the Leader of the Council and the Chief Executive. If it continued we would consider withdrawing from the DMC completely because we did not feel that the decision-making was safe. Robin Porter and Mark Turner chose to deal with my memo through the Complaints Procedure. They told us that that was what they were going to do and we did not object."

Before the Investigation began, the Monitoring Officer confirmed to us that he had decided that, because of the potential seriousness of the allegations being made in Cllr Franks' memo, it should be treated as a Standards Complaint.

## **5.2 "CONCERNED RESIDENT"**

At 13:09 on 24th August 2022 a resident of Luton sent an email to the Chair of the DMC copied to Cllrs Hazel Simmons and Gilbert Campbell and to Robin Porter, the Chief Executive. It read (sic) - the italics are our own:

*"Dear David,*

*I am writing to you to share my concern about the discussions and decisions made at the above meeting on the 23 Aug 22 concerning the planning application in regards to 'Land at the rear of No's 68-76 Wardown Crescent'.*

*The behaviour of a number of Cllrs in support of the planning application was well out of order.*

*Cllr M Hussain stated that he had no interest in the planning application but acted in a way to support it through-out the meeting. He got agitated when asked if he had any personal interest and the continued to feed questions to applicant which were designed to help them.*

*This is because of the applicant being a 'Muslim' and because they are using this connection to move forward developments.*

*You may not know that there is strong underlying connections and support through-out the Muslim community in Luton. They will always support Muslims and in particular those who have businesses in Luton and or connections to the Mosques.*

*The other 'Muslims' were again only supporting the application because of the Muslim connection.*

*It looks like the Labour party should now be called the Muslim party.*

*I was pleased to see that you were following the council's environment protection policies as set out by the Officers and your final decision to refuse the planning application.*

*It is clear that the "Muslim' Labour Councillors will not follow council policy and will act in favour of this and future Muslim planning applications.*

*The Council needs to act on this asap otherwise we will end up with a full Muslim Labour Council which will act on the will of Muslim leaders in the community.*

*The Council should investigate the actions from last nights meeting and appropriate action against the Cllrs supporting this planning application.*

*It is important to act now before the applicant re-applies for planning for the same land. Regards,  
Concerned resident"*

### **5.3 OBSERVER**

On 29<sup>th</sup> August Cllr Franks submitted a statement made, we understand, by an observer of the 23<sup>rd</sup> August meeting. It read (once again the italics are ours):

*"I believe the councillors who voted against should be further investigated. As they all linked the application with Mr Abdul Aziz and one of the reasons given by Mr Mahmood (DAVID FRANKS: I believe this is a reference to Councillor Mahmood Hussain) was that he was a friend of Mr Abdul Aziz. This he then tried to mull over by not declaring a prejudicial interest. This statement alone is proof that there was a prejudicial interest and the rest nodded at the same time.*

*A strong action against these councillors would send the right message to the public and councillors."*



## **6 APPROACH**

### **6.1 DOCUMENTS AND OTHER SOURCES**

We have taken reasonable steps to list the main source materials we specifically reviewed at Appendix 1 (though we do not guarantee that the list is exhaustive). The source materials listed there and the summaries of our formal interviews together formed the evidence base we considered during the Investigation. Individual emails and the like are referred to in the text of the Report itself and are not normally referred to again in Appendix 1.

### **6.2 FORMAL INTERVIEW METHODOLOGY**

In investigating the Complaint we gathered evidence at formal interview from the following people (listed in the order in which we interviewed them along with the role names that applied *when we spoke to them*):

- (i) Gemma Clark - Planning Officer
- (ii) Cllr Dave Taylor - Luton Borough Councillor and Chair of the DMC
- (iii) Cllr David Franks - Luton Borough Councillor and Complainant
- (iv) Nicola Monk – Corporate Director Inclusive Economy
- (v) Cllr Gilbert Campbell - Luton Borough Councillor and Complainant
- (vi) Cllr Lee Bridgen - Luton Borough Councillor and Complainant
- (vii) Steven Sparshott – Senior Solicitor (Planning)
- (viii) Sunil “Sunny” Sahadevan – Head of Planning
- (ix) Sue Frost – Director Sustainable Development
- (x) Cllr Mahmood Hussain – Luton Borough Councillor and Subject Member
- (xi) Cllr Amjid Ali – Luton Borough Councillor
- (xii) Cllr Summara Khurshid – Luton Borough Councillor and Subject Member
- (xiii) Cllr Raja Ahmed – Luton Borough Councillor and Subject Member
- (xiv) Robin Porter – Chief Executive
- (xv) ██████████ - Luton Borough Councillor

We contacted Cllr Kashif Choudhry, one of the Subject Members, on 4<sup>th</sup> April asking to interview him. After prompting by us he replied on 13<sup>th</sup> April. He told us he was busy and was not available to speak to us until after 4<sup>th</sup> May. We did, however, exchange emails with him and gathered some information (presented where relevant in Sections 7 and 8 and elsewhere). As previously noted, Cllr Choudhry is no longer a serving councillor and we have chosen not to again try to speak to him.

We also contacted Cllr David Agleby on 4<sup>th</sup> April. He had been Deputy Chair of the DMC on 23<sup>rd</sup> August 2022. After prompting by us he replied on 3<sup>rd</sup> May and asked to arrange to speak to us after 4<sup>th</sup> May. Cllr Agleby lost his place on the Council in the May 4<sup>th</sup> elections and we have not since asked to speak to him.

We also had some email exchanges with Cllr Anne Donelon, who had served as a member of the DMC for three years from 22<sup>nd</sup> May 2019 until she left the committee on 17<sup>th</sup> May 2022, but chose not to interview her.

We began our interviews on 14<sup>th</sup> March 2023 and conducted our final interview on 18<sup>th</sup> May. With one exception (that of Gemma Clark, whom we interviewed in person at Luton Town Hall) we carried out all the interviews using the Zoom video communications platform.

By agreement we recorded (video and audio) the interviews, though Gemma Clark's interview was audio only. In each case we produced written summaries of our discussions. Those interviewed were given the opportunity to comment on the written record whilst it was still in draft and any relevant comments made were reflected in the final summaries, which were then (with one exception) "virtually" agreed and signed off by interviewees.

The exception was Cllr Summara Khurshid (one of the Subject Members) who, at time of writing, had not signed off the summary of our conversation with her. Any references in the Report to comments made by Cllr Khurshid are therefore drawn from the draft summary with the agreement of the Monitoring Officer.

Once the summaries had been agreed by interviewees they became the formal record of each interview and the video/audio recordings and any written notes taken at interview were destroyed by us in accordance with best practice. At time of writing the recording of our conversation with Cllr Khurshid remains extant in the event that there should be any disagreement over the content of the draft summary of our conversation with her.

With that exception, the written records therefore now form our only record of the interviews. Sections 7 and 8 of the Report contain text drawn directly from the interview summaries.

### **6.3 23<sup>rd</sup> AUGUST 2022 DMC MEETING**

A recording of the Development Management Committee meeting on August 23<sup>rd</sup> 2022, can be found on the Council's YouTube channel at <https://www.youtube.com/watch?v=DuXpGFCFsrc>

At our request Mark Turner arranged for a verbatim transcript of the meeting to be prepared, not least because we ourselves were not always able to identify who was speaking from the YouTube record. We relied very heavily on that transcript throughout the Investigation and we understand that the Monitoring Officer shared it with Complainants and Subject Members. The transcript contains a small number of mistakes but we do not believe they are material so we have not tried to alter it in any way, checking back to the YouTube record only when necessary. The transcript of the meeting is presented at Appendix 2 and we suggest that readers familiarise themselves with it.

### **6.4 VISIT TO 68 – 76 WARDOWN CRESCENT SITE**

On 14<sup>th</sup> March we visited the site of the proposed residential development which lies behind and overlooks 68 – 76 Wardown Crescent. We were accompanied by Gemma Clark, the Planning Officer who had dealt with the planning application on behalf of the Council and who had spoken at some length at the DMC meeting on August 23<sup>rd</sup>. Whilst we could not access the site itself (which lay behind Heras fencing) we familiarised ourselves insofar as we were able with the topography of the site and took photographs.

## **6.5 THE REPORT**

The Complaint was made against the four Subject Members and the allegations made applied to all four Subject Members. In the interests of economy and efficiency we have therefore decided to produce a single report about the Complaint. This reflects the approach taken by the Monitoring Officer on 31<sup>st</sup> August 2022 email when he sent a single email to all the Subject Members. He has informally agreed with our approach.

However, as Cllr Hussain is the only councillor still serving, our conclusions can now only apply to his case as the other three Subject Members are no longer under the jurisdiction of the Code.

After we had completed the preliminary draft of the Report it was peer-reviewed – for quality and to ensure consistency of approach with similar cases across the country.

Following that peer review, we shared the Draft Report with the Monitoring Officer, Mark Turner. The intention was that he could ensure that, on its face, the Report was indicative of a satisfactory investigation and was of the required standard. He had no concerns in that respect. We recommended that he should share the Draft Report with one of the Authority's Independent Persons and ask for any comment they might wish to make.

We then shared the Draft Report, with draft conclusions and recommendations, in confidence with the two Complainants who were still sitting Luton Borough Councillors (Cllrs David Franks and Lee Bridgen) and the one Subject Member who was still a sitting member (Cllr Mahmood Hussain). We received responses from all three councillors. Cllr Hussain said that he was “grateful of [the] fairness and transparency of [the] report” but made no further comment on the Draft Report itself. Cllr Bridgen made no comment. Cllr Franks made two comments, one of which is addressed later in the Report.

In discussion with the Monitoring Officer, it was agreed that the Draft Report would not be shared with former councillors Campbell (Complainant), Ahmed, Choudhry and Khurshid (Subject Members) because they were no longer sitting councillors and, as a consequence, the Council no longer had any jurisdiction over them under the Code as noted above. It was, however, agreed that the Monitoring Officer would contact each of them to inform them of the outcome of the Investigation.

We now submit the Final Report containing our final conclusions and recommendations to Mark Turner for his consideration in line with the applicable arrangements. In doing that we pass copyright in the Report to Luton Borough Council.

## **7. FINDINGS – THE WIDER CONTEXT**

### **7.1 EARLIER DECISIONS OF THE DMC**

We had been told informally before the Investigation began that there had been concerns about various behavioural issues at DMC for some time. When asked, some of those to whom we spoke referred to such issues and to decisions at DMC meetings which they thought questionable. What they said is set out below.

#### **7.1.1 SUNNY SAHADEVAN**

Sunny Sahadevan, Head of Planning, told us, “There had previously been concerns about probity and Member behaviour at the DMC. Mark Turner was aware of these and so he had attended a few of the previous committees. I myself had the same concerns about certain Member behaviours. For instance, planning applications had been called into committee when there wasn’t an obvious reason for doing so. However, these “questionable” call-ins were not always by the same Member.

“I had also had concerns about voting patterns at meetings – almost like a “block vote” from the same cohort of Members each time - when applications were approved that officers would ordinarily have refused for sound planning reasons, because they were counter to policy.

“Members participating in these voting patterns would vote without asking questions before voting. It would normally be expected that, if a Member was going to go against the officer recommendation, they would test and question the officer judgement before settling on how to vote. But that did not always appear to be the case. The first time some of these Members would engage in the process would be the vote itself.

“There were two or three such planning applications that I recall. During meetings Members would actually indicate that they supported an application and this led to a pattern of the usual cohort of Members voting in favour. Leading up to the vote officers would explain why an application was not acceptable (because it was contrary to policy and not consistent with previous Council decisions) but it would be approved anyway without the various Members justifying further the reasoning why they were still going to proceed against the officer recommendation.

“Since joining Luton I have had many instances of councillors putting pressure on me and trying to influence planning decisions. I have always been very careful not to accommodate such pressure and those councillors have learned very quickly not to come through me. Having worked at other Authorities where I would say the Monitoring function is a bit more strident, this level of pressure being placed upon me was a new experience.

“Because of my unwillingness to be influenced, in my opinion councillors therefore had no choice other than to address this at a higher level than my post. This is why they often approach Sue or Nicola.

“If I was more confident that there would be an investigation into the culture of Members trying to influence planning decisions, I may have considered lodging the approaches I have had as complaints.

“I will point you to videos of DMC meetings and to the reference numbers that will provide context for your investigation and you can observe the behaviours for yourself. The warning signs have been there for some time and certain earlier decisions should have warranted investigation.

“Steven and I flagged up the inappropriate behaviours involved in these earlier decisions. However, this did not result in these practices being looked into. Maybe the lack of investigation may have had the effect of certain councillors continuing to behave as they have done. In fact it appears to me that it may have been going on for some years. In the other Authorities at which I have worked the monitoring side of things appeared a bit more prominent and had a higher profile.

“As far as call-in procedures are concerned, Corby, for example, where I worked before Luton, have really strict call-in procedures. At Luton the call-in procedures were lax by comparison. Any Member could call in any application at any time without giving a reason. That seemed ripe for misuse. Since arriving at Luton I have been pushing for the call-in procedure to be tightened up. I have had some success in that it is now tighter than it was but it could undoubtedly be tighter still. Members decide their own call-in procedures and there is only so much that we as officers can demand. With the recent change to the Constitution that has been made I think we have started to address some of the issues.

“Predetermination puts a council at risk. Planning decisions can be quashed in the High Court. As well as reputational damage to the Council, it can also be liable to pay compensation. Members must understand that they should consider cases on their merits and by reference to the policies in the Local Plan. Predetermination is totally unacceptable.”

After speaking to Sunny Sahadevan we asked the Monitoring Officer to confirm that there had been a recent change to the call-in procedure. He said that that the Council had introduced a call-in protocol through the comprehensive review of the Constitution which he had carried out and which had been approved in November 2022.

### **7.1.2 SUE FROST**

We asked Sue Frost whether there had been previous examples of planning applications that had been called in and approved when planning officers had recommended refusal. Was this part of a pattern of behaviour?

She replied, “Yes, I would say it was part of a pattern. There had been other instances where there appeared to be particular interest from the councillor who had called in the application. We are now keeping records of where this might have happened so that we can keep an eye on what appears to be going on. I think this planning application was called in by a councillor but I think the number of comments from the public would have resulted in the application going to the DMC anyway. Either way this was a culmination in what had been going on because it was so obvious that there was some interference .... Perhaps we should monitor the business of the DMC very carefully and build up a proper body of evidence. It may change anyway after the May elections if membership of the DMC changes.”

### **7.1.3 NICOLA MONK**

Nicola Monk said, "This was not the first time that something like this had happened. There have been dubious call-ins and dubious behaviours in the recent past. That probably happens from time to time in many planning committees up and down the country."

### **7.1.4 ROBIN PORTER**

We said to Robin Porter that we had been told that the vote at the DMC on 23<sup>rd</sup> August was part of a pattern of similar voting in favour of applications and against the recommendation of the planning officers. Was he aware of those instances? He replied, "There weren't too many of those."

### **7.1.5 CLLR DAVID FRANKS**

When we spoke to Cllr David Franks he began by saying, "There is a general understanding amongst senior officers and amongst Liberal Democrat members that unacceptable behaviour has been going on in the Development Management Committee for quite some time. I have made the Chief Executive aware in our confidential one-to-ones that the Liberal Democrat Group is really quite concerned that the Liberal Democrat members of the DMC may be tarred with the same brush if it becomes a public row. We would prefer to avoid questions from journalists like "Has money changed hands" (which I am not saying and for which I have absolutely no evidence whatsoever).

"The Chief Executive mentioned this planning application to me some weeks before the 23<sup>rd</sup> August meeting, even before I knew it would appear on a DMC meeting agenda. I myself was concerned that we would get the same sort of behaviour at that meeting as we have experienced in the past."

We asked Cllr Franks what had happened in the past to lead to the view that unacceptable behaviour had been taking place. He replied, "Cllr Mahmood Hussein is the leader of this movement. He calls the shots and the others follow him. He is a very strong character and can appear to be something of a bully in dealing with his fellow councillors.

"These situations usually arise when planning officers use their delegated powers to refuse a planning application for what we consider to be very good reasons. When Hussain realises an application is going to be refused he will call it into committee and try to persuade members to grant it. A good example is a recent application for a rear and side extension to a domestic property at the end of a row which was clearly going to cause a problem for an adjacent house. Hussain called it in and it was duly passed. I believe that the application above Wardown Crescent was called in because it was going to be refused but I can only speculate as to who did that."

### **7.1.6 CLLR GILBERT CAMPBELL**

Cllr Gilbert Campbell told us, "To give some history, at previous DMC meetings I have thought about walking out of the meetings because I was not happy with what was taking place. Cllr David Franks wrote a letter to the Chief Executive and gave me a copy. It was about what he saw as "tribal voting". The Chief Executive and Chair of the Standards Committee started coming to meetings and the following year the entire committee was reorganised. The "tribal voting" appeared to stop.

### **7.1.7 CLLR LEE BRIDGEN**

We asked Cllr Lee Bridgen what he felt about the propriety of member behaviours at the DMC. He said, "I can think of two recent examples of planning applications that were approved when the planning officer had recommended refusal. They had been referred to DMC by members of the Labour Group. In those two cases I felt that there was a "voting pattern" amongst certain members in favour of approval when I myself felt that the applications should have been rejected.

"One application referred to an extension to 42 Granville Road (Ref: 21/01260/FULHH) [MK note: Approved by the DMC on 29<sup>th</sup> June 2022]. The other was about proposed rear and side extensions at 37 Burford Close (Ref: 21/01374/FULHH) [MK note: Approved by the DMC on 23<sup>rd</sup> February 2022]. In both cases I felt that the reasons given for refusal by the planning officers were based on sound principles and that the officer had it right. In both cases I felt that the justification for allowing the application to go ahead were quite weak. The same sort of voting pattern happened as happens quite regularly.

"I am also mindful that, if an applicant has their application rejected, whether by delegated authority or by the DMC, they have a right of appeal. If the DMC decides to approve an application against the recommendation of the planning officer, then any objectors or anybody who might be impacted by that development has no right of appeal of that decision. With that in mind it seems to me that it is not right and fair that these applications were approved when that approval was not based on a sound, objective consideration of the application. Of course, this "voting pattern" is difficult to prove. My colleague Cllr Franks can cite other applications with similar voting patterns, I believe."

When asked Cllr Bridgen what he and his fellow complainants meant when they used the phrase "tribal voting"? He replied, "I meant Labour Party members voting along party lines in a quasi-judicial process, for whatever reason. In other Council meetings party members might be whipped to vote along party lines but to do that on the DMC would potentially involve predetermination. A former member of the Labour Party, Anne Donelon, who now sits as an independent, has said on her Facebook page that this has been happening."

### **7.1.8 CLLR ANNE DONELON**

Cllr Anne Donelon (who left the Labour Party on 7<sup>th</sup> March 2023 having been deselected) served on the DMC for around three years until 17<sup>th</sup> May 2022. We decided not to speak to her but reviewed her four page resignation letter dated 18<sup>th</sup> March Facebook page to which we had been directed by some of those we spoke to.

