

**Formal Assessment – Ref SH07 170820201**

**Complaint against Councillor Elizabeth Huntley** (“the ‘Subject Member’”) of Bigbury Parish Council (“the Parish Council”)

**Complaint by Mr Jonathan Marshall** (“the ‘Complainant’”)

**Independent Person George Barnicott**

**1. Documents and information considered**

1.1 In carrying out this Formal Assessment, I have considered:

- 1.1.1 The complaint from the Complainant as received, together with supporting documentation;
- 1.1.2 The informal assessment;
- 1.1.3 The response from the Subject Member and supporting documentation;
- 1.1.4 South Hams District Council’s “Dealing with Standards Complaints” procedure; and
- 1.1.5 The views of the Independent Person.

**2. Summary of the Complaint**

2.1 It is alleged that the Subject Member breached the Bigbury Parish Code of Conduct in that the Subject Member:

- 2.1.1 lacked impartiality;
- 2.1.2 improperly used her position to confer an advantage or disadvantage; and
- 2.1.3 brought the office of Councillor or Council into disrepute.

2.2 It is further alleged that the Subject Member used her position to seek to remedy the perceived financial loss of one resident.

### 3. Decision

- 3.1 A finding that the Subject Member breached the Parish Council Code of Conduct by bringing the office of councillor into disrepute and attempting to improperly use her position as a councillor to confer a disadvantage.
- 3.2 With the aim of upholding and improving the standard of conduct expected of councillors, I recommend that the Subject Member undertakes training on the Code of Conduct and Probity in Planning.
- 3.2 No further action is taken in respect of the allegation that the Subject Member breached the Code of Conduct by improperly attempting to secure an advantage for a neighbour.

### 4. Reasoning

- 4.1 In September 2020, the Complainant applied to South Hams District Council (“the Council”) for planning permission for a replacement dwelling on his property in Bigbury (“the Planning Application”). The Planning Application generated considerable interest. However, it is not the purpose of this formal assessment, to be an assessment of the Planning Application or the District Council’s decision.
- 4.2 The Complainant alleges the Subject Member breached the Code of Conduct in that the Subject Member lacked impartiality; improperly used her position to confer an advantage or disadvantage; and brought the office of Councillor or Council into disrepute. There is also a further allegation the Subject Member used her position to seek to remedy the perceived financial loss of one resident.
- 4.3 As with the assessment of all ethical standards matters, the complaints are considered on the balance of probabilities, that is; would a reasonable person in possession of all the facts, and viewing them objectively, consider that it is more likely than not the Subject Member has breached the Code of Conduct.
- 4.4 I am satisfied for the purposes of this formal assessment that the Subject Member was bound by the Parish Council’s Code of Conduct at the time of her alleged actions, as the Subject Member acting in her official capacity at these times.
- 4.5 **Lacked impartiality and brought the office of Councillor or the Parish Council into disrepute.** The Complainant says that on 18 December 2020 the Subject Member sent an e-mail to the Ward Member of the District Council (“the Ward Member”), who was also a member of the District Council’s Development Management Committee, which would in due course, make the decision on the Planning Application. The Subject Member told the Ward Member about an extraordinary meeting of the Parish Council that had taken

place the previous evening and conveyed a sense that the meeting found the Planning Application unacceptable. The Subject Member then arranged for the Ward Member to meet with her and another parish councillor on 30 December 2020 to view the Complainant's property and the site of the proposed development among other potential developments.

