

**REPORT ON COMPLAINT OF MALADMINISTRATION AND MISCONDUCT IN PUBLIC  
OFFICE RELATING TO PLANNING APPLICATION RU.21/2211**

**BACKGROUND**

1. I have been appointed to investigate complaints of maladministration and misconduct in public office made in a document provided by Cllr Andrea Berardi on behalf of residents and in an email written by Cllr Berardi dated 25<sup>th</sup> January 2023 in support of that document concerning Planning Application RU.21/2211.

**QUALIFICATIONS**

2. My qualifications for conducting this investigation are as follows. Since 2011 I have held the position of Monitoring Officer for Runnymede Borough Council (RBC). I have been admitted as a solicitor since 1989. During the course of my career I have worked in private practice, the Crown Prosecution Service as a Crown Prosecutor and in local government since 1990.
3. For some twelve years I held a variety of positions with the London Borough of Hillingdon which involved undertaking Planning work ranging from providing advice on planning matters, conduct of Planning Inquiries, advising on Planning Enforcement matters, drafting Planning Obligations, and acting as the principal legal adviser to the Planning Committees of that authority. During 2008-2009 I worked for Spelthorne Borough Council and performed similar duties to those I discharged at Hillingdon. I also worked for the London Borough of Tower Hamlets and dealt with high profile cases, including Planning matters. In my time at RBC I have been involved in a variety of Planning matters, such as advising on Planning matters, drafting Planning Obligations and advising at Planning Committees.
4. In addition to my work experience I have also presented training courses on Planning matters in conjunction with barristers and solicitors.

**BACKGROUND**

5. On the 25<sup>th</sup> January 2023 Cllr Andrea Berardi sent an email to the Chief Executive of RBC, Mr Paul Turrell, and copied myself and all RBC Councillors in to that email. A copy of that email appears as Appendix 1 to this report. In his email Cllr Berardi explains that a number of residents have created a document about possible maladministration in respect of the manner in which RBC dealt with a particular application for Planning Permission. For those not familiar with the background to this matter it is important to note that the formal Decision Notice in respect of Planning Application RU.21/2211 was issued on the 13<sup>th</sup> July 2022 after the application had been considered and decided at the meeting of the Planning Committee held on the 22<sup>nd</sup> June 2022. Cllr Berardi goes on in his email to request that the matter be investigated and that the residents may refer the matter to other agencies. The email goes on to state that there is a concern on the part of the residents that misconduct in public office may have occurred.
6. Cllr Berardi is at pains to state that the complaint is not about the merits of the particular Planning Application or future applications but rather the manner in which

the particular application was dealt with. He goes on to state that the document raises issues about the material placed before the Planning Committee and that the report was presented in a manner which served the interests of the applicant. Cllr Berardi states that such an approach undermines the confidence that Councillors can have in officers.

7. Cllr Berardi includes a paragraph where he comments on the way in which Planning Applications should be dealt with and makes reference to the approach used by scientists when dealing with a matter. The email also sets out some basic statements relating to development in the Green Belt, questions the extent of development on the Fairmont Hotel site and raises question about whether enforcement action should have been taken in respect of matters which have occurred on the site. The email concludes with a repetition of the request that an investigation be conducted.
8. It should be noted that Cllr Berardi does not include in his email any evidence to support the claims which have been made by residents but merely refers to the approach which has been made to him and the concerns raised by residents.
9. I have not been made aware of Cllr Berardi raising concerns about the way in which the specific Planning Application had been dealt with prior to the submission of his email.
10. Attached to Cllr Berardi's email was a document which runs to some forty-five pages. There is no indication in the document as to the identity of the authors/authors. The document is titled **Maladministration Complaint at Runnymede Borough Council in relation to the retrospective planning application covering Fairmont Hotel and associated sites (RU.21/2211)**. The document is broken down into series of headed sections and contains narrative, pictures and diagrams. The document appears to be a review of the report prepared by RBC officers in relation to Planning Application RU.21/2211 and wider issues associated with this particular site.

## **CONTEXT**

11. The issues referred to in this complaint relate to Planning matters concerning a site known as the Fairmont Hotel located in Wick Lane Englefield Green Surrey. The site is described in Planning reports as the location of a luxury 5 star hotel, spa and conference facility positioned within large, landscaped grounds. The current hotel is located on a site formerly occupied by a hotel which was called the Savill Court Hotel. Planning Permission was granted in January 2018 for the complete redevelopment of the former hotel. There have been a series of Planning Permissions granted relating to the development of the wider site which have culminated in the current hotel and private residences which occupy the wider site. There are a number of matters which are the subject of current Planning Enforcement investigations on the wider site. There is also currently a Planning Application being considered by RBC which relates to the matters which are subject of this complaint and other Planning matters pertaining to the wider site. That Planning Application is registered under reference number RU.22/1189 and was submitted prior to the receipt of this complaint.