Part of that letter reads as follows:

"I resigned the Labour Whip for two reasons:

(i) Due to the incompetence and failure to follow rules and procedures which I observed on the planning committee. Unfortunately, independent thought is not encouraged in the Luton Labour Group. You are encouraged to stand up for your residents' interests only if they align with the wishes of the councillors who control the Group ....

A very cavalier attitude was displayed by certain Labour councillors to following rules and procedures on the planning committee, and I often had to remind certain fellow Labour

councillors of the need to adhere to the rules. The most egregious example included a discussion on an email chain with one senior member of the planning committee discussing with a portfolio holder how he was going to vote prior to a forthcoming full council meeting. This was blatantly ignoring the requirement for the members of the planning committee to base their decisions on the representations made at the meeting and not be predetermined. This conversation followed the portfolio holder circulating documentation which was also contrary to the rules as this should be circulated through the officers.”

#### **7.1.9 CLLR AMJID ALI**

We asked Cllr Amjid Ali whether he had had any concerns about behaviours at the DMC in the three years he had been a member of the committee. He replied, “Whilst we are sitting in opposition [Cllr Ali is a Liberal Democrat] we have to analyse what the ruling party is doing. We take a critical view. There have been one or two questionable decisions taken at DMC in the past. Precedents have been set when more thought was perhaps required.

“That said I do not have enough information to say that members have been influenced in their decision making or that they have had prejudicial interests that they should have declared whether at this meeting or earlier.”

#### **7.1.10 CLLR MAHMOOD HUSSAIN**

When we spoke to Cllr Mahmood Hussain we asked him why he thought the three councillors had made a standards complaint? He replied, “The only thing I can say is that elections were coming up. Cllr Franks has never missed an opportunity to score political points in all the years I have been a councillor. He’s made similar allegations about predetermination and development in the past. Liberals always oppose developments in their wards. I don’t in my ward. We need housing in Luton.”

#### **7.1.11 EMAILS**

We came across certain emails which we considered to be relevant to this part of the Investigation.

On **30<sup>th</sup> June (11:16) Cllr Robert Roche** wrote to **Cllr Dave Taylor** and said:

*“Hi Dave*

*Hope all is well after a late meeting last night.*

*I thought last night’s meeting was a tricky one and I am concerned at the lack of knowledge and professionalism amongst some of our group. My comments are coming from my role as Portfolio Holder and wanting to be supportive of you as Chair, the integrity of the Labour Group on the committee and report back my observations and comments. I have to say sitting there it did not come over as a good look and it was a good job Franks was not there, Lee Bridgen was laughing when they kept going on about car parking and everyone needs a car.*

*I had some conversations with members after and their comments were a bit worrying thinking they can change the NPF, section 106 rules by pressurising the officers. To me there is a lack of knowledge on the following*

- *National Planning Framework*



- *Local Plan*
- *Active Travel Plan which members passed through Policy Group (Sustainable Locations) – they abstained on an issue of lack of parking on one application*
- *DCM committee being non-political and run by legislation*

*I heard one member say that we make policies for our residents which normally is true but not at this committee. I have a Portfolio Holders Meeting on Monday and with your agreement will ask for training to be delivered on the above items to the Labour Group element of the committee only to ensure they understand what their role is on this committee.*

*I hope you don't mind this email as I want to be supportive of you and the committee and get a committee that fully understands its role. The public and the Lib Dems will be watching.*

*Regards*

*Rob”*

A few minutes later on **30<sup>th</sup> June (11:36)** Cllr Taylor replied to Cllr Roche and said:

*“Rob*

*Thanks for your comments, I agree entirely*

*I was very frustrated at the behaviour of the Labour group members who seemed to treat DM committee as some of free for all. Mahmood Hussain seemed to be orchestrating the debate which is annoying given his experience on planning.*

*I am also concerned about the officer recommended refusals which certain members attitude was we don't care we will approve them.*

*I haven't spoken to Sunni yet but I will do. Dave”*

After an exchange of emails in which Nicola Monk and Sue Frost became involved, on **1<sup>st</sup> July (17:46)** Nicola Monk wrote to Mark Turner cc: Sue Frost, Sunny Sahadevan, and Robin Porter and said:

*“Hi Mark*

*Can we have a catch up next week. It seems as though the members are not behaving well at DMC. My officers are very concerned, and you'll even see (below) that Cllr Roche has now raised concerns with Cllr Taylor.*

*Members have recently received DMC training so should know how to conduct themselves, and we can get the attendance figures from Ann.*

*I would be grateful if you could consult with Sunny and Sue in the first instance and review matters.*

*Separately, I know Cllr Goding has also had concerns about DMC conduct in the past. Kind*

*regards*

Nicola Monk”

### **7.1.12 LETTER SAMANTHA McKEEMAN TO RESIDENT**

On 6<sup>th</sup> June 2023, Samantha McKeeman, Principal Solicitor and Deputy Monitoring Officer at the Council, wrote a letter in reply to a resident who had raised certain issues about decisions made by the Development Management Committee in a letter of complaint. We have set out below some of what she said to the resident because it appears to us to be pertinent to the Investigation.

*“It is difficult to investigate historic complaints over 6 months, particularly if they are not specific, however I have looked back over the decisions of the Development Management (previously Development Control) Committee going back over a 3 year period specifically.*

*“There are very few decisions made that are not in accordance with the recommendations of the Officers, who set out the implications for each development application in a report to the Committee. Looking into the decisions where the Members overruled the Officers recommendations, I cannot find any correlation with Labour members voting patterns and the decisions made, or any wrong doing with the decision making process.”*

The letter then refers to decisions that were made about two specific planning applications. It continues, *“In relation to both of these applications, I have spoken to the Planning Officers concerned. Both of these decisions were contentious, in that, there were a number of representations. However, I cannot find any wrong doing in the way the decisions were made, and note that decisions made were in accordance with the recommendations set out by the Officers.*

*“With regard to the references you make in your complaint to comments made by Cllr Donelon. If this was Cllr Donelon’s perception of what was happening at the time, as a member of the Committee herself, she should have raised her concerns through the correct channels at the time, but did not do so. “*

## **7.2 EVENTS IN THE RUN-UP TO THE 23<sup>rd</sup> AUGUST DMC MEETING**

### **7.2.1 ROBIN PORTER**

When we spoke to Robin Porter, the Chief Executive, we asked why he had sent an email about the planning application at Wardown Crescent to senior managers on 26<sup>th</sup> July 2022. That email read: “I understand that there is a possibility of the item tomorrow night being deferred due to some last minute information. If the item is not deferred I would ask Mark (following input from all) to email DMC members today to remind them about their obligations around lobbying and predetermination and the necessity to only make decisions on Planning Grounds. I would then ask that this message is verbally given at the start of the meeting as some members might not read their emails.”

Robin replied, “I sent that email as a result of a conversation I had either with Sue Frost or Sunny Sahadevan, or maybe even Mark Turner. Whoever I spoke to raised concerns that the planning application, which should have been determined by officers, had been called in by members. There were concerns as to why it had been called in.

“Imam Chishti is a very important person in our community. He is held in great respect and in high regard. However, in planning matters, all applicants must be treated equally and in accordance with planning regulations and law. I was concerned that members of DMC might not

take into account solely those matters that they should do in deciding the outcome of the planning application.

"I had previously had a conversation with Cllr Raja Ahmed – now an ex-councillor - who came to see me about the planning application. He specifically asked me my views on the application. In a quick conversation in my office I told him that DMC was a quasi-legal committee. He needed to form his own opinion but needed to remember that he was only to take planning reasons into account in his determination. He replied, "Absolutely. I cannot see any reason why this application should be granted." That was about ten days before the August meeting.

"I thought that exchange was strange because it was the first time in four years that a member of DMC has asked for my opinion. They wouldn't normally do that. It is not my role to influence planning decisions and I wouldn't ever play a role because it is not appropriate."

We then said that we had formed the impression from our conversations that certain senior officers had been put under pressure with regard to the planning application. The name of the h [REDACTED] oned in that context.

Robin replied, "I think that asking whether the application might be approved is entirely appropriate, for example. Simply asking questions is not the same as putting an officer under pressure. But officers need to be specific about what was actually said if they have concerns. No-one at any stage ever said to me (and they ought to have done, if that was the case) that they had been put under undue pressure by the [REDACTED] That would have been an entirely different matter.

"I spoke to Nicola Monk on a daily basis about various items of Council business and at no stage did she say to me that she felt under undue pressure from the I would [REDACTED] ed if she had not talked to me if she felt under such pressure. She did, however, talk about the appropriateness or otherwise of the [REDACTED] calling in the application. As things stand any member can call in a planning application.

"I think it was [REDACTED] ed the application in and that was why I spoke to him. He certainly had an interest in it and I had verbally advised him to tread carefully. I don't recall whether I spoke to the Leader about it. It was a planning matter. She takes no role in planning matters so I doubt I would have done.

"I know that Imam Chishti and his son were having conversations with members. They asked to have a conversation with me. I explained that I don't get involved in planning matters and that our planning decisions are made by planning officers and the DMC. So I declined to speak to them about it."

### **7.2.2 NICOLA MONK**

Nicola Monk told us, "I go to the DMC for major planning applications like Luton Airport and Luton Town FC where there is significant public interest or a great deal of controversy. I provide top cover for my officers. I went to the 23<sup>rd</sup> August meeting because we knew it was a controversial domestic planning application.

"The application was called in to go to DMC by the [REDACTED] He is not a ward councillor. He called it in because the applicant's father is Imam Chishti, who is a very significant

and highly influential figure in our community. King Charles has just awarded him the MBE for his community works. We were ready for it. It did not sit right with me as the chief officer for that department.

“Members can call in anything but it is unusual for them to do so for domestic applications, particularly when officers are saying that the application cannot be approved because it is contrary to the Local Plan and is in a District Wildlife Site. Why would you overrule officer advice on something so clear?”

“This was not the first time that something like this had happened. There have been dubious call-ins and dubious behaviours in the recent past. That probably happens from time to time in many planning committees up and down the country.

a [REDACTED] text messages about it. He suggested by WhatsApp message that it would be good if the application could be approved, though he is not a member of the DMC, of course.”

We then asked Nicola about the email sent by the Chief Executive to senior officers of whom she was one, on 26th July (a month prior to the 23<sup>rd</sup> August meeting), the day before the item was initially due to be discussed at DMC ( See Section 7.1.1 above for the text of the email). She replied, “Yes, I remember that email. Robin was alert to the situation and had probably been lobbied himself. As officers we were trying to ensure that the application was considered in the proper way without members having a skewed view on it. We were really concerned and there needed to be transparency and openness about this application. We should not be accepting influence of that kind.”

### **7.2.3 SUE FROST**

Sue Frost told us, “I attended that meeting. I go to the meetings more often than not. Nicola Monk did not normally attend the DMC meetings. She attended on that day because we had concerns about the closeness of the applicant to some councillors, some of the correspondence we had received and some of the pressure that had been put on planning officers with regard to the application. I can’t remember specifics because it’s a few months ago now.

“There had been various discussions and I think the applicant had been in contact with some of the councillors. We also became aware that the applicant was the son of the imam. It just didn’t feel right in terms of what had gone on. There was more than normal interest in this application. It threw up some policy issues for us in terms of the integrity of the Local Plan and the protections for open spaces within it.

“I had a couple of phone calls from the [REDACTED], and I may also have an email from him, which I will try to find for you. He was trying to get a better understanding of why we were going to refuse the application. But at the same time there was a certain amount of his wanting to change our minds about it and of influencing the outcome. I spent a long time explaining to him why we had decided that the application ought to be refused and what the implications of approval would be on the Local Plan in that it would set a precedent for future development on that site. He did not say anything at all about why he was interested in the planning application.”

Asked about Robin Porter’s email (see Section 7.1.1 above) Sue said, “From memory, Nicola Monk had raised the matter with the Chief Executive. It may be that others had raised it too. But that

was when he started to become concerned because the [REDACTED] had been putting pressure on Nicola. I think that the Chief Executive may also have raised concerns with the Leader (certainly someone did) and she may in turn have spoken to members of the Labour Party about it .... the Chief Executive .... did take a particular interest in the planning application. There seemed to be a very obvious bias towards the property developer by members.”

#### **7.2.4 SUNNY SAHADEVAN**

Sunny Sahadevan told us, “I don’t believe that the Wardown Crescent application was called in. I believe it had to come to committee anyway because, as per the Constitution, if four or more letters are received that run counter to the officer recommendation, then the Committee has to consider the matter. In this instance the planning officer had recommended refusal but there were four or more letters of support for the development going ahead.

“I was aware that there was lots of Member interest in the Wardown Crescent application. I am also aware that various officers were put under pressure from the political side of things to try to give the application more favourable consideration than it might otherwise have had. A very senior Member, who carried a lot of weight, put a lot of pressure on Nicola Monk and Sue Frost. He was trying to persuade them that the proposals were acceptable and to make the case as to why they were acceptable.

“Both Nicola and Sue do their best to protect the Planning Service. I myself did not have any contact with the senior Member directly, though I was asked by them for comments on the progress of the application. Nicola also asked whether we, as planning officers, were right to refuse the planning application when approval had been given to the Woodbury Hill Path development.

“Thus, I was aware that senior officers were being put under pressure. They also told me that they were being put under a lot more pressure than I was directly witness to but they protected the Planning Service and shielded us from that direct pressure.

“Nicola told me that she spoke candidly to the senior Member on one occasion. She told him he was putting his reputation at risk by getting involved in the way that he was. In his role, he ought to back away, she said. I got the impression she was dealing with the matter sensitively and was trying diplomatically and professionally to handle the situation and assisting him in not getting himself into trouble or sully his reputation.”

“Because of my unwillingness to be influenced, in my opinion councillors therefore had no choice other than to address this at a higher level than my post. This is why they often approach Sue or Nicola.”

We then asked Sunny about the email sent to him and others by the Chief Executive on 26<sup>th</sup> July, the day before the planning application was to be first discussed at the DMC (it was in fact deferred for a month). He replied, “There had been last minute representations which officers hadn’t had time to consider so the item was deferred in July. This was an attempt by the CEO to ensure that things were done properly. By the time the item reached the DMC on 23<sup>rd</sup> August senior officers and the Monitoring Officer were aware that, because of the pressure that had been applied, there would be a less than perfect consideration of the item at committee. They knew

that things might not run in a way which would keep the Council's reputation intact in terms of standards and probity."

#### **7.2.5 GEMMA CLARK**

When we spoke to Gemma Clark she told us, "I had formed the impression before the meeting that something was going on behind the scenes but I think I was shielded from a lot of the interest being shown in the application and left to do my job. On a couple of occasions I was asked for an update by Sue Frost, the Service Director, who reports into Nicola Monk, and Sunny Sadehevan, the Head of Planning, because councillors had been asking what was happening with the planning application.

"I myself didn't deal with any councillor directly. I set up a meeting with Sue to go through the planning application because I think a councillor had suggested to her that we should be supporting it. She agreed with my recommendation. Robin Porter, the Chief Executive, sent an email to senior officers about the application saying it must be dealt with on planning merits alone."

#### **7.2.6 CLLR DAVE TAYLOR**

We asked Cllr Dave Taylor whether, as Chair, he had any concerns about the application before the meeting. He said, "I *suspected* that some members of the DMC would try to overturn the decision to refuse. I wasn't lobbied (they know better than to do that) but I guessed that some lobbying had been going on though I can't prove that. Chishti's mere presence at the meeting increased my suspicions that something was going to happen. He is such a pivotal figure in the Muslim community. He can be described as being at the top of the Muslim community in Luton. His word is final. He is well-respected, does a lot of charity work and recently received an MBE for that work from the King."

#### **7.2.7**

We felt it important to speak to [REDACTED] about the planning application even though he had not himself been present at the DMC meeting and was not a member of the DMC. His name had been raised by some of those we spoke to in connection with events before the meeting.

We began by asking him whether he had called in the planning application. He replied, "I did not call in the application for consideration by the DMC. I was not initially aware that the planning application had been submitted. As the application progressed through the Council's planning process the consultation period was extended. I was contacted by the applicant's agent to enquire why the consultation was going beyond the norms and why there hadn't been a response to their emails. I therefore forwarded the email on. As a councillor I get many enquiries on a wide range of different matters and I forward on emails to officers all the time.

"I got in touch with Nicola Monk, the Corporate Director, by telephone and asked her why there was a delay and why the applicant had not had a response. I also exchanged text messages with her on the matter. It was something we regularly did on a variety of matters such as community safety so we had each other's phone numbers anyway. I don't have those text messages any more.

“The Chief Executive and I also spoke about the matter. He told me that it was a very sensitive issue. He explained the details of the proposed development site and told me why the planning officers had refused the application. He told me that the applicant was making the case for development and that I as a regular user of the religious centre might be seen to have a conflict of interest if I got involved. It might affect my credibility.

“I recognised that I had a conflict of interest because I know Mr Chishti and I also know his son though I am not related to them. I regularly go to the religious centre. I therefore stepped back. I was later told that the application had been called in and was going to the DMC. That was the extent of my involvement. I asked questions and sought answers and that was the end of the matter as far as I was concerned.

“I told Mr Chishti and his son that there was a clear conflict of interest so I could not get involved and could not help him anymore. I had asked the questions but now it was best that his agent liaised with Council officers and decided what steps to take. He should accept that he might not get planning permission. I could not guide them or assist them any further. I do not know if Mr Chishti and his son were speaking to other councillors about the application. I stayed well away from it so as not to risk tarnishing my own reputation or that of the Labour Party or the Council. I do not know why the four councillors voted as they did. That is their responsibility. I have signed up to a set of standards that are very dear to me so I refused any further involvement.”

We then asked why [REDACTED] that officers had used the word “pressure” to describe his interactions with them over the planning application. He replied, “I would like to better understand the nature of that “pressure”. If a member asks an officer a question as an elected representative about why there is a delay in a planning application or why emails have not been replied to after six weeks when that is beyond the targets we set ourselves, does that amount to “pressure”? If a councillor is expressing a resident’s frustration does that constitute “pressure” or is it simply asking a question? I was asked why a resident was not getting a reply to a simple question. As far as I am concerned there is categorically nothing else that might be described as “pressure”.

“I also wanted to know why planning officers were going to refuse the application. I asked what the grounds for refusal were. I have a right to understand those. That is a reasonable question and isn’t the same as “pressure”. If someone asks me the question I can then explain the reasons.

“It is not true that I tried to get officers to change their minds over the refusal. I myself sat on the Development Control Committee for three or four years and I know that it carries out a quasi-judicial function and that there are planning rules and guidelines. How could I ask someone to change their decision? They have never done it before for me! So, why would they do it for this application? I don’t know why any officer would suggest that I had done that. I am a man of integrity!

“Had I done that Nicola would have reported me or told me that she wasn’t comfortable with the conversation and that I was acting inappropriately. At no point was I made to feel that I had done that. I do not recall any such conversation with Nicola though I did, as I said, have a conversation with Robin Porter about the sensitivities surrounding the case. I didn’t know where the site was. The applicant’s agent had talked about Woodbury Hill Path and I also tried to understand why permission had been granted for development on that site when it wasn’t being granted at the

Wardown Crescent site. I asked about that too and wanted to know why there was a difference in approach.