- 4.6 The Complainant draws attention to a further e-mail from the Subject Member to the Ward Member in which the Subject Member says "I feel it is rather deceitful to compare ridge heights with The Willows which is built further up a steep hill." The Subject Member then refers to speaking with another parish councillor about the Planning Application.
- 4.7 In a further e-mail dated 11 February 2021 to the Ward Member, the Subject Member refers to correspondence from the Complainant raising concerns about the earlier site visit. The Subject Member also refers to her hopes that the Ward Member will have the opportunity of speaking with the planning officer about the consequences of the planning officer's decision for the whole of the village. Those consequences being she suggests, that the Planning Application represents a test case for the Neighbourhood Plan and would if approved, set a precedent for a development further down from the Complainant's property where a similar ridge line was being proposed.
- 4.8 In response to the Complainant's allegation, the Subject Member repeats what she sees as being the consequences of the Planning Application being approved. Planning permission has since the alleged conduct took place and indeed, the Subject Member's response, been granted on appeal.
- 4.9 Finally, the Complainant refers to a further e-mail from the Subject Member to the Ward Member. The e-mail refers to discussions between the Subject Member and the Chairman of the Development Management Committee. The e-mail refers to discussions with the Chairman on postponing the Committee site visit until after the May elections. The email seeks to encourage the Ward Member to seek deferral of the site visit.
- 4.10 The same e-mail also relates that the Subject Member appears to "have tracked down the new owner of the adjoining property and to talking with him about the Development Management Committee viewing the rear of his property.
- 4.11 For disrepute to be found, this has to be something that the reasonable person would consider would objectively damage the Subject Member's standing in the community. In considering whether this is the case, I have compared to the way any parish councillor may deal with a planning application in their area with the actions of the Subject Member in dealing with the Application. While any planning applicant may not like the involvement of an elected member to the extent that the Subject Member has been involved

in undertaking her role as a parish councillor, others may welcome the due diligence that was being undertaken.

- 4.12 As the Nolan Committee's 1997 report stated: 'It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves'.
- 4.13 Lobbying by both applicants for planning permission and objectors is a normal and perfectly proper part of the planning process. The public would expect a planning application to be judged on its own merits and considered in a transparent, accountable, objective and fair way.
- 4.14 Although neither the Subject Member nor the Parish Council were the decision-maker for the Planning Application, as a member of a body being consulted about the Planning Application by the District Council, the Subject Member was a part of that process.
- 4.15 The evidence strongly suggests that Subject Member lobbied the Ward Member for a particular recommendation and further sought to encourage the Ward Member to put pressure on the planning officer for the same outcome. Even allowing for the fact that the evidence comprises the extracts from e-mails, the tone and tenor of the e-mails to the Ward Member go beyond that to be expected of a parish councillor faced with a planning application. The Subject Member ceased to be impartial or at least pre-disposed and went a step too far. A reasonable person would regard this as lowering their estimation of the councillor's office.
- 4.16 **Improperly used her position to confer on or secure for herself or any other person an advantage or disadvantage used.** This allegation appears to break down into first, attempting to disadvantage the Complainant's Planning Application by lobbying against it; and secondly, attempting to secure advantage for a resident by using her position to seek to remedy the perceived financial loss of that resident.
- 4.17 The first part has already been largely considered under the previous heading. There is little to add, other than to say it was clearly to the Complainant's disadvantage that the determination of the Planning Application should be delayed.
- 4.18 As for the second part, the Complainant says that the neighbour was a close friend of several members of the Parish Council and those on the Neighbourhood Planning committee. The Subject Member is not specifically identified as one of them and in any event, the Subject Member says that the neighbour, X, is not a personal friend, but someone who is a neighbour who she occasionally encounters while out walking. She does however say that they did have a chance meeting on the beach and X told the Subject Member

that she had recently lost her sale because of the Planning Application and the possible consequences of that. The Subject Member refers in her response to a specific sum of money being mentioned.

4.19 There is also an e-mail from the Subject Member to the Ward Member dated 18 April 2021, which says: “Yesterday I met with [X], the owner you saw who moved away a fortnight ago.” The email then advises how X explained it was possible to access the back garden of her former property.

4.20 It is always a fine line between an acquaintance and a friend. The evidence is not conclusive and in any event, reaching a conclusion is not necessary as the evidence of the Subject Member using her position to seek to remedy X’s perceived financial loss is scant.

George Barnicott  
Independent Person

David Fairbairn  
Monitoring Officer

16 February 2022