12. The email from Cllr Berardi and the document he submitted makes reference to Planning Application RU.21/2211 but then goes on to deal with other matters and this makes consideration of the complaint complicated because it causes confusion.
13. The main thrust of the complaint concerns Planning Application RU.21/2211 and it would therefore be worthwhile briefly dealing with that application. When one looks at the material held by RBC that application is described as follows:

Application seeking retrospective planning permission for the proposed erection of 4 detached treehouse lodges ancillary to the existing hotel use at Fairmont Hotel with associated access and pathways and the proposed part change of use of existing land at Dell Park House for hotel use (Use Class C1)

14. For those unfamiliar with Planning matters I will explain what is meant by the term 'retrospective planning permission.' Retrospective planning permission is planning permission sought after a development has been built. Planning regulations allow land owners to apply for planning permission retrospectively after they have carried out unauthorised works or a use of land, and Planning law requires Local Planning Authorities to accept and consider them. If a land owner submits a retrospective planning application, the application will be considered on its own planning merits in the same way as other applications and are not more likely to be approved or refused because a land owner has submitted their application after they have carried out unauthorised works. In this case the land owner constructed what are described as four treehouses without the appropriate consent. Guidance issued by central government states '*A local planning authority can invite a retrospective application. In circumstances where the local planning authority consider that an application is the appropriate way forward to regularise the situation, the owner or occupier of the land should be invited to submit their application (section 73A of the Town and Country Planning Act 1990) without delay*'. Therefore whilst an individual should not undertake development without Planning Permission it is possible to address such an oversight via the submission and determination of a Planning Application.
15. In instances where a retrospective Planning Application is refused a Local Planning Authority can still pursue enforcement action. The mere fact that an application has been invited does not prevent enforcement action. The refusal of a Planning Application related to unauthorised development does not mean that formal enforcement action will immediately be taken. RBC, in line with recommended good practice, has adopted what is termed an enforcement charter and any decision will be taken in accordance with the provisions of that charter. There will always be a requirement to have regard to the facts of any given case. Clearly a possible outcome of any such process can be formal enforcement action.
16. It should be made clear from the outset that Planning Application RU.21/2211 has been determined by the Council and been refused. That refusal has not been appealed and therefore the application has been dealt with and it is no longer a live issue. This complaint was submitted some months after the determination of the application and is in essence dealing with historic matters.

17. It is most important that readers appreciate and understand that when a Local Planning Authority receive a Planning Application they must determine the application which is before them. By this I mean if a person applies for Planning Permission to build a seventeen-storey high office block the Local Planning Authority must either grant or refuse permission for that application. The Local Planning Authority cannot grant permission for a fifteen storey high block.

### **EXPLANATION OF THE TERMS MALADMINISTRATION AND MISCONDUCT IN PUBLIC OFFICE**

18. Cllr Berardi's email and the document submitted both use the terms '*maladministration and misconduct in public office*'. It would clearly be of benefit if those terms are explained.

19. The term '*maladministration*' is not defined in law and similarly there is no explicit threshold for what constitutes maladministration. It is for the Local Government Ombudsman to decide whether a particular set of circumstances amount to maladministration. In general terms, it is '*administrative fault by the body in jurisdiction*' or '*fault in an action taken by a body acting on behalf of the body in jurisdiction*'.

20. Maladministration in broad terms might include:

- flaws in policies or decision making
- poor administrative practice
- failure to adhere to or consider properly statutory guidelines
- failing to consider properly the exceptional circumstances of an individual or a situation
- not properly considering statutory powers or duties
- failing to give an adequate service

21. It can only be assumed that because the document contains a series of claims regarding the material contained in the officer report on Planning Application RU.21/2211 and other matters this is what the author/authors believe constitute maladministration.

22. Misconduct in public office is a criminal offence and carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office.

23. The offence is committed when:

- a public officer acting as such;
- wilfully neglects to perform his duty and/or wilfully misconducts himself;
- to such a degree as to amount to an abuse of the public's trust in the office holder;
- without reasonable excuse or justification

24. Local authority employees were held in the case of Bowden (1995) to be holders of a public office.
25. The wilful neglect or misconduct can be the result of a positive act or a failure to act. There must also be an element of knowledge or at least recklessness about the way in which the duty is carried out or neglected. The test is a subjective one and the public officer must be aware that their behaviour is capable of being misconduct.
26. The defendant may advance evidence of a reasonable excuse or justification. It is for the jury to determine whether the evidence reveals the necessary culpability.
27. This is an extremely serious allegation to make as the liberty of an individual can be at stake. Therefore clear evidence should be provided to support such an allegation.