“When it was explained to me that it was a Designated Wildlife Site with rare species and that that was why officers were opposing the application, I stepped back. After that there was no communication with Nicola or anyone else about it. I think that conversation took place well before it went to the DMC. It was during the period when emails were not being replied to and consultation was being extended.”

### **7.2.8 SUBJECT MEMBERS AND OTHERS**

We asked each of the Subject Members if they had been put under any pressure or lobbied as far as the planning application was concerned. **Cllr Mahmood Hussain** said, “None whatsoever. Why would I ask who the applicant was if I already knew?” **Cllr Raja Ahmed** told us, “No, I wasn’t contacted by any officer, councillor, member of the DMC, or anyone else at any time before the meeting about the planning application. Nor did I contact anyone about the planning application either. If anyone put any pressure on any officer or councillor about the application I certainly knew nothing about it.” **Cllr Summara Khurshid** simply replied, “No. Why would I?” **Cllr Kashif Choudhry** told us, by email, “I can confirm that I was not under any pressure or obligation to vote in any particular way. I voted using my best judgment.”

Cllr **Lee Bridgen** told us, “I didn’t have any concerns about potential member behaviours *leading up to* that meeting “. We spoke to **Cllr Amjid Ali** who told us, “It may have been that something was going on in the background but I cannot say what that was.... I do not have enough information to say that members have been influenced in their decision making”. We asked Cllr Ali what he knew about the Chair’s question about lobbying that he had asked at the start of the meeting. He replied, “I wasn’t lobbied. There have been occasions when applicants have sought to provide further information and contacted me directly .... Why would I risk my own reputation and my own job over someone else’s planning application?”

**Steven Sparshott** told us, “I don’t know why [the Chief Executive] sent that email other than that he probably had alarm bells ringing about an application that had been called in when it was so contrary to the Development Plan. It’s possible too that other things were happening behind the scenes.”

## **7.3 PROCEEDINGS AND THE VOTE**

### **7.3.1 MINUTES**

The minutes of the 23rd August DMC record the following under “65. Erection of a four bedroom detached dwellinghouse (Ref: 7).

*“Following the debate the Chair put forward the recommendation to refuse the application for planning permission as outlined in the report. It was seconded by Councillor Bridgen.*

*On being put to vote, four Members voted for refusal whilst four Members voted against refusal of the application. As the votes came to a deadlock, the Chair used his casting vote to vote in support of the recommendations as set out in the report to refuse the application. The vote was carried.*

*Councillor Franks asked for the vote to be recorded as set out in the notes below.”*



Later the Minutes record:

*“Councillor Franks requested that the votes in respect of the recommendation outline in the report (Ref: 7) be recorded as follows;*

- *For: (Members in favour of the Recommendation : Councillors Bridgen, Campbell, Franks, Taylor (Chair), including Chair’s casting vote)*
- *Against: (Members not in support of Recommendation : Councillors R: Ahmed, Choudhury, M, Hussain, and Khurshid)*
- *Abstained: (Members who neither voted for nor against) Councillors Agbley, and A, Ali)”*

### **7.3.2 OFFICERS’ REFLECTIONS ON THE MEETING AND THE VOTE**

We spoke to officers about the discussion and the vote. They told us the following.

#### **7.3.2.1 NICOLA MONK**

Nicola Monk said, “I can’t remember [the questions] in detail .... [b]ut it felt to me like the questioning was providing justification for why the development for a family home on that site was required. Luton’s need for larger properties was mentioned. The questioning did not pertain to the location or the fact that it was contrary to the Local Plan. It felt to me more like “softer” questioning. Even so, members spent a lot of time discussing what should have been a very quick item, which was in itself a “red flag” for me.

“If the imam had not been involved it wouldn’t have been called in or got to committee. It was a domestic application and the officer’s ruling to refuse would have stood. That is the point. It was to do with the “who”, not the “what”. The “what” couldn’t be clearer in terms of the National Policy Planning Framework and the Local Plan.

“The Head of Planning summarised the position very clearly for members before the vote took place. He pointed out the unhealthy precedent for development on wildlife sites and protected open spaces in Luton that would be set by a vote in favour of the application. He more or less said, “You can rip up the Local Plan if this goes through”.

“I think the situation was made complex by [Imam Chishti] turning up at the meeting. If he hadn’t turned up they may have voted differently. I think his presence had some influence on proceedings. Why turn up otherwise?

“Knowing what I knew beforehand I wasn’t surprised that the vote went as it did. I *was* surprised at Cllr Hussain’s vote because he is a long serving member and is very experienced in planning matters. When you speak to him he will say that he asked questions at committee and heard what others said and that on the balance of what was presented to him by the applicant he felt the application was sound and voted against refusal.

“The applicant had referred to fly-tipping and other problems and that made for a very persuasive narrative for members. The choice [the applicant] put forward was between a nice family house and a dumping ground. But Cllr Hussain would also have known the consequences of a vote to allow the development to go ahead, he should have thought about the longer-term impact, listened to what officers were saying and voted accordingly.

“There were also two abstentions, maybe for different reasons. Cllr Agbley, the Deputy Chair, was the first. I suspect he felt conflicted because four Labour councillors were saying one thing and officers another. As the first to vote he probably felt lost because he could be persuaded by both arguments. So, the best course of action for him was to abstain.

“Cllr Ali abstained too. He is a fair-minded, intelligent councillor and is fairly new. He is a Liberal Democrat. I don’t know why he would have abstained when Cllr Franks had been supportive of officers not long before the vote. If my leader had done that I would have thought carefully about that before voting. I have no idea, however, whether he was influenced by the presence of the imam. He may simply have taken the approach taken by Cllr Agbley because, as the next to vote, he too was uncertain as to how he should vote.

“Both before and after the meeting I went to see the Leader of the Council and the Monitoring Officer about this matter. We knew something was going to happen otherwise I would not have gone to the meeting. We were considering calling the members in to discuss what had happened so that we could make it very clear to them what was expected of them (a couple of them were new to planning) and we were thinking about refresher training.

“That said they had all had training within the last few months on the Local Plan and how to conduct yourself at planning committee (I myself was at the session). At the same time it’s worth remembering that the application had been refused on the Chair’s casting vote and the officer’s decision had not been undermined because the right decision was made. As an experienced member of the planning committee the Chair knew what had to be done.

“[W]e really do not want a repeat of this behaviour. The DMC needs good committee members who understand what is expected of them. This is a quasi-judicial setting and members can be personally liable for poor decision-making. We must make sure that people with the right skills get onto this committee in the new administration regardless of the party politics.

“We have four councillors who have made the wrong decision, have probably been influenced by the presence of the imam at the meeting, I suspect there was lobbying before the meeting but I cannot prove it. Something wasn’t quite right. But that is to be set against the context of a DMC that at times feels adversarial. It is supposed to be non-political. There is an element of disrespect and a lack of discipline and that can lead to the kind of outcomes we got at that meeting. It can breed poor decision-making.”

### **7.3.2.2 SUE FROST**

Sue Frost told us, “I wouldn’t say that the DMC spent an *exceptionally* long time discussing the planning application. There have been other instances of spending a long time discussing applications in the past. In this case the applicant spent a long time presenting their case. He was trying to undermine the tree officer’s arboricultural report. Before the meeting we felt the need to get some expert opinion in the room. For example, Trevor Tween, our ecologist, who is well qualified to speak about green corridors and district wildlife sites, attended the meeting. We wanted to help the members make the right decision on this and to counter the arguments coming from the applicant. But the members heard what the applicant had to say rather than what our expert officers said. That undermined their credibility and showed a lack of respect for them.

“Some of the members said that they didn’t know the imam but I have been told that they would all have known him because he is the leader of the Muslim community in Luton. I think there was definitely an element of pressure on some members from that direction and I think that that pressure swayed the way they voted.

“I don’t think they would normally have voted that way. With other applications they have voted to protect areas for wildlife conservation. I think they would have done the right thing and refused the application because they *do* know how important open spaces are and certainly the more senior members would know that cutting down trees and clearing a designated wildlife site would be totally against our policies.

“This development was so far away from what the Council would normally permit that there is no reason to think that it would have been acceptable. It just didn’t make sense. The fact that they voted against the officer’s recommendation in this instance was the giveaway .... It may be that the members were doing the imam a favour but I have no evidence to support that.

“At the time I thought it was going to be another poor decision but fortunately the Chair had the casting vote so the application didn’t go through. Had it been approved I would have been upset for the planning team who are demoralised when such issues occur and it would have opened a can of worms as far as the Local Plan was concerned.”

### **7.3.2.3 SUNNY SAHADEVAN**

Sunny Sahadevan spoke several times at the DMC and, immediately prior to the vote, starting at 1hr 27 mins 15 secs, he set out in detail why the planning application should be refused – readers can refer to that in Appendix 2. He said little more to us about the planning application when we spoke to him other than “the Wardown Crescent application .... was *clearly* counter to policy” and “comparisons had [previously been drawn] with a nearby site, at Woodbury Hill Path, where we had granted permission .... In fact the circumstances were very different. It was not a Designated Wildlife Site. With that site, there were planning reasons for granting permission, though we had refused permission there several times before they eventually got their consent.”

Sunny spoke about the vote at the DMC meeting by reference to what he saw as voting patterns at *previous* meetings of the DMC. He said, “I had also had concerns about voting patterns at meetings – almost like a “block vote” from the same cohort of Members each time - when applications were approved that officers would ordinarily have refused for sound planning reasons, because they were counter to policy.

“Members participating in these voting patterns would vote without asking questions before voting. It would normally be expected that, if a Member was going to go against the officer recommendation, they would test and question the officer judgement before settling on how to vote. But that did not always appear to be the case. The first time some of these Members would engage in the process would be the vote itself. Reading the expressions of other Members at the meeting I got the sense that they were also concerned with what was happening.

“There were two or three such planning applications that I recall. During meetings Members would actually indicate that they supported an application and this led to a pattern of the usual cohort of Members voting in favour. Leading up to the vote officers would explain why an application was not acceptable (because it was contrary to policy and not consistent with previous

Council decisions) but it would be approved anyway without the various Members justifying further the reasoning why they were still going to proceed against the officer recommendation.”

#### **7.3.2.4 GEMMA CLARK**

Gemma Clark said, “The parcel of land associated with the Wardown Crescent planning application is a Designated District Wildlife site and is next to an Area of Great or Local Landscape Value (AGLV or ALLV). It is part of a nature corridor linking different areas of the town. The relevant Local Plan Policy is LLP28 – Biodiversity and Nature Conservation.

“After looking at the site map for this application we looked at the history for the site. We found that it had always been allocated as a District Wildlife Site going back to the 1940s. The Planning Acts came in in 1948, so anything before that isn’t relevant. In 1964 an applicant wanted to use the land for a bungalow. That was refused and dismissed at appeal. In 1981 an applicant wanted to build a detached dwelling which was also refused and dismissed at appeal. The same happened in 1983. There was an application for erection of a bungalow and a garage which was refused in 1991. There was an enforcement notice in 1993 relating to unauthorised use of the land for storing vehicles. There is then more recent history from 2013, 2014 and 2021.

“My Committee Report, which was given to members and to the applicant prior to the meeting, summarised all the information that had been received for the application. I verbally presented it at the meeting on 23<sup>rd</sup> August. I would have given a brief history of the site before focusing on the main reasons for objection and the reasons for refusal and I would have elaborated on each of those.

“I first spoke about biodiversity and made reference to LLP27, 28 and 29 of the Local Plan. Normally that would be sufficient reason in itself for refusal because it would be a departure from the principles of the Development Plan. If approved it would have to be advertised as such and justification given because that land had been ring-fenced for the purposes of a District Wildlife Site. People can object on that basis. The loss of the wildlife site was my first reason for refusal.

“The site forms part of a corridor and the development there would have compromised that corridor and other sites within the town. The Ecologist made that point. It would have been harder to resist development in other Designated Areas.

“I spoke about the .... views of the Ecology Officer and the Tree Officer. Both had objected and I made that clear with reasons why. There were other grounds for refusal. I went through my concerns with the development itself. It was a modern development over three storeys and out of keeping with the character of other houses in the area. LLP15 applies here. This was my second reason for refusal.

“This was back land development and I had had concerns about windows overlooking the rear of the neighbouring properties from a high elevation above .... I saw that as detrimental to those properties. This was my third reason for refusal. My final reason for refusal was access - the steep gradient and the concerns that Highways had over slippery conditions and speeding.

“My item was the first on the agenda and took around 90 minutes. It was the first I had given in person. That was an unusual amount of time to spend talking about one house. Not much time was spent on the next item, which was for maybe 100 flats.”

Asked about members' questions Gemma replied, "You can never tell what members are going to ask, questions can be pretty random. For example, I cannot see how Cllr Mahmood Hussain's question as to whether any Council officer had visited the site whilst it was being cleared has any relevance at all to the planning application. I cannot see either how the dumping of cars on the site many years ago is relevant either – that was the enforcement notice in 1993. It has no planning merit at all.

"Cllr Khurshid's question about the character of the area appears more relevant though she did have the opportunity to visit the site to better understand that. Cllr Ali's (who abstained) question about the designation of the site before 2011 was reasonable. His question about the TPO was also reasonable.

"I do not think that the proxy's suggestion that they could improve the ecology of an area by building a house on it appears possible. Moreover, the applicant's mention of Woodbury Hill Path as being a comparable site was not relevant because that parcel of land has always been a residential brownfield plot with a house on it and does not sit within the District Wildlife Site. In planning terms it was a red herring and was not comparing like with like. Their suggestion that it is a wildlife site without wildlife appears to have come about because the site had been cleared. The Ecologist said that, given time, it would return.

"Cllr Franks made the valid point that Luton is a very densely built area and that we don't have many wildlife sites or open spaces so we should be taking even more care to protect the ones we do have.

"In planning terms this was a simple decision because it went against principles in the Local Plan. The fact that four members voted against refusal was surprising given what they had heard and the simplicity of the decision to be made."

"I believe that all members of the DMC have had members' training about planning. They know we have a Development Plan and that it is their role to enforce it. Members do sometimes go against officer recommendations but normally they uphold them. I was puzzled that they had voted against refusal. I wondered at the time whether I had explained our reasons for refusal well enough or whether they simply didn't understand the Development Plan and how it worked. But they didn't seem to give a planning justification as to why they voted for the development to go ahead."

#### **7.3.2.5 STEVEN SPARSHOTT**

Steven Sparshott said, "[T]he planning application for 68 – 76 Wardown Crescent had been refused by officers and because it was contrary to the *core principles* of the Development Plan but had been called in by a councillor. The core principles are generally thought of as inviolable subject, of course, to judgement calls. When applications such as this one are called in you have to wonder why.

"A lay person might well be concerned when an application such as this comes to DMC because, ordinarily, an application like it is dealt with under delegated powers and would be a clear refusal according to the core principles of the Local Plan. That said, it may have been called in by a councillor who did not understand the fine detail of the principles of the Local Plan and the related intricacies. Such a councillor may simply regard the site as back land with rubbish on it and

therefore appropriate for development. A call-in by a member, especially an experienced member, of the DMC would, however, be a different matter.

“In my opinion the application should never have come anywhere near the DMC. It was a clear refusal under delegated powers”. [Had approval been given for this development] then it gives a weapon to those who object to airport development, for example .... to call into question the integrity of that development and can cause reputational damage.”

#### **7.3.2.6 ROBIN PORTER**

Robin Porter told us, “Thinking back the officer recommendation was super-clear for refusal .... I myself could not see any reason why that application should be granted. It is entirely appropriate for members to call in officer decisions if they see fit. But I was more than surprised that four members of DMC voted to approve the application and reject officer advice. I was mightily relieved that DMC ultimately came to the right decision and backed the officer’s recommendation albeit on a casting vote.

“When asked by the Monitoring Officer on what basis the four had voted against refusal, there wasn’t a convincing explanation. There are three possible reasons, it appears to me. First, this may be a training issue - but I think that officers can demonstrate that they have given the DMC members appropriate training. Second, it may also be that some DMC members have forgotten the statutory responsibilities that rest with them ....Finally, it could be that outside influence has come into play and the four members concerned voted against officer recommendations for other reasons.

“[I]n future, I want to see members of the DMC doing what they ought to be doing and making decisions within the parameters that they are allowed to make decisions within. They must not bring into their decision-making external factors that they are not allowed to take into account when making a decision. The DMC must absolutely have the freedom to go against an officer recommendation but only when there are coherent planning grounds to do so. They must not be swayed by external factors. All members of the DMC, whatever their seniority or their level of influence, should behave in that way. We have to be sure going forward that, as an organisation, we can say that we are making the right decisions for the right reasons and doing things in the right way.”

### **7.3.3 MEMBERS’ OBSERVATIONS ON THE MEETING AND THE VOTE**

We spoke to members who had been present at the DMC meeting about the discussion and the vote. They told us the following.

#### **7.3.3.1 CLLR DAVE TAYLOR**

Cllr Dave Taylor, Chair of the DMC, told us, “The recommendation by officers was for refusal. The DMC has to make a recommendation either to accept with conditions or refuse with reasons for refusal .... We had a pre-meeting, as we always do, and the reasons for refusal were valid. There had been a long planning history on this going back to the 1950s. I think there had been five or six previous refusals because the site was classified as public open space, a kind of nature reserve. The applicant had bought the piece of land and decided to level it without any planning permission at all. He subsequently submitted a planning application for a three or four bedroomed house. He was given advice that his application was unlikely to succeed. He went

ahead with it anyway. We [had previously] visited the site .... We looked at the site and the access. It appeared to me that the officer's recommendation to refuse could stand up on appeal."

We asked how common it was for the DMC to go against the recommendation of the Planning Officer. DT replied, "We can and do go against officers' recommendations but, if we do, we must have reasons for doing it. It tends only to be when a recommendation is marginal. But this one was clear-cut. There was no doubt whatsoever. The decision could be upheld if the applicant appealed against refusal. If the applicant were to appeal, the Planning Inspector would visit the site, read the papers and make a decision. Sometimes the Inspector does grant the appeal.

"The discussion went on for 90 minutes, which is unusual for a refusal. A lot of questions were asked and comments made. I didn't expect it to be a short discussion. The design of the house was good and we could recommend it, but not on this site.

Cllr Taylor, told us, "Before the vote took place I expected it to be close. It was and I had to use my casting vote. All the Muslim councillors apart from Cllr Ali voted the same way. It's possible that he was lobbied and told by David Franks not to support refusal, but that is pure speculation on my part. Cllr Ali is well-respected in the Muslim community." He added, "It's possible that, lobbying or not, individual members somehow felt an obligation to Mr Chishti and therefore to his son and cast their votes with good intentions. But my views on this are pure speculation."

### **7.3.3.2 CLLR DAVID FRANKS**

When we asked Cllr David Franks about the discussion at the DMC he said, "The Chief Executive mentioned this planning application to me some weeks before the 23<sup>rd</sup> August meeting, even before I knew it would appear on a DMC meeting agenda .... My particular concern was that by granting planning permission on a small part of our designated wildlife spaces we would be rendering it extremely difficult to justify refusing further development on wildlife spaces elsewhere. Luton is seriously deficient in green open space. Such a decision would also damage the integrity of the Local Plan. As Liberal Democrats we have consistently resisted development on green open space.

"For those reasons I did not attend the official site visit – whether the house was well-designed and in a good location with good access did not seem to me to be the issue. What was relevant was the danger to the Local Plan and the designated wildlife site. It's a small site but there are much larger ones at either end of it. It's part of a much bigger site than exists within its own boundaries. It's not easy to know where one ends and the other begins.

"[S]ome of the arguments that were used during the DMC Meeting were questionable. For example, the applicant said that the planning application was supported by the Fire Service. That wasn't true. The Fire Service simply asks itself whether it can reach the site if called upon to do so. It doesn't mean they "support" the application."

We asked how common it was for the DMC to go against the advice of officers. Cllr Franks replied, "It's fairly rare. It tends to arise when there is a difference of opinion between members of the DMC and the Planning Officer who has recommended that a development be permitted. In this case this was a Planning Officer recommending refusal and particular members wanting to overturn that recommendation."

Cllr Franks said that the use by the Complainants of the term “tribal voting” “was a reference in this case to the tendency of Labour councillors to crowd together and vote in a particular way.” He later said, “The way they were going to vote was clear from the beginning. But the relationship between [Cllr] Hussein and the applicant and his family is not so clear.”

We asked why Cllr Franks, the Labour Chair of the Committee, had cast his vote for refusal. He replied, “Either he was convinced by the Planning Officer’s strong arguments or he was very firmly or sternly briefed before the meeting. It’s true too that David Agbley abstained, and he too is a Labour member. My Liberal Democrat colleague Cllr Ali also abstained. I have no idea whether he was lobbied or not.”

### **7.3.3.3 CLLR GILBERT CAMPBELL**

Cllr Gilbert Campbell told us, “The planning application was for the building of a house on a piece of land that was a designated wildlife site. It has been used for fly-tipping in the past but has long been considered to be a wildlife site. Applications had been made previously to build on the site, going back to before World War II. They were all refused. There were some appeals, which were always lost.

“When I received the papers and realised the application was for building on a wildlife site, I deliberately went on my own and inspected the site. I didn’t go as part of the organised DMC visit. I could see some clearance had gone on, some trees had been cut down, but it was still messy. I could also see that the access from Wardown Crescent was a *very* steep slope though I believe that you can access the land from the end of the site as well somehow. I seem to recall that access was discussed at the meeting.

“At the DMC Meeting, the Head of Planning, Sonny Sahadevan, said in an unusually long statement that a vote in favour of the planning application would drive a wedge right through the Local Plan. He spoke in strongly worded terms. He made it very clear that a vote against refusal would set a precedent and allow building anywhere in the Borough in spite of what the Local Plan said. That would be very dangerous for the town.

“We spent a long, long time discussing the application before it went to the vote. It took as long as a whole meeting usually takes. It then went to the vote, which was tied. We vote in alphabetical order. Over the years, whenever a vote is tied, normally the Chair Dave Taylor votes with his Labour colleagues because they are in the same party. I was shocked and surprised he didn’t do the same when it came to this application. A Lib Dem councillor abstained and so did a Labour councillor. Labour councillors generally don’t abstain and that also surprised me.

“I myself often vote against applications, particularly for blocks of flats which put a strain on the local infrastructure and facilities. Labour often ignore such considerations. I am aware that Luton doesn’t have a lot of green belt. If we keep building on it there will be none left and people will have nowhere to exercise or walk. This planning application felt the same in that it was for development on a designated wildlife site. Development of such land is literally forbidden by the Local Plan. But four members of the committee ignored that and voted against refusal.”



#### **7.3.3.4 CLLR LEE BRIDGEN**

Cllr Lee Bridgen said, “I didn’t go on the official site visit .... I am relatively familiar with the area and went separately to visit the site .... The area is a designated wildlife site and I wasn’t sure why there should be special consideration given to allow development to go ahead there.

“During the debate, the Head of Planning, Sunny Sahadevan, made it very clear that if a planning application on a designated wildlife site were to be approved, it would make it very difficult, almost impossible, to enforce or restrict any future development or planning applications on similar sites which are currently protected by the Luton Local Plan. In essence we would have been voting to tear up the Luton Local Plan as far as district wildlife sites are concerned. Those sites are important and we have very few of in Luton.

“This was a very clear, unequivocal steer from Sunny. There would be significant problems arising out of a vote against refusal. I didn’t see how a member making an objective decision with an open mind and without predetermination could arrive at any conclusion other than to vote in favour of refusal.”

Asked what he thought about the questions that were asked by members Cllr Bridgen replied, “I thought they were pertinent at the time. I probably would have asked some of those questions myself though I can’t remember them in detail now.

We then asked about the vote. Cllr Bridgen said, “It does happen that members go against the recommendations of officers but normally we do follow their recommendations. There are times when it is questionable whether the Luton Local Plan is being contravened so we might approve an application in such circumstances. An application can also be referred to the DMC if it is felt that the application goes against the Luton Local Plan but there is nevertheless a benefit in so doing. There might also be occasions when an officer decides there isn’t sufficient benefit in approving an application under the Luton Local Plan and members of the DMC might disagree.

Asked about the use of the description “tribal voting”, Cllr Bridgen said, “I meant Labour Party members voting along party lines in a quasi-judicial process, for whatever reason. In other Council meetings party members might be whipped to vote along party lines but to do that on the DMC would potentially involve predetermination. A former member of the Labour Party, Anne Donelon, who now sits as an independent, has said on her Facebook page that this has been happening.”

#### **7.3.3.5 CLLR MAHMOOD HUSSAIN**

We asked Cllr Mahmood Hussain, a Subject Member, whether he had gone on the site visit. He replied, “I did. It was the first time I had visited that site but I had visited a neighbouring site very close by (at Woodbury Hill Path), which was mentioned during the DMC meeting, on another occasion. That too had been recommended for refusal and members voted to allow it to go ahead against officers’ advice. That was very close to the wildlife site. It’s as if one site merges into the other.

“I go on every site visit so I can make an independent and informed decision once I have heard the officers give a full report. I take my role very seriously. What is the point of having members make decisions on planning – and give reasons if they go against officers’ recommendations -

unless they can make up their own minds? Otherwise we may as well let officers make all the decisions.”

We asked Cllr Hussain why he had he asked the questions he had asked at the meeting? He replied, “I visited the site some years ago. There were a lot of dumped cars. When we visited before the meeting this time, it was hard to see the site because there was a lot of rubbish, and vegetation there and large trees had been cut down. There were no dumped cars though. We had to go right to the top of the site to see it properly. There wasn’t very much vegetation left growing on the site. I don’t know what it’s like now.

“At the meeting I asked whether any Council officers had visited when the site was being cleared. I was told that a lot of rubbish and vegetation had been removed and that the environment officer had visited the site. I also wanted to know whether any TPOs had been put in place and, if not, why not? We should be going in beforehand to stop trees being cut down. I also asked the neighbours the same thing at the DMC. Had they told the Council or complained? If we are saying that we cannot do a development because it is a designated wildlife site then we need to protect the site before it gets cleared. There seems to be no point in protecting it after the event. I asked similar questions when we did the site visit.”

We then asked what reasons Cllr Hussain would have given for his vote against refusal if the application had gone ahead. He replied, “I would have said that the site had been cleared, trees had been cut down and vegetation had been removed. I would also have said that the Highways Manager had no objection to access to the site up the steep hill in the papers we considered. Had he objected and said access wasn’t safe then there would have been no point in building a house there.”

We then asked about the potential impact on the Local Plan. He replied, “We keep the Local Plan in mind when we make decisions but we make our decisions on the merits of each application. As far as I am concerned it would not have set a precedent if the application had been passed.”

#### **7.3.3.6 CLLR RAJA AHMED**

Cllr Raja Ahmed told us, “I had already read the papers for the planning application because, when the papers arrive, I read them for my knowledge even if I cannot attend the meeting. I had already had a site visit with fellow councillors. Consideration of the planning application had also been deferred from a previous meeting because more information was needed so I had read the papers before anyway.

“I didn’t need to ask questions at the meeting because I had read what were very comprehensive papers. I understood the application and it seemed quite clear. I had listened to what officers had said, what the applicant had said, and had heard the questions that other members on the DMC had asked. I had enough information to make a judgement.”

We reminded Cllr Ahmed of what the Planning Officer had said at the meeting and of the reasons she had given for refusal of the planning application. We then asked why he had voted as he had at the DMC. He replied, “When we visited the site we did not approach it up the slope but came from another direction. As far as I could see the emergency services could gain access from that direction.

“When I looked at the site there were other houses just round the corner from the plot and around it. There had been fallen trees on the site and it had been cleared of those. A Council official had visited the site and had agreed that the site could be cleared. No trees had been cut down. The applicant had said that they would plant more trees as part of their application. This was an application for a domestic property and not a business application and we need more houses in Luton. For these reasons I felt that the planning application should be granted.

“It was mentioned at the meeting that it was a designated wildlife site in the Local Plan. If this was a wildlife area I cannot understand why there has been development on Woodbury Hill which is right next to it. The whole area should have been clear if it was a designated wildlife site. But it didn’t look like a wildlife area to me. It was a vacant plot in the middle of an area of housing.”

Having considered the summary of our conversation with him whilst it was in draft Cllr Ahmed emailed us with the following (sic). “Further to our conversation I would like to respond to the last question you asked me in the interview in more detail. You asked why I voted against the officers advice? Officers presented a report which suggested that the plot of land in question was in designated wild life area in local the plan and it is in area of natural beauty with natural habitat of rear species.

“When I along with members and officers visited the I site I was surprised to find other houses within the vicinity, recently build with planning permission granted by a previous DMC. The plot of land was clear, and there were no remains of any cut trees, there was no presences any bushes or natural habitat. In addition there was a build-up area in close proximity of the plot. As far as privacy is concerned the design of the house did not invade or over look any other houses in the area. The high way and emergency services report was in favour of the applicant. In addition the applicant present and an independent expert report which clearly suggested that there was no presence of wild life or rear species at this site. Therefore based on what I saw and the body of evidence presented at the DMC meeting in my view outweighed the officers view point, that’s why I voted in favour of the applicant.”

#### **7.3.3.7 CLLR KASHIF CHOUDHRY**

In our email correspondence with Cllr Kashif Choudhry we asked him “If you had to say why you voted against refusal of the planning application at the DMC Meeting what would your reasons for doing that be?”

He replied, “As to why I made the decision to support the applicant, this is because, firstly, there was no evidence presented to us that there was any form of wildlife existing in the area, hence I believed that it would not endanger any animal if a home was to be built there.

“Secondly, the land in question was being used as a dumping ground, which is far more dangerous to wildlife than building a home could ever be. From what I had observed, the land was essentially run down and forgotten about, other than for residents to fly-tip their rubbish into, so there would be significantly less harm to build a home there rather than to leave it as the dumping site that it presently as.

“Thirdly, I noted a similar property that already exists in the same area, i.e. within Woodbury Hill Path, upon which, to the best of my knowledge, there has been at least one home built.

Additionally, most of the residents were in agreement and had no reservations about building in this area. The minority of residents who objected were in fact people who did not live in the area.

“Finally, the last factor that influenced my decision was that the Beds Fire and Rescue Services did not object to the development. The officers had raised a concern of access, which in my opinion is the responsibility of the owners and builders of the property.”

#### **7.3.3.8 CLLR SUMMARA KHURSHID**

When we spoke to Cllr Khurshid we referred to the presentation by the Planning Officer and the four reasons she had given for refusing the planning application .... Did she recall that? She replied, “I will have heard the planning officer say what they said but there are often microphone issues in the Council chamber so sometimes it’s hard to hear what others are saying. I was surprised that the applicant was given more than five minutes to present their case. Five minutes is the normal allotted time. On that day it was prolonged. He was given much more time than was normal. Even though questions were asked and answered and comments made, the proceedings seemed to be going on and on. The longer it went on the more confusing I found it. And bear in mind I wasn’t feeling very well.”

Cllr Khurshid also said, ““I don’t recall what questions I asked .... but .... I would never do anything that would create a problem for or jeopardise the Luton Local Plan. I also remember it being discussed that the site had been a centre for fly-tipping . That helped me make my decision. The applicants were saying that they would construct something that would be eco-friendly and enhance the area and we need 17,000 houses in Luton. I took that into account as well. Everyone has the right to make up their own mind. I speak for myself.”

#### **7.3.3.9 CLLR AMJID ALI**

We asked Cllr Amjid Ali, who was not a Subject Member, for his recollections of the meeting and the vote and why he had asked the questions he had. He replied, “The discussion lasted a long time. We spent an unusual amount of time talking about the planning application. I had done a visit to the site of the proposed development beforehand. But I knew the site anyway. In my years in college I was a police cadet and I knew of issues that related to that site .... That was something like twenty years ago so it wasn’t relevant today. I still declared that at the DMC meeting as well because I thought it could be relevant to my consideration of the planning application.

“When it came to questions and the vote I wondered whether development on that site (whatever it was) might benefit the area. It was a crime hotspot when I was a police cadet and it remains so to this day. Most of the neighbours referred to it in their comments on the planning application and were in favour of the development going ahead. Only two, I think, were against. This resonated with me because I knew the background. If residents were saying that then their views needed to be taken into account.

“The site when you look at it has no fence or demarcation to separate it from the adjoining plot of land. The adjoining plot of land if I can recall at the time of the visit was bought by one of the neighbours and there was planning approval to build on that site. But the applicant’s bit of land was not being granted permission.

"I personally didn't see any difference at the time of the visit or any less impact that the neighbouring plot of land had on wildlife and the plot of land in question. Also the applicant had done extensive wildlife and tree surveys which indicated that the trees were old and some were diseased. The area had no large animals living in it and excessive household items dumped in the area were a cause for concern in respect of contamination. I felt that the officers' report and the surveys that the applicant presented were contradicting one another.

"However one thing that stuck out was that, in the officers' report, the tree surveyor had visited but could not get access to inspect the trees properly due to the rubbish and weed growing on the trees. The second time the surveyor provided his report was from behind a desk and not as a result of an onsite visit. Due to this reason in my evaluation I gave the Council's tree surveyor less weighting and more weighting to the applicant's tree surveyor.

"The Council had done no wildlife survey and it was up to the applicant to provide a survey. Therefore I gave weight to the applicant's survey that from my viewpoint was satisfactory to conclude that there was no threat to wildlife and the design of the property was sympathetic to small wildlife like birds and squirrels.

"What did cause me to stumble was the fact that this application would have set a precedent and allowed further private landowners to build on land that was in the wildlife area and would have had a definitive impact on the small woodlands in Luton. There were no safeguards in place to prevent this precedent from being used in the future. After asking my questions, I therefore abstained from the vote."

## **7.4 LEAVING THE MEETING BEFORE IT ENDED**

### **7.4.1 COMPLAINANTS**

The Complainants had said in the Complaint that "three of those who voted against the refusal motion left the meeting and did not return. Having completed their attempted assault on the Luton Local Plan they considered they had no further reason to remain."

Two of the Complainants commented on this when we spoke to them. **Cllr David Franks** told us, "I felt they had no interest in any other item on the agenda. There was a clear implication in that, I believe." **Cllr Lee Bridgen** told us, "I thought it was outrageous that they did that. It was as if they had attended just to vote that application through before disappearing for the rest of the business. That was unusual, though they may of course had good reason to leave the meeting."

We now examine this in greater detail below.

### **7.4.2 MINUTES OF THE MEETING**

The minutes of the 23rd August DMC record that, "Councillors R. Ahmed, A. Ali, Campbell and Khurshid were only present for Item 7 of the Agenda (Land Rear of Nos. 68 to 67 Wardown Crescent, Luton)."

### **7.4.3 CLLR RAJA AHMED**

#### **7.4.3.1 CLLR RAJA AHMED - STATEMENTS**

Cllr Raja Ahmed made no mention of leaving the meeting in his reply to the Monitoring Officer dated 7th September. However, we have noted a statement made by Cllr Ahmed made in

response to a question regarding attendance at the meeting of the DMC on 23rd August. It was prefaced by an explanatory note which read, "... following the meeting referred to above the Monitoring Officer wrote to Cllr Kashif Choudhry in his capacity as Labour Group Whip to express his concern at members of his Group leaving the meeting before all the items of business had been dealt with. In turn, Cllr Choudhry wrote to those members who had left the meeting early to request an explanation."

Cllr Ahmed replied to Cllr Choudhry as follows (sic), "With regards to the meeting in question, I did leave the meeting of Development Management Committee conducted on Tuesday 23rd August 2022 at approximately 19:40, after the first application on the agenda overran, which would have normally expected to finish in roughly 40 minutes maximum.

"Please check correspondence of my apologies that I was unable to attend this meeting initially, mail dated 15th August 2022 at 17:49 to Bert Siong and cc: Dave Taylor the Chair development management committee and to yourself Kashif Choudhry, due to a pre-planned family holiday.

"During the family holiday I realised I had left my Bank Cards at home and had to travel back to Luton to collect these for the rest of the holiday. As I arrived in Luton, I decided to attend the meeting, as usually on average these meetings last about 2 hours. Recently there has been a lack of attendance by members. In some instances not enough members to form a quorate, which was highlighted at the labour group meetings to improve attendance standards. While I was in Luton I decided to attend this meeting to meet expected attendance standards. I communicated with family and they agreed I had a bit of time before I had to return back for dinner. As the first application on the agenda overran by some time, I discussed with Dave Taylor the Chair Development Management Committee that due to the first agenda over running I cannot possibly stay for the remainder as I had to travel back to Birmingham, in time to take my family to dinner as they did not have any money with them. My intention was to stay for the full meeting as they typically last on average for 2 hours, however I could not predict that the first agenda would take so long. I feel upset that clarification would be needed to my purpose of attendance, as I clearly sent apologies in advance for this meeting. When I had to travel back I thought I would partake (much to my family's dismay) as it was possible to do so. This should clarify my passion to try my best with attendance. The first opportunity when a break took place I conversed with Dave Taylor about my circumstances on the day in question, who advised me that it is fine to leave during this break. You may recall Kashif, during the break of this meeting I expressed my apologies to yourself also that I was unable to stay for longer as my small children were waiting for dinner."

#### **7.4.3.2 CLLR RAJA AHMED – INTERVIEW**

When we spoke to Cllr Raja Ahmed and asked him about his leaving the meeting he said, "I wasn't in Luton on the day of the meeting. I had gone up to Solihull with my family to stay in a (prepaid) hotel for a week's holiday on the day before the meeting. Around ten days before the meeting I sent my apologies by email – you will be able to find the email which will have the exact date – because I wasn't going to attend the meeting.

"I am a self-employed taxi driver .... Most of my fares are paid by cash and I have a money bag. When we arrived at the hotel and unpacked on Monday evening I realised I had left my money bag and my cards and my wife's cards at home in our rush to leave. I needed money for our holiday

but had nothing. I couldn't sensibly return home that evening to collect it because it was too late in the evening.

"I travelled back next day which was the day of the meeting. Our Chief Whip had previously received an email from Mark Turner about attendance at meetings because some meetings had fallen short of quorum. He forwarded the email to me and other councillors and told to us ensure we attended meetings. Labour Party selection was also starting at that time and they took attendance at Council meetings into account. So I had that in mind too.

"When I had collected the money bag I contacted my wife and we agreed that I would attend the DMC meeting because I was already in Luton. Those meetings normally last one or two hours. The idea was that I would attend the meeting, go back to Solihull and we would all eat dinner together.

"So I went to the meeting and spoke to Eunice (Lewis-Okeowo – Democracy and Scrutiny Officer). I explained that I had apologised but had come back for my money and would like to attend the meeting. She said it was fine and to inform the Chair, which I did. He agreed that I could attend the meeting.

"The meeting lasted much longer than I had expected! My wife and children were waiting to eat. The DMC took a short break after considering the planning application we have been talking about. I explained the situation to the Chair, told him that I had not expected to come to the meeting at all and that I had not expected the meeting to last as long as it had. He agreed that I could leave the meeting and return to Solihull. I also asked the Labour Whip, Cllr Kashif Choudhry if I could leave and he also agreed."

#### **7.4.4 CLLR SUMMARA KHURSHID**

##### **7.4.4.1 CLLR SUMMARA KHURSHID – STATEMENT**

In her reply to the Monitoring Officer Cllr Summara Khurshid said in an email dated 7th September (sic), "During the meeting on 23rd August 2022 around 7pm my head started spinning, felt cold sweats and suffocation. During the break I drank water and went out to get some fresh air and came back to join the meeting hoping that I would feel better. However started feeling sick and felt like vomiting, hence I walked out and could not brief the Chair as the chair had already resumed the meeting after the break and did not want disturb the proceedings. Please also note that since becoming a Councillor (May 2019), I have never walked out a meeting. In any case I can assure you that this will not happen again."

##### **7.4.4.2 CLLR SUMMARA KHURSHID – INTERVIEW**

When we spoke to Cllr Summara Khurshid and asked her about her leaving the meeting she said, "I have been suffering health issues in the aftermath of COVID and on the day of that DMC meeting I was really unwell. But I decided to attend anyway and participate in the meeting and not let my colleagues on the committee down. As the meeting proceeded I did not feel very well. There were times when I felt like puking. At one point I wanted to get up and leave but the meeting was in progress and I couldn't. At the break I went outside to get some fresh air but when I came back the meeting had restarted and I did not want to interrupt the proceedings so I did not go back in."

#### **7.4.5 CLLR DAVE TAYLOR**

We asked Cllr Dave Taylor, Chair of the DMC, about the councillors who left the meeting after the vote during the break. He said, "I had received apologies from Cllr Raja Ahmed a couple of days before the meeting saying he would not be attending because he was on holiday. But he arrived at the meeting and said he had left his wallet at home and had to come back to get it so had decided to come to the meeting. It felt to me like an excuse for coming back home. It's at least possible that he was *told* to go to the meeting. He had to return to his family after the meeting and that was probably why he left early. You can interpret that however you wish. I don't recall Cllr Khurshid telling me she felt unwell."

#### **7.4.6 OTHER COMMENTS**

Others to whom we spoke, who had attended the DMC meeting, expressed opinions on the departure of members of the committee from the meeting.

**Gemma Clark** said, "Two or three members left after my item and didn't stay to vote on further items. It was highly unusual for members to leave part way through a meeting; I thought it was most bizarre."

**Nicola Monk** told us, "Cllr Ahmed came in from holiday especially for this planning committee. He stayed for one item and then left. That was not appropriate. If you come to a meeting you stay for the whole meeting and not attend for part of it. The Monitoring Officer picked up Cllr Choudhry on that as well and the Chair called him back in. Two members left the meeting completely after the vote and I recall that Cllr Choudhry was late returning for the next item on the agenda."

**Steven Sparshott** spoke about "the decision by some councillors to leave the meeting after the application had been discussed and voted on. You should stay for the duration of the meeting unless there was a very good reason not to."

We asked **Cllr Mahmood Hussain** about the departure of members after the item had been discussed. He replied, "The Standards Complaint said that three Labour members left the meeting. That wasn't factually correct. Cllr Campbell, a Conservative, left the meeting along with two Labour councillors."



## **8 FINDINGS – PERSONAL AND PREJUDICIAL INTEREST**

### **8.1 DMC MEETING 23rd AUGUST 2022**

#### **8.1.1 TRANSCRIPT AND YOUTUBE RECORD**

As we have noted above, the transcript of the DMC Meeting is available to readers as Appendix 2 and the video recording of the meeting can be found on the Council's YouTube channel (see Appendix 1 for weblink).

We note that Item 4 of the agenda "Disclosures of Interest" begins at 01 mins 13 secs of the transcript and ends at 14 mins 05 secs and therefore lasts just under 13 minutes. We do not repeat here that part of the transcript that covers Item 4 of the agenda, which can obviously be found in Appendix 2.

#### **8.1.2 DRAFT MINUTES OF MEETING**

The Draft Minutes of the 23<sup>rd</sup> August DMC Meeting record the following under Item 64. Disclosure of interest – Ref 4:

- (i) Councillors M. Hussain, Choudhury, R. Ahmed, A. Ali, and Khurshid declared personal but non-prejudicial interest in respect of Item 7, (Erection of a four bedroom detached dwellinghouse Land Rear of 68-76 Wardown Crescent, Luton) in that they knew the applicant as a community leader as well as his son in the same capacity.
- (ii) Councillor Khurshid also declared personal interest but non prejudicial in that she had met the applicant a couple of years ago but had never met his son; The Planning Solicitor advised that knowing the son would not be considered as "interest" and therefore was of no relevance to the declaration. Page 6 of 216

All Members who declared personal but non prejudicial interest remained in the room and took part in the debate, discussions and decision thereof.

The Minutes also record (sic) that, "The Applicant clarified the issue expressed by some Members of the Committee earlier about declaration on interest regarding Item 7, that the religious leader was not the applicant and that he had never met any of the Councillor sitting at this hearing today."

#### **8.1.3 FINAL MINUTES OF MEETING**

The Draft Minutes of the 23<sup>rd</sup> August DMC Meeting were discussed at the 28<sup>th</sup> September DMC Meeting. The minutes of that meeting record the following under Item 69 "Minutes – Ref (2.1) – 23 August 2022:

- Minute No. 67 (ii) – that the person who made representation and spoke on the report described himself was the Proxy Applicant (Representative of the Applicant). He was not the same person whose name appeared on the application form.
- Minute No. 64 (i) Councillor R. Ahmed declared personal but non-prejudicial interest in respect of Item 7, Erection of a four bedroom detached dwellinghouse Land Rear of 68- 76) in that he knew the father of the Proxy Applicant in the capacity of a community leader and an Imam at the local mosque).

- Minute No. 64 (ii) Councillor Choudhury declared personal but non-prejudicial interest in respect of Item 7, Erection of a four bedroom detached dwellinghouse Land Rear of 68-76) in that he knew the father of the Proxy Applicant as the Imam at the local mosque.
- Minute No. 64 (ii) Councillor Khurshid said she knew the father of the Proxy Applicant as the Imam in the local mosque but had never met the person who described himself as the Proxy Applicant. She was unaware that he was the applicant and confirmed that she had no interest to declare.
- Minute No. 64 (ii) Councillor A. Ali declared personal but non prejudicial interest in that during his years as a Police Cadet, he took part in an investigation which involved the Police in regards to this plot of land in respect of Item 7, (Erection of a four bedroom detached dwellinghouse Land Rear of 68-76)
- In regards to Minute No 64 (i) regarding Item 7, Erection of a four bedroom detached dwellinghouse Land Rear of 68-76, Councillor M. Hussain asked that clarity be made in the minutes that at the meeting of 23 August, he stated that there were two people in the Council Chamber known to him (the Imam, Mr Abdul Aziz Chisti) and the second person, Proxy Applicant). He said he was not certain whether they were the Applicants or not. He was told that they were not the Applicants. Following legal advice Councillor Hussain declared personal but non prejudicial interest in that he knew the two people referred through activities in the Mosque and during funerals.

## **8.2 COMMENTS FROM SUBJECT MEMBERS' FORMAL STATEMENTS**

In an email of 31st August the Monitoring Officer asked the Subject Members to “please provide [him] in writing, with [their] response to the complaint.” He received replies from each of the Subject Members. We have set out below the comments each made about personal and prejudicial interest, predetermination and possible breaches of the Code.

### **8.2.1 CLLR RAJA AHMED – STATEMENT AND EARLIER COMMENTS**

In his reply to the Monitoring Officer Cllr Raja Ahmed said in an email dated 7th September (sic), “In response to your email dated 31st August regarding the proceedings at the development control meeting held on Tuesday 23rd August 2022, in which you mention about residents observing the meeting, have raised concerns about failure to disclose an alleged prejudicial interest and the general obligations in the Code of Conduct:

“4.1 Regarding the obligations of code of conduct: I adhere to the Nolan Principles on a daily basis and these govern all that I do. I am the chair of the audit and governance committee, a member of the Scrutiny finance review group and the chair of the scrutiny health and social Care Review group. My time at these meetings should provide you with assurance that my decisions align with these values and code of conduct. I have a strong track record of leading by example and have never brought the council or labour group into disrepute.

“4.6 & 4.7 Accusation of not declaring a prejudicial interest: As you are very well aware of our local demographics, we have a large population of Muslim community in our town. Mr Chishti is well known figure in the community as well as the council. He has been a regular attendee as an Imam at the full council meetings. This was discussed at length at the beginning of the meeting, the chair consulted the legal officer on this matter when we observed the presence of Mr Chishti

in the gallery. He replied that it is entirely up to the members to decide this would not affect their personal judgement and this should be in the minutes.

"I would like to make correction of your recorded minutes, The Clark has failed to capture my personal declaration at the beginning of the proceedings. Once the meeting started I declared my personal interests as expected of me. I stand by the declaration made at the development control meeting and that I did not have any prejudice interest in relation to the decision in question. I brought to the chairs intention that I know of Mr Chishti as the Imam of the Jamia Ghousia Mosque where I have attended on occasions religious programmes and funeral prayers, so have most of the other elected members, Council officers, police and our parliamentarians. As far the applicant and the proxy are concerned, I have never met them prior to this meeting.

"4.1 I have always strived to the best of my ability to provide leadership to the Authority and communities within its area, by personal example.

"4.6 and 4.7 These apply to emails received from "Concerned resident" and "Someone who observed the meeting". They accused me of not declaring a prejudicial interest but I did. Mr Chishti is well known member of the community, all other Muslim councillors and the vast majority of the Muslim population of Luton because he is the Imam of the Westbourne Road Mosque. He is also known by other members of the Committee including the Chair.

"The Chair asked if any member needed to declare an interest on any item on the agenda. I saw Mr Chishti in the gallery as I knew him in the capacity mentioned above ' imam of the local mosque and no further interest declaring this. This should have be noted in the minutes.

"In paragraph five Cllrs Bridgen, Franks and Campbell ask if it is reasonable to accept that the four members who voted against the refusal had 'pre-determined' the application, possibly committing a criminal offence. Again, this is a highly dangerous and totally speculative suggestion, unsupported by any evidence."

We have also seen a further statement made by Cllr Ahmed made in response to a question regarding attendance at the meeting of the DMC on 23rd August. It was prefaced by an explanatory note which read, "... following the meeting referred to above the Monitoring Officer wrote to Cllr Kashif Choudhry in his capacity as Labour Group Whip to express his concern at members of his Group leaving the meeting before all the items of business had been dealt with. In turn, Cllr Choudhry wrote to those members who had left the meeting early to request an explanation."

Cllr Ahmed's reply to Cllr Choudhry included the following (sic), "To question my morals with regards to the principles of the party are deeply upsetting. I adhere to the Nolan Principles on a daily basis and these govern all that I do. I am the chair of the audit and governance committee, a member of the Scrutiny finance review group and the chair of the scrutiny health and social Care Review group. My time at these meetings should provide you with assurance that my decisions align with these values and code of conduct. It has never been my intention to bring the council or labour group into disrepute. Once the meeting started I declared my personal interests as expected of me. I stand by the declaration made at the development control meeting and that I did not have any prejudice interest in relation to the decision in question.

I do understand why the clarification was needed, however I can assure you I uphold the principles

of the council and labour party with utmost respect and have done so for many years.”

### **8.2.2 CLLR KASHIF CHOUDHRY – STATEMENT**

In his reply to the Monitoring Officer Cllr Kashif Choudhry said in an email dated 5<sup>th</sup> September, “I would like to start by saying that there were no prejudices on my behalf and I cannot speak on any of the other Councillors .... I had no previous knowledge that the applicant was the son of Imam Chisti before the meeting, and I declared my interest once it became known to me. I further add that I normally pray at a different mosque than that led by Imam Chisti, although I have attended funerals at his mosque over several years, however I do not know Mr Chisti on a personal basis but due to my being a councillor, as his mosque falls under my ward.”

### **8.2.3 CLLR MAHMOOD HUSSAIN**

In his reply to the Monitoring Officer Cllr Mahmood Hussain said in an email dated 6<sup>th</sup> September, “This is my response to your email of 31<sup>st</sup> August concerning the meeting of DMC, at which you were present. Regarding the general obligations in the Code of Conduct:

“4.1 I have always strived to the best of my ability to provide leadership to the Authority and communities within its area, by personal example.

“4.6 and 4.7 These apply to emails received from “Concerned resident” and “Someone who observed the meeting”.

“They accused me of not declaring a prejudicial interest because I didn’t say I was a friend of Mr Abdul Aziz.

“I do not regard myself as a friend of Mr Aziz. However he is well known to me, all other Muslim councillors and the vast majority of the Muslim population of Luton because he is the Imam of the Westbourne Road Mosque. He is also known by other members of the Committee including the Chair.

“As you may recall, Chair asked if any member needed to declare an interest on any item on the agenda. I said to the Chair I need to consult the Legal Officer to say that I have noticed Imam Aziz Chishti is the gallery and his son was in the chamber and to ask if they were applicants, because I do know them both. The Legal Officer asked me if I wanted to declare personal or prejudicial interest. I replied I wanted to declare a personal interest. He replied that it is entirely up to the members to decide this would not affect their personal judgement. That should be in the minutes.

“In paragraph five Cllrs Bridgen, Franks and Campbell ask if it is reasonable to accept that the four members who voted against the refusal had ‘pre-determined’ the application, possibly committing a criminal offence. Again, this is a highly dangerous and totally speculative suggestion, unsupported by any evidence.”

### **8.2.4 CLLR SUMMARA KHURSHID**

In her reply to the Monitoring Officer Cllr Summara Khurshid said in an email dated 7<sup>th</sup> September (sic), “Before the meeting I never spoke to any of the other Councillors. I know that Mr. Qazi is the Mosque imam and other than that I have no contact with him or his family - I declared at the

meeting that there was conflict of interest what so ever as far as this planning application is concerned.”

### **8.3 INTERVIEWS**

We have set out below what the various interviewees we spoke to said about personal and prejudicial interest, predetermination and possible breaches of the Code.

#### **8.3.1 CLLR DAVID FRANKS**

We asked Cllr David Franks, one of the Complainants, whether the 13 minute period spent discussing declarations of interest at the start of the meeting was unusual. He replied, “Yes, though it’s not unique. It probably happened because some members of the DMC thought that the relationship that some Labour members of the committee had with the applicant was closer than it should be if they were to be considered independent and impartial. Indeed there was some mystery over the identity of the applicant, who was named as a Mr Hussein.

“He was represented at the meeting by someone who wasn’t Mr Hussein who claimed he was a proxy applicant. It all got very mysterious and left a lot of unanswered questions. It was unclear and vague and somewhat unsatisfactory. I have learned subsequently that the applicant is a son of Imam Chishti, though I didn’t know that at the time. I gather too that the imam was in the public gallery but I didn’t know who he was and had never met him though I could see that there were a few people in the public gallery.

“All this lends weight in my mind to the likelihood that some (not all) of the Labour members of the DMC *ought* to have declared a prejudicial interest. It seemed to me that there had been a deliberate attempt to conceal the identity of the applicant and the applicant’s relationship with the imam. I myself didn’t know any of the people involved and as far as I know I had never seen any of them before. I certainly didn’t recognise the imam.”

We next asked Cllr Franks why he thought the four Labour members of the DMC who were the subject of the complaint had a prejudicial interest. He replied, “There are several reasons. The mystery surrounding the identity of the applicant. The fact that the person representing the applicant turned out to be the applicant under another name – he said that he wanted the house for himself and his family. The relationship with the imam, which I didn’t understand.

“There was then a great deal of wriggling to persuade everyone in the room there that they had no need to declare a prejudicial interest. To spend that amount of time doing that suggests to me that they were trying to convince *themselves* that they did not have a prejudicial interest or at least convince themselves that they could *get away with* not calling it prejudicial. The body language was also shifty and underhand.”

We then read out what the Planning Solicitor said at the DMC meeting in relation to personal and prejudicial interest [See Appendix 2]. He had referred to familial and friendship relationships. If that was the definition of what a prejudicial interest was then how did what Cllr Franks had described constitute a prejudicial interest? He replied, “Steven needs to protect his own position and his job is a very difficult one. Steven always says that the decision to declare an interest is a decision that must be arrived at by the individual member. The advice he gives can only be general and non-specific in nature because he doesn’t know what relationship members have

with particular individuals unless a relationship is well understood – like a family member or a next door neighbour, say, when things would be fairly clear.

“To give an example. I lived next door to a man who was managing director of a construction company. I agreed that he would let me know when he tendered for Council business. If that ever came up in Council business I would declare an interest and leave. The key is whether someone who knew all the relevant facts might perceive the relationship to be prejudicial. If we believe that to be the case, then we would declare that interest.”

Asked by us what that interest was here, Cllr Franks replied, “In this case it is difficult to point to what that impression might be.” We restated our question and Cllr Franks replied, “You are asking me to speculate. My feeling is that by far the most likely sequence of events was that [Cllr] Hussain had been lobbied by the imam, his son or someone close to them. As a result he acted as he did. I am absolutely not, however, saying that this is the Muslim community looking after its own.”

Asked again how all this translated into prejudicial interest Cllr Franks said, “Apart from anything else it’s predetermination. They have already made their minds up as to how they will vote before arriving at the committee. On that the law is clear. You have to consider all the available evidence before voting and that includes everything that comes up at the committee. Predetermination is contrary to planning law and if it were made public it would be bound to bring the Council into disrepute. I do, though, recognise how difficult it is to prove predetermination.

“I think this is both predetermination and failure to declare a prejudicial interest. The predetermination is probably clearer, however. The way they were going to vote was clear from the beginning. But the relationship between [Cllr] Hussain and the applicant and his family is not so clear.”

### **8.3.2 CLLR LEE BRIDGEN**

When we spoke to Cllr Lee Bridgen, who was a Complainant, he told us the following. “The DMC performs a quasi-judicial function and it is a legal requirement that we go into DMC meetings with an open mind. Failure to do that can amount to predetermination, which I believe to be illegal. It is relatively difficult to prove predetermination conclusively and a “smoking-gun” statement is probably required but great care is nevertheless required.

“A prejudicial interest might mean that you enter the chamber with an open mind but are more inclined to vote in a particular way. The responsibility for declaring a personal and prejudicial interest rests with us as councillors. The Planning Solicitor can provide advice but the ultimate decision is ours. If our decision is challenged it is for us as members to defend it.

“I didn’t have any concerns about potential member behaviours *leading up to* that meeting. My concerns developed as the discussions about declarations of interest progressed .... There was a long debate at the meeting about declarations before there was any discussion on the planning application. Usually such declarations are very quick though, occasionally, a member might need advice from the Planning Solicitor, Steven Sparshott.

“In this case the Planning Solicitor spoke at some length. He talked of familial and friendship relationships. There were interjections from the Chair, the members concerned, and Cllr Campbell. He was becoming animated because he felt quite strongly that some members should

be declaring a personal and prejudicial interest. This all added up to an unusual amount of time spent discussing interests.

“If I recall correctly, Steven’s advice was that if the relationship was that of an imam and a congregant then that would be considered a personal but not a prejudicial interest. However, if it went beyond that into a social interaction, then it becomes somewhat murky. That said, I only really started to have real concerns after the event when I thought about the outcome of the meeting.

“During the debate, the Head of Planning, Sunny Sahadevan, made it very clear that if a planning application on a designated wildlife site were to be approved, it would make it very difficult, almost impossible, to enforce or restrict any future development or planning applications on similar sites which are currently protected by the Luton Local Plan. This was a very clear, unequivocal steer from Sunny. There would be significant problems arising out of a vote against refusal. I didn’t see how a member making an objective decision with an open mind and without predetermination could arrive at any conclusion other than to vote in favour of refusal.

“Taken together all this leaves me believing that those members did have a prejudicial interest that they ought to have declared. I am not accusing them of predetermination, however. That is very difficult to prove.”

We then asked what Cllr Bridgen thought the prejudicial interest was. He replied, “There was a lot of discussion about their relationships with the imam. There was also a lot of discussion about the identity of the applicant. This was made even more complicated by the fact that someone was speaking on behalf of the applicant. I myself strongly felt that, if I had been in their position, I would have declared a personal and prejudicial interest. Even if I feel that my personal interest isn’t of a prejudicial nature, I err on the side of caution. Otherwise there might be the perception that I have a prejudicial interest.

“Thus, as a Luton Town FC supporter, I am quick to declare a personal and prejudicial interest if the football club makes a planning application. I did the same when an application came in from a ... company which competes with my own. I could have judged both applications without a prejudicial interest but I felt it safest to declare a personal and prejudicial interest. The issue is the perception of bias.

“Imam Chishti was upstairs in the gallery during the meeting. Before Council meetings we have faith leaders doing prayers and it may be that he has done that. But I have certainly never before seen him at a DMC meeting. My ultimate understanding was that the imam was the applicant and that the person speaking on behalf of the applicant in the Council Chamber was his son. I felt it wasn’t entirely clear. The paperwork simply had an initial and the name Hussain.”

We then asked what the Complainants meant when they used the phrase “tribal voting”? Cllr Bridgen replied, “I meant Labour Party members voting along party lines in a quasi-judicial process, for whatever reason. In other Council meetings party members might be whipped to vote along party lines but to do that on the DMC would potentially involve predetermination.”

### **8.3.3 CLLR GILBERT CAMPBELL**

When we spoke to Cllr Gilbert Campbell, who was a Complainant, he told us the following. “We spent what seemed to be a long time at the DMC Meeting, before the business of the meeting

began, discussing whether certain members had a personal or prejudicial interest in the planning application that was being discussed. It was unusual to spend so long discussing declaration of interests.

“I felt those who voted against refusal had a prejudicial interest. They knew the father of the applicant and the applicant. The father of the applicant was upstairs in the public gallery and other members of the family may have been there too. The applicant himself did not speak. I think his brother acted as his representative during the meeting. I myself was not contacted by anyone about the planning application before the meeting but I can’t speak for others.

“The discussion about declarations of interest involved getting advice from the Planning Solicitor, Steven Sparshott, who said that the public could deem an interest prejudicial if a member of the DMC knew the applicant. But, Steven said, it was for individual members to make a judgement about whether they had a personal or prejudicial interest. He has repeatedly described this as a “grey area” in the past. But if I myself knew someone who had made a planning application I would simply sit on my hands and I would not do or say anything. I would not vote. Failure to do that could be said to be prejudicial.”

#### **8.3.4 CLLR DAVE TAYLOR**

When we spoke to Cllr Dave Taylor, the Chair of the DMC, he told us the following. “The application came to DMC on 23<sup>rd</sup> August. Mr Chishti was present with the applicant’s consultant. I was very surprised that Mr Chishti came along because it wasn’t his application, though he may have had something to do with it. He wasn’t in the gallery but at the back of the room itself. I don’t have a problem with that because numbers were low. It was his son’s application. I thought “this isn’t going to be easy”. We all know Chishti. He has been the imam of the central mosque for many, many years. When I was mayor in 2015 I went to Islamic cultural events there and met him. I don’t call him a friend, however.

“Cllr Campbell, who also knew who Chishti was, was vociferous and said the Muslim councillors should declare a personal and prejudicial interest. I think Chishti’s presence wound him up. There were some arguments about this. Steven Sparshott, the Planning Solicitor, said that if you were a personal friend and you went to dinner with an applicant, say, then that would be a personal and prejudicial interest. But simply knowing someone is not a reason to declare an interest. His judgement was that it was a personal interest, but not a prejudicial interest. But Cllr Campbell was still making some comments about the situation. It was a “conspiracy”, a “Muslim plot”. I stopped him and said that if he had a complaint there were other ways of pursuing that complaint, not in the Council chamber. But Cllr Campbell was touchy all night and was trying to wind them up.”

“I ... recall the Planning Solicitor explaining what a personal and prejudicial interest was. When I saw Chishti come into the meeting and heard the arguments about personal and prejudicial interests I felt the need to ask whether anyone had been lobbied because I suspected it had been going on. But no-one responded.”

Asked whether it was normal to spend 13 minutes discussing declarations of interest, Cllr Taylor said, “No. My view is if you aren’t sure you should make it known rather than suffer the consequences if you don’t. Normally there isn’t a problem. It is up to individuals, having listened



to the Planning Solicitor, to make up their own minds what interest they have, if any. It was not for Cllr Campbell or me to point it out, though I can ask.

“I myself didn’t think that members had a prejudicial interest. If you go to the mosque on a Friday and hear Chishti preaching then you are one of many who knows who he is. All members knew Chishti. But a prejudicial interest only applies if you are close to a person - a personal friend - or are a blood relative. That said, I think that Chishti’s mere presence will have influenced some of the Muslim members. Only one of the four [Subject Members], Cllr Hussain, could be described as an experienced councillor and committee member. He has served on the planning committees for probably as long as I have. The others had only been on DMC for a few months.”

We asked Cllr Taylor whether, in his opinion, the Complaint had any merit. He replied, “My personal view before the meeting was that there had been some lobbying from the Muslim community to try to influence Muslim members of the DMC, though not necessarily from Chishti, who may not have been involved at all. But, if they did a favour for Chishti, they would rise up in the community. I can only speculate as to who was involved and I cannot prove anything. I myself was not lobbied though I understand that a couple of the officers *were* lobbied. It is clearly wrong to go into a meeting predetermined as to the outcome and I think it is wrong to put pressure on members to get a particular decision.

“It is difficult to say whether members of the committee had personal and prejudicial interests because Chishti is so well known in the community. Everyone knows him and respects him. I have met him on many occasions. But he is not a friend. I was chatting to him in the town hall when the King visited Luton recently. I think it’s likely that they had a personal interest but I don’t know if it was prejudicial.”

### **8.3.5 CLLR AMJID ALI**

When we spoke to Cllr Amjid Ali, a member of the DMC (but not a Subject Member), he told us the following. “[T]his meeting had a very uneasy atmosphere to it. Bizarre even. I had never before seen the Labour councillors apparently so confused about where they stood and whether they should have been declaring interests. It may have been that something was going on in the background but I cannot say what that was. They spent far longer than I had ever seen before considering what interests to declare.

“It seemed that it was only at the meeting that they joined the dots. Imam Qazi was there and his son was the applicant. I don’t think they knew that before the meeting and it seemed to throw them into some confusion. It was as if Imam Qazi’s name was thrown into the discussion about personal and prejudicial interests when there was no need to do it. He was not the applicant. I don’t think the applicant was there, his brother represented him and spoke in favour of the application. There was an air of uneasiness which seemed to arise when they found out that the applicant and his brother were Imam Qazi’s sons.

“I myself didn’t know before the meeting that Imam Qazi would be there or that one of his sons was the applicant. I don’t know all of his sons. I know *of* one or two of them but that’s as far as it goes. It was only when I saw Imam Qazi was there that I joined the dots myself.

“I myself tend not to associate with the mosques. I don’t go to one particular mosque regularly and I am not a member of a particular mosque. I try to stay neutral. I try not to be aligned to one

particular religious establishment. I try to give time to everyone. But because my fellow councillors had declared an interest I knew Imam Qazi as well and I felt I then had to declare an interest to avoid the accusation that I hadn't declared an interest when I ought to have done so.

"To speak broadly, if you gave me the name of a mosque I would know the imam of that mosque. As councillors you liaise with them. Soon after I became a councillor I tried to persuade the Luton mosques to standardise over when they would celebrate Eid because different mosques may celebrate it on different dates. That was how I got to know many of the imams."

### **8.3.6 STEVEN SPARSHOTT**

We spoke to Steven Sparshott who, as Senior Solicitor (Planning), had played a leading role during the discussion that took place about personal and prejudicial interest, as can be seen from Appendix 2.

We asked him whether it was unusual that the discussion about declaration of interests had lasted 13 minutes, he replied, "Yes, that was unusual. In order to define a prejudicial interest I think about someone looking in from the outside and I deploy what I call "the SOAP test". As a councillor you have to be able to make a **S**elfless, **O**bjective, **A**ccountable decision, in the **P**ublic interest. Would someone furnished with all the facts think that your ability to make a SOAP decision is impaired?

"It is entirely up to members to make a decision *on that objective test* and *not subjectively* based upon what they themselves think. It is irrelevant if you think you can make a decision about your best friend's planning application, it is what *the objective lay person* looking in thinks. That would clearly be prejudicial interest, no matter what you yourself might think about your ability to make a fair and balanced decision.

"But beyond that, in any situation the specific circumstances must come into play and there can be grey areas. My wife is a catechist and has regular dealings with the priest at her church. If it were his planning application then it appears to me that her relationship with him would make her interest personal and prejudicial. However, if she simply attended Mass at the church then I do not see that relationship as prejudicial but possibly but not necessarily, personal only.

"Now, as far as seeing the imam once a week at Friday prayers is concerned then that probably does not constitute a prejudicial interest but having more dealings with him might be prejudicial. In this case, of course, we were not talking about *the imam's* planning application but *his son's* planning application and members were thus one step removed from the imam. Would a lay person think that you would favour his son's planning application even if you were very good friends with the imam? Probably not; the issue is how well the member knows *the imam's son*.

"Even if a councillor sat next to the imam's son at Friday prayers once a week that would not necessarily make the interest prejudicial or indeed personal in the first instance. I myself regularly sit with councillors but that does not mean that I have a prejudicial interest. That relationship may not even be personal. Sitting next to them does not make them "close associates" or "friends". The bar to a prejudicial interest is a high one and the relationship has to be significant in order to make an interest prejudicial.

"It would have been preferable if the members had spoken to me in advance so that we could have had a frank and detailed conversation about their particular circumstances and I could give

advice. That is possible in committee but a phone call or face to face discussion in a more relaxed setting would have been better but is not a requirement.

“In the end, though, members should know how well they know someone and whether someone looking in would consider the interest prejudicial. It is not for me to decide.

“From the evidence available to me so far, their relationships with the applicant do not appear to have been prejudicial. I don’t know either that there has been any hint of predetermination – emails declaring an intention to vote against refusal, for example. I cannot see a breach of the Code of Conduct here.

“That said, Cllr Mahmood Hussain has been on planning committee for a number of years. I am pretty sure that, during the debate, he said something along the lines of “I don’t see a problem with this application providing we can put planning conditions on it.” [MK see transcript p.24]. That sounded to me most peculiar, bearing in mind all the reasons it should be refused unless he gave good reasons for saying that. But that does not point to a prejudicial interest or predetermination (which occurs before a meeting). It is circumstantial.

“As far as I can see there is no evidence to point directly to a prejudicial interest or to predetermination. Everything is circumstantial.”

### **8.3.7 NICOLA MONK**

We spoke to Nicola Monk, the then Corporate Director Inclusive Economy (whose remit included Planning) who attended the DMC meeting. She told us, “Steven Sparshott was very clear at the outset of the meeting about what personal and prejudicial relationships were. This was because the imam came to the meeting and sat in the public gallery opposite the members. That was unusual in itself. If I put in a planning application I would not expect my father to attend the committee no matter how influential he was.

“It was unusual that members spent so long discussing personal and prejudicial interests. It was a question with either a “yes” or a “no” answer. The imam is a very influential figure. They had to acknowledge that they had a relationship with him because most of them do. If you look at their social media feeds you will see photographs of him with them and many of them are Facebook friends with him.

“They had to justify to the DMC what their relationship to him was and I think they stumbled over that. They didn’t have a relationship with the applicant but they had a relationship with his father, who happened to be in the chamber. Whether that relationship is because he is their religious leader or there is a friendship I do not know, and they may well differ individually, but they did have to acknowledge that they had a relationship with him because it was looking very obvious.

“I can’t speculate on whether there was a prejudicial interest. It was for members to decide. But from an outsider’s perspective it was most unusual to spend 13 minutes discussing whether they had a prejudicial interest or not. Clearly they didn’t find it a simple decision because they wouldn’t have had to examine it in such detail if it were simple. It looked odd to me.”

### **8.3.8 SUNNY SAHADEVAN**

We spoke to Sunny Sahadevan, Head of Planning, who told us, “We are guided at DMC by the legal knowledge and advice of the Planning Solicitor, Steven Sparshott. I myself would say that it

is better for Members to err on the side of caution in declaring interests if they aren't sure. They have to think about the impression that an informed member of the public looking in might form. Some Members do exactly that.

"I was surprised in the circumstances that some of the Members of the DMC didn't exercise such caution in this case. I would say that if you know the applicant or someone who might be affected by the proposal and that might colour your view of the application then I would regard that as prejudicial. You have to disassociate yourself from everything else other than the planning issues.

### **8.3.9 SUE FROST**

We spoke to Sue Frost, Director for Sustainable Development, to whom the Head of Planning reports. She told us, "At the start of every meeting the Chair asks if there are any personal and prejudicial interests. I think he emphasised that at the meeting on 23<sup>rd</sup> August. The Planning Solicitor was also present and may have reminded members on the matter of personal and prejudicial interests .... It is for members to decide whether they have such interests."

We asked Sue Frost whether she had any particular thoughts about the discussion that went on about personal and prejudicial interests whilst she was at the meeting. She replied, "It felt more like an interrogation. Much more attention was paid to this than would normally have been paid. I think the members who were the subject of the Complaint were following the lead of a senior member, Cllr Mahmood Hussain. I recall that he seemed to be setting the wording out and that the others followed and repeated what he said.

"The members made it obvious that they knew that the applicant was the son of the imam. The imam was sitting up in the gallery and I was told after the meeting that he was looking directly down at the members who were on the opposite side of the chamber to me. The imam was directly above me so I couldn't see him. Some of the members said that they didn't know the imam but I have been told that they would all have known him because he is the leader of the Muslim community in Luton .... But I do understand that it is very difficult to prove a prejudicial interest."

### **8.3.10 CLLR RAJA AHMED**

When we spoke to Cllr Raja Ahmed, one of the Subject Members, we asked him how he knew Imam Chishti and whether he knew the applicant, who was a son of Imam Chisti. He replied, "When I went to the meeting I saw Imam Chishti in the public gallery. Abdul Aziz Chishti is his full name. You will hear him called Qazi too, which means a religious person, a community leader. Imam and Qazi mean similar things. You will hear him called Chishti and Qazi as well. One of the councillors who spoke before me mentioned Imam Chisti and his son, who was the applicant. I didn't know that Imam Chishti was going to be there until I saw him in the gallery.

"When it came to my turn to declare an interest I said that I knew Imam Qazi Chishti because he is the Imam of one of the Luton mosques, a preacher and a community leader. I have a local mosque but there are maybe 17 or 18 mosques in Luton and I know the Imams of seven or eight of those mosques because I visit many of them. If I know the family of a person who has died I will go to whichever mosque the funeral is taking place at. I have sometimes been to Imam Chishti's mosque for funerals and sometimes for Jummah prayers on Friday (I myself do not pray five times a day like some Muslims, I just do Jummah). So I declared a personal interest.

“As far as his son, the applicant was concerned, I did not know him. I had never met him. But I declared a personal interest about him too. I did not know he was the applicant before the meeting. That came out during the meeting and it came out that that was why Imam Chishti was present. The applicant himself didn’t speak in the meeting. He was represented by his brother, who said that his brother (the applicant) wasn’t feeling well. I didn’t know the applicant’s brother either. I don’t know their names. We spent a lot of time talking about declarations of interest.”

### **8.3.11 CLLR KASHIF CHOUDHRY**

As previously noted, Cllr Kashif Choudhry declined to speak to us before he ceased to be a member. However, he did reply to us by email in answer to the question “You said you had no interest as far as Imam Chishti's son (the applicant) is concerned. At the time of the meeting did you know Imam Chishti's son at all? If so in what way? Cllr Choudhry said, “I had no personal relations with Imam Chishti’s son, other than that he may follow me on social media. Despite this, I had not met him nor interacted with him prior.”

### **8.3.12 CLLR MAHMOOD HUSSAIN**

When we spoke to Cllr Mahmood Hussain, one of the Subject Members, he told us “I understand the importance of declaration of interests and the need not to be predetermined .... I asked for clarification about declaration of interests before we started discussing the planning application. I wanted to make sure I was getting it right. I also remember Cllr Campbell saying that Muslims always vote for Muslim planning applications, which I resent to this day. I drew it to the attention of the Chair. I said I resented that disgraceful comment and that he should be asked to withdraw it. I have never ever been accused of that in all my years on the Council.

“Until we went into the Council chamber for that meeting none of us (though I can only speak for myself) knew who the applicant was. I did not know that Imam Qazi would be there in the gallery. I was surprised to see him sitting there. I didn’t know his son was the applicant. We needed to be clear about who the applicant was because we needed to declare interests. I asked if Imam Qazi was the applicant and was told his son was the applicant.

“I know Imam Qazi. He is very well known in the community and is a community leader. He was recently honoured by King Charles. The Chair knows him and so too do the Complainants. I had dealings with him when I was Mayor. He sometimes used to do the prayers at the start of Council meetings. He has attended many functions at the Town Hall. He risked his own life performing funerals during COVID.

“I know his son because he has also done the prayers at the Council and is sometimes present at funerals I attend. He was present for Remembrance Day, for example. Like his father, he is an imam. But I don’t have a personal relationship with him as a friend.

“I know Imam Qazi in the way that I know the parish priest at St Margaret’s Church in Farley Hill, which is in the ward I represent. I go there socially and for funerals. I know the parish priests at the Anglican churches too. I myself am prominent in the community and in the Council. There aren’t many churches in Luton that I haven’t visited and there aren’t many mosques where I haven’t attended funerals [MK: “Islamic funerals are extremely spiritual events and central to Muslim communities. In addition to offering comfort to the grieving, a Muslim funeral service provides an opportunity to pray to Allah to have mercy on the deceased].

“There was only one son of Imam Qazi present at the meeting. We found out at the meeting that he was acting as proxy for his brother, who was the applicant, because his brother wasn’t feeling very well. The applicant himself was definitely not there.”

### **8.3.13 CLLR SUMMARA KHURSHID**

When we spoke to Cllr Summara Khurshid, one of the Subject Members, she said, “After the meeting started it was suggested by someone that some members needed to declare prejudicial and personal interests and there were some heated arguments. The Chair seemed a bit confused. I did think it was a bit strange that some of the more senior councillors spent so much time talking about interests. All this alarmed me. Imam Chishti was present at the meeting and I didn’t know why he was there. He is a community leader and is known to every member of the DMC. Three other councillors - Choudhry, Hussain, Ahmed – said that they did not have a prejudicial interest but declared a personal interest because they know the imam in a personal capacity.

“So I did the same even though he wasn’t the applicant because I wanted it to be clear that I knew him. But I don’t know his son, who was the applicant. I didn’t have a prejudicial interest. I know Imam Chishti because he is the imam of the Westbourne Mosque. He is very well known in the Muslim community. I recently attended the funeral of the imam’s wife in a councillor capacity. No-one, even older children, can say they don’t know who he is. He is involved with funerals and traditional marriage ceremonies. I don’t know why there was so much focus on the imam, though, because he wasn’t the applicant. It soon became clear that the applicant was his son.”

We said that the transcript of the meeting indicated that Cllr Khurshid had declared in the meeting that she had met the applicant Hussain once or twice in the past but didn’t know that he was the applicant. She replied, “I met the applicant a few years ago but I don’t “know” him and I don’t know anything about him. At the time I met him I didn’t know he was the imam’s son. I don’t even know his name so perhaps his name was on the meeting papers and maybe that’s where I got “Hussain” from. I read the papers before the meeting but I didn’t know that the applicant was Imam Chishti’s son.”

## **9. EVALUATION AND CONCLUSIONS**

### **9.1 WERE THE SUBJECT MEMBERS IN CAPACITY?**

The alleged breaches of the Code took place at the Development Management Committee on 23rd August 2022. The four Subject Members were serving councillors at the time. They were attending the DMC as committee members and were conducting the business of Luton Borough Council in a public forum that was captured “live” on the Council’s YouTube channel. We understand that all the Subject Members had formally accepted the Luton Borough Council Code of Conduct.

**On the basis of the evidence available to us and the balance of probability we conclude that Cllrs Raja Ahmed, Kashif Choudhry, Mahmood Hussain, and Summara Khurshid were acting in their individual capacity as Luton Borough Councillors when attending the Development Management Committee on 23<sup>rd</sup> August 2022. The Code is therefore engaged.**

### **9.2 PERSONAL INTEREST, PREJUDICIAL INTEREST AND PREDETERMINATION**

#### **9.2.1 LGA GUIDANCE ON THE MODEL CODE**

Before reviewing and analysing the evidence available to us, we first discuss personal and prejudicial interest and bias and predetermination. In doing this we make very extensive use of the LGA Guidance on the LGA Model Code (“the Guidance”) which has been adopted by a number of Authorities.

Luton Borough Council has not, as yet, adopted the LGA Model Code in full, though we understand that the matter has been discussed in the Standards Committee. However, that part of the Model Code which deals with the registration and disclosure of interests has been incorporated into the Code whilst the rest of the Code remains as it was. To that extent the Guidance is of considerable value to the Investigation.

We also refer to the LGA Planning Advisory Service’s “Probity in planning” document.

##### **9.2.1.1 DECLARATIONS OF INTEREST**

The Guidance talks about three different categories of interests: (i) Disclosable Pecuniary Interests (DPI); (ii) Other Registerable Interests (ORI); and (iii) Non-Registerable Interests (NRI). The first two of these must generally be recorded on a public register whilst the third “*do not need to be recorded on the register but will need to be declared as and when they arise*”. It is with this third category that we are concerned here. Talking about Non-Registerable Interests the Guidance says:

*“A Non-registerable Interest arises where the interest is that of yourself or your partner which is not a DPI or of a relative or close associate (see definition below).*

*As a councillor you are not expected to have to register the interests of your relatives or close associates but under the Code you are expected to declare them as and when relevant business occurs which affects their finances or wellbeing. The Code says you should not participate in the relevant business in two circumstances:*

*a. when a matter directly relates to that interest. Or*

*b. when a matter affects that interest to a greater extent than it affects the majority of inhabitants and*

*a reasonable member of the public would thereby believe that your view of the public interest would be affected.*

*For example, under a) if your son has submitted an application for a licence to open a bar, the matter directly relates to your relative. You must not take part in any discussion or vote on the matter.*

*For example, under b) there has been an application made to build several units of housing on a field adjacent to your business partner's home. It is not their application, but they will be more affected by the application than the majority of people so again you would be expected to declare the interest and withdraw.*

*Similarly, an application for the property next door to you does not directly relate to your property so it is not a DPI, but you would instead need to declare a Non-Registerable Interest.*

*In all of these cases you can speak on the matter before withdrawing but only where the public are also allowed to address the meeting. If the public are not allowed to address the meeting on that item, you would need if necessary, to get another councillor who did not have an NRI to make any relevant case or to represent the wider views of constituents.*

#### ***What is the difference between 'relates to' and 'affects'?***

Something relates to your interest if it is directly about it. For example, the matter being discussed is an application about a particular property in which you or somebody associated with you or an outside body you have registered has a financial interest.

'Affects' means the matter is not directly about that interest but nevertheless the matter has clear implications for the interest – for example, it is a planning application for a neighbouring property which will result in it overshadowing your property. An interest can of course affect you, your family or close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, an interest would need to be declared in both situations.

#### ***What does "affecting well-being" mean?***

*The term 'well-being' can be described as a condition of contentedness and happiness. Anything that could affect your quality of life or that of someone you are closely associated with, either positively or negatively, is likely to affect your well-being. There may, for example, be circumstances where any financial impact of a decision may be minimal but nevertheless the disruption it may cause to you or those close to you could be significant. This could be on either a temporary or permanent basis. Temporary roadworks in your street may affect your wellbeing on a temporary basis. Closure of a local amenity may have a more permanent impact on your wellbeing if you use it more than the majority of people in the area.*

#### ***What are the definitions of relative or close associate?***

*The Code does not attempt to define "relative" or "close associate", as all families vary. Some people may have very close extended families, but others will have more distant relations. You*



*should consider the nature of your relationship with the person (eg 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 your responsibilities as a councillor. It would be a person with whom you are in either 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. A close associate may also be somebody to whom you are known to show animosity as you might equally be viewed as willing to treat them differently."*

#### **9.2.1.2 BIAS AND PREDETERMINATION**

The Guidance also talks about Bias and Predetermination. Some of what it says is reproduced below.

*"Bias and predetermination are not explicitly mentioned in the [Model] Code of Conduct [and nor are they mentioned in the Luton Borough Council Code of Conduct].*

*There is however a separate concept in law dealing with bias and predetermination which exists to ensure that decisions are taken solely in the public interest rather than to further private interests.*

*Both the courts and legislation recognise that elected councillors are entitled, and indeed expected, to have and to have expressed their views on a subject to be decided upon by the local authority. In law, there is no pretence that such democratically accountable decision-makers are intended to be independent and impartial as if they were judges or quasi-judges.*

*Nonetheless, decisions of public authorities do involve consideration of circumstances where a decision-maker must not act in a way that goes to the appearance of having a closed mind and pre-determining a decision before they have all of the evidence before them and where they have to act fairly. Breaches of the rules of natural justice in these circumstances have and do continue to result in decisions of local authorities being successfully challenged in the courts. These issues are complex, and advice should be sought and given in the various situations that come up, which is why there are no direct paragraphs of the code covering this, although it does overlap with the rules on declarations of interest.*

*While declaring interests will to some extent deal with issues of bias, there will still be areas where a formal declaration is not required under the Code of Conduct, but councillors need to be clear that they are not biased or predetermined going into the decision-making process. Otherwise the decision is at risk of being challenged on appeal or in the Courts. To quote a leading judgment in this field "All councillors elected to serve on local councils have to be scrupulous in their duties, search their consciences and consider carefully the propriety of attending meetings and taking part in decisions which may give rise to an appearance of bias even though their actions are above reproach."*

*The rules against bias say that there are three distinct elements.*

*The first seeks accuracy in public decision-making.*

*The second seeks the absence of prejudice or partiality on the part of you as the decision-maker. An accurate decision is more likely to be achieved by a decision-maker who is in fact impartial or disinterested in the outcome of the decision and who puts aside any personal strong feelings they may have had in advance of making the decision.*

*The third requirement is for public confidence in the decision-making process. Even though the decision-maker may in fact be scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision-making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact, in order to ensure that justice should not only be done but should manifestly and undoubtedly be seen to be done.*

*To varying degrees, these “requirements” might be seen to provide the rationales behind what are generally taken to be three separate rules against bias: “automatic” (or “presumed”) bias, “actual” bias, and “apparent” bias.*

*[1] Kelton v Wiltshire Council [2015] EWHC 2853 (Admin)*

*The rationale behind “automatic” or “presumed” bias appears to be that in certain situations (such as if you have a pecuniary or proprietary interest in the outcome of the proceedings) then it must be presumed that you are incapable of impartiality. Since a motive for bias is thought to be so obvious in such cases, the decisions are not allowed to stand even though no investigation is made into whether the decision-maker was biased in fact. In these circumstances you should not participate in the discussion or vote on the issue. These are covered by the code’s requirement to declare certain interests and withdraw from participation.*

*A single councillor who is guilty of bias is enough to strike out the whole decision when challenged before the courts. This can cause huge cost and reputational damage for the local authority yet is seldom due to actual corruption or even consciously favouring a personal interest over the public interest on the part of the councillor involved and may have no repercussions for them personally.*

### **Predetermination**

*The Localism Act 2011 has enshrined the rules relating to pre-disposition and predetermination into statute. In essence you are not taken to have had, or appeared to have had, a closed mind when making a decision just because you have previously done anything that directly or indirectly indicated what view you may take in relation to a matter and that matter was relevant to the decision.*

*Predetermination at a meeting can be manifested in a number of ways. It is not just about what you might say, for example, but it may be shown by body language, tone of voice or overly-hostile lines of questioning for example.*

*You are therefore entitled to have a predisposition one way or another as long as you have not pre-determined the outcome. You are able to express an opinion providing that you come to the relevant meeting with an open mind and demonstrate that to the meeting by your behaviour, able to take account of all of the evidence and make your decision on the day.*

### **How can bias or predetermination arise?**

*The following are some of the potential situations in which predetermination or bias could arise.*

### **Connection with someone affected by a decision**

*This sort of bias particularly concerns administrative decision-making, where the authority must take a decision which involves balancing the interests of people with opposing views. It is based on the belief that the decision-making body cannot make an unbiased decision, or a decision which objectively looks impartial, if a councillor serving on it is closely connected with one of the parties involved.*

### **Improper involvement of someone with an interest in the outcome**

*This sort of bias involves someone who has, or appears to have, inappropriate influence in the decision being made by someone else. It is inappropriate because they have a vested interest in the decision.*

### **Prior involvement**

*This sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with. This may be a problem if the second decision is a formal appeal from the first decision, so that someone is hearing an appeal from their own decision. However, if it is just a case of the person in question being required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.*

### **Commenting before a decision is made**

*Once a lobby group or advisory body has commented on a matter or application, it is likely that a councillor involved with that body will still be able to take part in making a decision about it. But this is as long as they do not give the appearance of being bound only by the views of that body. If the councillor makes comments which make it clear that they have already made up their mind, they may not take part in the decision.*

*If the councillor is merely seeking to lobby a public meeting at which the decision is taking place but will not themselves be involved in making the decision, then they are not prevented by the principles of predetermination or bias from doing so. Unlike private lobbying, there is no particular reason why the fact that councillors can address a public meeting in the same way as the public should lead to successful legal challenges.*

### **What do I do if I need advice?**

*If you are unsure as to whether your views or any action you have previously taken may amount to predetermination you should always seek advice from the monitoring officer (or the clerk if you are a parish councillor).*

***The Golden Rule is be safe – seek advice if in doubt before you act.***

## **9.2.2 LGA PROBITY IN PLANNING**

The LGA's Planning Advisory Service produced a document "Probity in Planning" which contains a section of "predisposition, pretermination and bias" of which it says:

### ***"Predetermination***

*Members of a planning committee, local plan steering group or full council (when the local plan is being considered) need to avoid any appearance of bias or having ‘predetermined’ views when making a decision on a planning application or policy.*

*Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is indicative of a ‘closed mind’ approach and may leave the grant of planning permission vulnerable to challenge by Judicial Review.*

### **Predisposition**

*Predisposition is where a councillor may have a pre-existing opinion or attitude about the matter under discussion, but remains open to listening to all the arguments and changing their mind in light of the information presented at the meeting. Section 25 of the Localism Act 2011 (as amended) clarifies that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicates what view they might take in relation to any particular matter.*

*A councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the councillor was biased. For example, a councillor who says or ‘tweets’ from their Twitter account: ‘Wind farms are blots on the landscape and I will oppose each and every wind farm application that comes before the committee’ will be perceived very differently from a councillor who states: ‘Many people find wind farms ugly and noisy and I will need a lot of persuading that any more wind farms should be allowed in our area’.*

### **Impartiality and avoiding bias**

*Planning issues must be assessed fairly and on their planning merits, even when there is a predisposition in favour of one side of the argument or the other. Avoiding predetermination and the impression of it is essential. The decision making process must be seen to be fair and impartial from the perspective of an external observer.*

*If a decision maker has predetermined their position, they should withdraw from being a member of the decision making body for that matter. This applies to any member of the planning committee who wants to speak for or against a proposal as a campaigner (for example on a proposal within their ward).”*

## **9.3 EVALUATION OF EVIDENCE**

With the above as background we carefully considered the allegations made in the Complaint. We watched the YouTube broadcast of the meeting of the Development Management Committee on 23<sup>rd</sup> August 2022 and analysed the transcript of the same meeting many times. **We now make the following observations based on that and other evidence available to us (in particular the testimony of officers and councillors) and on the balance of probability.**

### **9.3.1 EARLIER DECISIONS OF THE DEVELOPMENT MANAGEMENT COMMITTEE**

The (occasionally guarded) testimony of senior officers who represented the Planning function of the Council led us to conclude that their concerns over certain dubious behaviours, questionable voting patterns, and a lack of probity in decision-making at the Development Management Committee in the recent past had very considerable merit.

Two planning applications, which were approved by the DMC on 23<sup>rd</sup> February and 29<sup>th</sup> June 2022, were presented to us as specific evidence of questionable decision-making in the face of reasoned recommendations for refusal by the Council's planning officers. Cllr Lee Bridgen's clear understanding of the need for propriety in decision-making at planning committees and his own risk averse approach to it gave further weight to the significance of the two examples. However, extending the Investigation into a detailed examination of those specific instances, and possibly others, was outside the scope of our work.

Email evidence from 30<sup>th</sup> June 2022 appeared to confirm beyond doubt that Cllr Rob Roche, the Portfolio Holder for Inclusive Economy, and Cllr Dave Taylor, the Chair of the DMC, had shared concerns about the behaviour of certain Labour group members "who seemed to treat DM committee as some [sort] of free for all" with one senior member, Cllr Mahmood Hussain, apparently "orchestrating the debate", they said. The Chair said that officer recommendations for refusal were met with an attitude from "certain members [that] we don't care, we will approve them". We took that to be a particular reference to the Granville Road decision the night before. Cllr Roche also said that a previous Deputy Leader also had concerns about DMC conduct in the past.

We wondered why, if Cllr Anne Donelon had concerns about the operation of the Development Management Committee, she had waited until she had resigned from the Labour Group before raising them. This suggested to us that there was very likely to have been a political dimension to her resignation letter of March 18<sup>th</sup> 2023.

At the same time, however, we did not completely discount Cllr Donelon's reference to a "cavalier attitude" to following rules and procedures on the planning committee and her allegations of predetermination by a senior member of the DMC.

We disregarded Cllr Hussain's dismissal of the Complaint as simply a product of political points scoring, not least because of the concerns expressed by the Portfolio Holder and the Chair of the DMC, both of whom were, like Cllr Hussain, members of the Labour group.

We attached particular significance to Samantha McKeeman's letter to a resident which appeared to be saying that an analysis of planning applications over a period of three years (presumably between mid-2020 and mid-2023) had shown that there had been very few decisions made that were not in accordance with the recommendations of officers.

**We therefore conclude that there were questionable behaviours and a lack of probity in the making of certain decisions at meetings of the Development Management Committee in the recent past. We see that as a reasonable lens through which to view events leading up to, and proceedings at, the 23<sup>rd</sup> August DMC meeting.**

**We do not, however, conclude that there was a pattern of questionable behaviour at the DMC in the more distant past though we cannot rule out the possibility that there were isolated examples of such behaviour. Instead, it appears to us that questionable behaviour started to manifest itself with the arrival of less experienced and, arguably, more impressionable members on the DMC.**

### 9.3.2 EVENTS IN THE RUN-UP TO THE 23<sup>rd</sup> AUGUST DMC MEETING

It appeared to us that senior officers had serious and growing concerns about the direction of travel of the Wardown Crescent planning application for at least a month before it was eventually considered by the DMC. Their concerns were magnified by decisions taken in the face of planning officers' advice at previous DMC meetings, both recent and less recent, and by the involvement of highly influential and much-respected Imam Chishti and his son in the Wardown Crescent planning application.

The Chief Executive's attention had been drawn to what was happening with the Wardown Crescent application by senior officers. His email to senior officers of 26<sup>th</sup> July 2022 referred to members' "obligations around lobbying and predetermination and the necessity to only make decisions on Planning Grounds".

We know from email evidence we have seen that the Chief Executive was already aware when he sent that email about questionable behaviours and decisions at recent meetings of the DMC. He was therefore understandably very keen to do what he could to ensure that the Wardown Crescent application was dealt with transparently, openly and in accordance with planning regulations and law, no matter (and perhaps especially because of) who the applicant was.

Some officers suggested to us that "pressure" was being brought to bear on them and fellow officers in the Planning function of the Council to look favourably on the planning application and to influence its outcome. There was some disagreement about the nature and appropriateness of that "pressure" and some officers chose their words carefully and even reworked their words when describing that pressure in their written statements to us.

Several officers referred to the actions of [REDACTED], [REDACTED], when discussing "pressure" with us. As a consequence of [REDACTED] actions the Chief Executive felt it necessary to speak to him about the need to "tread carefully". [REDACTED] told us that he heeded that advice and stepped away from the planning application (and communicated that to Imam Chishti and his son) but that, in any event, his interest had only ever extended to asking questions of officers. This strongly suggests to us that [REDACTED] may have been lobbied about the planning application. He is not, of course, one of the Subject Members and was not a member of the DMC.

Notwithstanding what several interviewees told us, it appears from the evidence available to us that, whilst he had involved himself in the planning application, [REDACTED] did not call it in. Rather it seems to have been considered by the DMC as required by the Constitution because of the number and nature of comments made by residents. It may be that the extent of [REDACTED] interest and involvement in the application led some officers to conclude that he had called it in. However, whilst there appears to us to be some confusion over this, we were told explicitly by [REDACTED] — and others that he did not call in the planning application.

We were also told that Imam Chishti and his son were "having conversations" with members and that they had attempted – unsuccessfully – to speak to the Chief Executive about the planning application. Cllr Raja Ahmed, a member of the DMC and a Subject Member, also briefly met the Chief Executive and asked him – most unusually in the Chief Executive's eyes – for his opinion on the planning application. The Chief Executive reminded the somewhat inexperienced councillor of the quasi-legal nature of the DMC, of which he was a member. Cllr Dave Taylor also said that he suspected that councillors were being lobbied.

## FINAL INVESTIGATION

By contrast, all the Subject Members insisted, in their various ways, that they had not been put under pressure or lobbied as far as the planning application was concerned.

**We therefore conclude that pressure was brought to bear on officers to look favourably on the Wardown Crescent planning application. We also conclude that the interest shown by some councillors in the planning application went beyond what was normal and that that interest probably stepped over the boundaries of propriety.**

**Notwithstanding Subject Members' insistence that they were not lobbied, given that the efforts of Imam Chishti and his son had gone as far as an attempt to set up a meeting with the Chief Executive to discuss the application whilst Cllr Raja Ahmed had actually spoken to him about it, we conclude that it was very unlikely that Subject Members and others were not lobbied, whether directly or indirectly, with a view to assuring a favourable outcome for the planning application when it was considered by the DMC. We see all this too as a reasonable lens through which to view proceedings at the 23<sup>rd</sup> August DMC meeting.**

### **9.3.3 PROCEEDINGS AND THE VOTE**

The Chief Executive, Robin Porter, told us that “[t]he DMC must absolutely have the freedom to go against an officer recommendation but only when there are coherent planning grounds to do so.”

In this case we were left in little doubt that a vote in favour of the planning application would have been very seriously damaging to the Luton Local Plan and that there were no coherent planning grounds to allow it to go forward. It appeared to us that the decision to be made by the DMC was not in any sense a marginal decision, which would be the normal grounds for justifying a vote against a planning officer recommendation.

In general the quality of some of the questions asked by Subject Members during the meeting appeared to us to be poor. Rather than focus on and incisively test the four reasons for refusal given by Gemma Clarke, as they ought to have done, Subject Members instead asked questions about matters that were largely unrelated to her reasons for refusal. Their questions appeared to arise out of and be led by the proxy applicant's narrative.

When we asked the Subject Members how they would justify their vote to approve the planning application we were unconvinced by the replies. Subject Members pointed to some of the same questions that had been asked during the meeting with, for example, the earlier development at Woodbury Hill Path being put forward several times as justification for approval, even though the DMC had been told it was irrelevant to the application.

The impact upon the Luton Local Plan barely featured in the explanations given to us, yet it was critical to the future of development across the whole Borough and was, arguably, the strongest reason for refusal. Other reasons given by Subject Members appeared to us to have no basis in fact. It is simply untrue to say, for example, that “the highway and emergency services report was in favour of the applicant”.

We turn now to the allegations of predetermination (see Section 9.2.1.2 above) that were made in the Complaint. We conclude that it is very highly likely that all the Subject Members entered the meeting with a predisposition, even a strong predisposition, to vote in favour of accepting the application. As decision-makers the Subject Members were absolutely entitled to be predisposed.

## FINAL INVESTIGATION

They were not, however, entitled to enter the meeting with a closed mind such that they did not remain open to changing their minds as a result of the arguments put forward during the meeting.

Bias and predetermination are extremely difficult to prove. Normally, as evidence of predetermination, we would expect to see some kind of written statement before a meeting (one or more emails perhaps) or one or more statements made in front of reliable witnesses that a member had unalterably made up their mind or maybe behaviour in a meeting that pointed to predetermination, like the reading out of a statement that had been prepared before a meeting. In this case we saw no such evidence. In the words of Cllr Lee Bridgen, there was no evidence of a "smoking gun" statement.

Such a conclusion from us would be met with the response from Subject Members that they had asked questions about the application and tested some of the arguments put forward by the planning officer and others, including the proxy applicant, even though, for the most part, their questions appeared to us to be wrong-headed and sometimes irrelevant. Subject Members would simply say, as Cllr Mahmood Hussain did, that they were exercising their right as members of the DMC to go against officer advice. Such a response would be very difficult indeed to counter.

It is also worth reminding ourselves that the DMC rejected the planning application on the casting vote of the Chair and that what the Complainants saw as the predetermined position of the Subject Members did not, in the event, have the effect of inflicting serious damage on the Luton Local Plan.

**We therefore conclude that there was very strong evidence of predisposition in the Subject Members' approach to the Wardown Crescent planning application. We conclude that some Subject Members did ask questions during the meeting but that, taken overall, the quality of those questions was poor. The questions were influenced far more by the narrative for acceptance that was put forward by the proxy applicant than by the reasons for refusal, based on sound planning grounds, that were put forward by the planning officer.**

**We conclude that, whilst Subject Members' behaviour both at the meeting on 23<sup>rd</sup> August and, apparently, at earlier meetings is, perhaps, suggestive of predetermination we cannot and do not conclude that the Subject Members were predetermined at the DMC meeting on 23<sup>rd</sup> August.**

**We conclude that Subject Members' voting was likely to have been influenced by the presence of Imam Chishti in the public gallery and by the apparently unusual extent of the lobbying in favour of the planning application that had preceded the meeting.**

### **9.3.4 LEAVING THE MEETING BEFORE BUSINESS ENDED**

Cllr Raja Ahmed had previously offered apologies and said that he would not be attending the DMC meeting on 23<sup>rd</sup> August because of a family holiday. In fact he returned to Luton, attended the DMC meeting and voted on the Wardown Crescent planning application before leaving the meeting early to return to his family who were, he said, in a hotel room in Solihull waiting for dinner. His explanation as to why he had returned to Luton (he had left his money bag at home) appeared to us to be vivid, lengthy, detailed and elaborate involving a (prepaid) hotel room and young children who had apparently not eaten for nearly 24 hours by the time he arrived back in Solihull.



## FINAL INVESTIGATION

Whilst it is of course possible that Cllr Raja Ahmed's explanation is an absolutely accurate description of what happened we tend, based on the evidence and on the balance of probability, not to subscribe to his account. Given our findings and conclusions about the meeting and the events that led up to the meeting we tend to place more credence on the view of the Chair, Cllr Dave Taylor, who told us "[i]t felt to me like an excuse for coming back home. It's at least possible that he was *told* to go to the meeting."

Cllr Summara Khurshid's explanation for leaving the meeting early appeared to us to be plausible and there was no evidence to suggest that she did not feel unwell at the meeting. However, given our findings and conclusions about the meeting and the events that led up to the meeting we were left asking ourselves why Cllr Khurshid chose to attend the meeting in the first place if she felt "really unwell" before it began. We conclude that it was expected of Cllr Khurshid that she would attend the meeting.

### 9.3.5 PERSONAL AND PREJUDICIAL INTEREST

The primary allegation in the Complaint was that the Subject Members had a personal and prejudicial interest in the planning application and ought to have declared a prejudicial interest and withdrawn from the meeting. We have already discussed declarations of interest in some detail in Section 9.2.1.1 above and readers may wish to refer to that at this point. However, in brief, in line with the LGA guidance, for there to be an interest there needs to be a "close association" between the member and the applicant, not merely that the applicant is in some way known to the member.

We noted from the statements made to the Monitoring Officer by Cllr Raja Ahmed and Cllr Mahmood Hussain in response to the Complaint that there appeared to have been some collusion between them in that parts of the content were identical or near identical. That led us to wonder why, having each made declarations at the meeting about their personal circumstances, they felt the need to "compare notes" about those declarations. It gave us some cause for concern.

Furthermore, it appeared to us that to spend 13 minutes of the meeting discussing whether certain members of the DMC had a personal and prejudicial interest was somewhat unusual. The decision was, in principle at least, a simple one – that is, was the applicant a close associate of the members – and, if there was any doubt, could easily have been resolved by seeking advice from officers as to the tests to apply.

That said, we can understand that the situation in which some members of the DMC found themselves may have been confusing. That was because (i) it seems to have been unclear to whom any personal and prejudicial interests might apply in that it was somewhat unclear who the applicant *actually was*; (ii) both applicant and proxy applicant were sons of Imam Chishti who was sufficiently known to the Subject Members that they felt they should declare a personal interest, albeit that the Imam would not necessarily meet the test of "close associate"; (iii) it was unclear to members of the DMC to what extent the two brothers and their father were each party to the planning application; and (iv) one of the brothers spoke as proxy applicant for the actual applicant (who was ill and seemingly not at the meeting); and (v), it seems from the transcript (01:01:25) that it was the proxy applicant who was intending to live in the house once it was built.

## FINAL INVESTIGATION

The Draft and even the Final Minutes of the meeting appear to us to reflect that lack of clarity. However, it would be pure speculation to conclude that, as Cllr David Franks said, “there had been a deliberate attempt to conceal the identity of the applicant”.

Given that there had been some “pressure” and “lobbying” in the run-up to the meeting, and that Cllr Ahmed appears to have returned from holiday to specifically to attend the meeting, it appears to us extremely unlikely that the Subject Members did not know that Imam Chishti was involved in the planning application in some capacity, even if it was unclear who the applicant actually was. Yet the Subject Members had not attempted to resolve their apparent confusion over personal and prejudicial interests by speaking to the Planning Solicitor in advance of the meeting and had waited until the meeting to do so. It also appears quite possible that some or all of the Subject Members were not expecting Imam Chishti to attend the meeting. The appearance of such a high profile and well-respected individual may have caused them some discomfort.

When we asked how, based on what the Planning Solicitor had said during the meeting, there were undeclared prejudicial interests, the Complainants did not provide us with a precise or persuasive explanation as to why there were such interests.

We were therefore given no evidence of a close association in Code and guidance terms. Without spending very considerable time building up a detailed and intimate knowledge of the individual relationships between the Subject Members and the three parties seemingly involved in the planning application, it is therefore impossible to conclude whether or not there was a close association as opposed to simply knowing the applicant. Such a conclusion would, as Cllr David Franks suggested, be based on pure speculation. As Cllr Dave Taylor said, “simply knowing someone is not a reason to declare an interest”. We also note the Planning Solicitor’s opinion that there were no prejudicial interests to declare.

**On the balance of probability and the evidence available to us we therefore conclude that the Subject Members did not have a prejudicial interest in relation to the Wardown Crescent planning application. However, we were nevertheless left with the overriding impression that the discussion about declarations of interest was highly unsatisfactory.**

When reviewing the Draft Report Cllr Franks asked if we had considered “whether the members were in compliance with paragraph 4.7 of the Code: not to use their position to secure an advantage or disadvantage for themselves or another person”. We did consider whether the Subject Members had breached paragraph 4.7 (and other paragraphs of the Code, including paragraphs 4.1, 4.6 and 4.9). Whilst there appears to be some evidence to suggest possible breaches of one or more those paragraphs of the Code, it also appears to us that, if such breaches had occurred, they would have most naturally flowed out of a failure to declare a prejudicial interest (which we were unable to conclude had taken place).

**On the balance of probability and the evidence available to us we therefore conclude that the Subject Members did not breach any of the General Obligations of the Code including paragraphs 4.1, 4.6, 4.7 and 4.9. Whilst there was some evidence to suggest such breaches, we did not find that evidence compelling.**

## FINAL INVESTIGATION

### 9.4 OVERALL CONCLUSIONS

Based on the evidence available to us and on the balance of probability, we conclude that:

- (i) The Subject members were acting in their individual capacity as Luton Borough Councillors when attending the Development Management Committee on 23<sup>rd</sup> August 2022. The Code is therefore engaged.**
- (ii) The Subject Members did not have a prejudicial interest at the meeting of the Development Management Committee on 23<sup>rd</sup> August 2022.**
- (iii) There was no compelling evidence to suggest breaches of any of the General Obligations of the Code.**
- (iv) Whilst it appears likely that the Subject Members went into the meeting with a predisposition to support the planning application and thus go against the planning officer's recommendation for refusal, there is no compelling evidence of predetermination.**
- (v) There were questionable behaviours and a lack of probity in the making of certain decisions at meetings of the Development Management Committee in the recent past.**
- (vi) There was no pattern of questionable behaviour and a lack of probity at meetings of the Development Management Committee in the more distant past, though isolated examples may have occurred.**
- (vii) Pressure was brought to bear on officers to look favourably on the Wardown Crescent planning application, though this does not appear to have been brought to the attention of the Chief Executive at the time. The interest shown by some councillors in the planning application went beyond what was normal and that interest probably stepped over the boundaries of propriety.**
- (viii) It appears very likely that the Subject Members and others were lobbied and put under some pressure, whether directly or indirectly, with a view to assuring a favourable outcome for the planning application when it was considered by the DMC.**

## 10. RECOMMENDATIONS

On the basis of the conclusions above we make the following recommendations:

- (i) That, having received the Report, the Monitoring Officer should act in accordance with Paragraph 7 of the “Arrangements for Dealing with Standards Allegations under the Localism Act 2011” and “decide whether to take no further action, to refer to a Sub-Committee (a “Local Adjudication Panel”) or .... decide on other action in relation to the case. The Monitoring Officer will need to consult with the Independent Person when making this decision.” Should the matter be referred to the Local Adjudication Panel it must be with the clear understanding that findings can only be made about serving councillors.**

We believe that it is imperative that, going forward, the Development Management Committee should operate and be seen to operate openly, transparently and with probity. We therefore make the following further recommendations:

- (ii) That future appointees to the Development Management Committee be carefully chosen with a view to ensuring that members behave with the probity appropriate and necessary for those serving on a planning committee. (In making this recommendation we note that none of the Subject Members now serves on the DMC).**
- (iii) That a structured programme of training be made available so that future appointees are furnished with the necessary skills and knowledge to carry out their roles effectively. That training should be delivered on appointment to the DMC and at least annually thereafter. Attendance at that training should be mandatory for members of the DMC and members should not be eligible to take up seats on the DMC until they have attended the training. That programme of training should have a specific focus on the declaration of interests.**
- (iv) That, notwithstanding the changes to the Constitution of November 2022, careful consideration be given to whether the rules for the call-in of planning applications to the DMC should be further amended to ensure that opportunities to subvert or otherwise manipulate the proper correct operation of the DMC are kept to a minimum.**
- (v) That the Monitoring function should remain active in ensuring that any future perceived shortcomings in the proper operation of the DMC are addressed soon after they arise and without the need to resort to Standards Complaints.**
- (vi) That members of the DMC should be reminded of the need to discuss any concerns they have about the declaration of interests (or any other similar matters) with the Planning Solicitor in advance of DMC meetings rather than at the meetings themselves.**

## FINAL INVESTIGATION

### **APPENDIX 1 – DOCUMENTS AND SOURCES**

In the course of the Investigation we reviewed a variety of source materials. These are listed below.

- (1) Luton Borough Council website <https://m.luton.gov.uk>
- (2) Luton Borough Council Code of Conduct for Members (includes related Arrangements) [https://www.luton.gov.uk/Council\\_government\\_and\\_democracy/Lists/LutonDocuments/PDF/Legal\\_Services\\_Division/Council\\_Constitution/Part-4-A-code-of-conduct-for-members.pdf](https://www.luton.gov.uk/Council_government_and_democracy/Lists/LutonDocuments/PDF/Legal_Services_Division/Council_Constitution/Part-4-A-code-of-conduct-for-members.pdf)
- (3) Luton Wikipedia entry <https://en.wikipedia.org/wiki/Luton>
- (4) Luton Borough Council Wikipedia entry [https://en.wikipedia.org/wiki/Luton\\_Borough\\_Council](https://en.wikipedia.org/wiki/Luton_Borough_Council)
- (5) Private Agenda Document Pack – Local Assessment Panel 04\_11\_2022
- (6) Ann Loeffler (Business and Member Support Manager) email to Melvin Kenyon 22<sup>nd</sup> May 2023 attaching training records for Subject Members.
- (7) Luton Borough Council Constitution [https://m.luton.gov.uk/Page/Show/Council\\_government\\_and\\_democracy/Councils/pages/Council%20Constitution.aspx](https://m.luton.gov.uk/Page/Show/Council_government_and_democracy/Councils/pages/Council%20Constitution.aspx)
- (8) Agenda Document Pack Development Management Committee – 23/08/2022 <https://democracy.luton.gov.uk/cmis5public/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/6106/Committee/1111/Default.aspx>
- (9) DMC Minutes 23<sup>rd</sup> August 2022 and 28<sup>th</sup> September 2022
- (10) YouTube recording of the Development Management Committee meeting on August 23<sup>rd</sup> 2022 <https://www.youtube.com/watch?v=DuXpGFCFsrc>
- (11) Luton Borough Council Planning Portal <https://planning.luton.gov.uk/online-applications/search.do?action=simple&searchType=Application>
- (12) Anne Donelon Facebook page <https://www.facebook.com/anne.donelon.1> and Resignation Letter dated 17<sup>th</sup> March 2022
- (13) Local Government Association Model Councillor Code of Conduct 2020 <https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020>
- (14) Guidance on Local Government Association Model Councillor Code of Conduct <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#respect>
- (15) Local Government Association Probity in planning – Advice for councillors and officers making planning decisions [https://www.local.gov.uk/sites/default/files/documents/34.2\\_Probity\\_in\\_Planning\\_04.pdf](https://www.local.gov.uk/sites/default/files/documents/34.2_Probity_in_Planning_04.pdf)
- (16) Email chain 30<sup>th</sup> June – 1<sup>st</sup> July re: DMC Member conduct involving Cllr Robert Roche, Cllr Dave Taylor, Sue Frost, Nicola Monk, Sunny Sahadevan and Mark Turner
- (17) Email 30<sup>th</sup> November Robin Porter to Sunny Sahadevan cc: Mark Turner, Sue Frost, Nicola Monk re: Wardown Crescent
- (18) Email 26<sup>th</sup> July Robin Porter to Stephen Sparshott, Mark Turner, Sunny Sahadevan, Sue Frost re: Wardown Crescent

## FINAL INVESTIGATION

- (19) Email chain 13<sup>th</sup> July – 15<sup>th</sup> July re: DMC and Member conduct involving Sunny Sahadevan, Robin Porter, Sue Frost, Stephen Sparshott, Mark Turner, Nicola Monk
- (20) Letter 6<sup>th</sup> June 2023 Samantha McKeeman in response to resident re: Complaint against Labour Members of Planning Committee

**APPENDIX 2 – TRANSCRIPT OF AUGUST 23<sup>rd</sup> 2022 DEVELOPMENT MANAGEMENT COMMITTEE**