### **CONSIDERATION OF THE CLAIM OF MALADMINISTRATION**

28. As explained above maladministration is not defined in law and similarly there is no explicit threshold for what constitutes maladministration. In order to conclude that maladministration has taken place in a particular situation one would need to demonstrate that one of the bullet points set out in paragraph 20 above has occurred. I will now consider those issues.
29. 'flaws in policies or decision making' – I will focus on the manner in which Planning Application RU.21/211 was dealt with. RBC follows standard local authority practice when dealing with Planning Applications. When an application is submitted there are checks to ensure that it complies with all the requirements associated with such matters i.e. are all the correct documents submitted, are they completed correctly and has the appropriate fee been paid. If the application is deemed to be valid then it will be processed. Processing involves consideration by a suitably qualified Planning Officer. Where appropriate external technical advice will be sought e.g. highways or environmental. The application will be publicised, and an opportunity will be provided for representations to be made.
30. RBC has internal rules which state that certain types of Planning Applications can be determined by Planning Officers exercising delegated authority whilst other types of applications must be submitted to the Planning Committee for determination. Regardless of whether a Planning Application is determined by an officer or the Planning Committee a report must be prepared setting out the relevant Planning considerations and containing a recommendation as to the decision which should be made. All such reports should refer to national and local policies, should analyse the relevant Planning issues and propose a recommendation.
31. In the present case a report was prepared for consideration by the RBC Planning Committee. That report did refer to national and local planning policies, contained an analysis of the relevant Planning considerations, and put forward a recommendation. The report was duly considered by the Planning Committee who made a decision on the application.
32. It should be noted that in the context of maladministration the reference to policies is not a reference to national or local planning policies but rather policies adopted by a public body. Thus if a public body adopted a particular policy and it was not reflective

of legislation then it could be held that maladministration had occurred if the public body had applied that policy to a particular case. By way of example if a public body had adopted a policy that it would only grant housing to people who owned three legged cats and used that policy as a justification to refuse housing to people who did not own such cats then it would be found to have committed maladministration because such a policy would not be lawful.

33. Therefore based on the material set out above I cannot find any material in the email from Cllr Berardi or the complaint document which is evidence of maladministration based on flaws in policies or decision making.
34. 'poor administrative practice' – Focussing on the manner in which Planning Application RU.21/2211 was dealt with there is no evidence produced in the email from Cllr Berardi or the complaint document that supports a claim of poor administrative practice. There is no material which suggests the Planning Application was invalid. The report which the Planning Committee considered states that forty-two properties were notified of the application and representations were received from thirty-four. A report was prepared which referred to national and local planning policies and the report was submitted for consideration by the Planning Committee with a recommendation.
35. 'failure to adhere to or consider properly statutory guidelines' – In the context of the determination of Planning Applications central government has issued guidelines to Local Planning Authorities on how applications should be determined. That guidance is contained in a document entitled Determining a planning application issued by Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government Published 6 March 2014 Last updated 24 June 2021. I attach a link to that document <https://www.gov.uk/guidance/determining-a-planning-application>. I have considered the contents of that document and looked at the manner in which Planning Application RU.21/2211 was dealt with. I can find no evidence in the email from Cllr Berardi or the complaint document which supports a claim that maladministration has occurred based on a failure to adhere to or consider properly statutory guidelines.
36. 'failing to consider properly the exceptional circumstances of an individual or a situation' – I have considered the consideration of Planning Application RU.21/2211 against this criteria and again find no evidence contained in the email from Cllr Berardi or the complaint document which supports a finding of maladministration based on this ground. Neither the applicant for Planning Permission nor any of the persons who submitted representations in respect of the Planning Application cited exceptional circumstances. Given that none were cited RBC cannot be found at fault for failing to consider matters not raised.
37. 'failing to give an adequate service' – Having considered the manner in which Planning Application RU.21/2211 was dealt with and considering the email of Cllr Berardi and the complaint document I can find no evidence to support a contention that an adequate service was not provided. RBC considered the application in accordance with its standard practices and central government guidance. By virtue of the level of representations submitted it was clear that the public was aware of the application, had time to submit representations, those representations were considered and formed part of the report submitted the Planning Committee.

38. I would conclude this section of my report by making the following comments. In the email submitted by Cllr Berardi and the complaint document it is claimed that maladministration has occurred in relation to the consideration of Planning application RU.21/2211. As I explain at paragraph 19 above there is no legal definition of that phrase. In trying to determine whether maladministration has occurred one needs to look at the manner in which an issue is dealt with and see whether any of the bullet points set out in paragraph 20 apply.
39. Whilst Cllr Berardi's email and the complaint document allege maladministration they do not supply any evidence to support such a claim. Cllr Berardi's email talks about *'To be clear, this complaint is not about the merits of the planning application or any future applications. It is about serious departures from planning guidance and deliberately ignoring and twisting evidence. Planning officers seem to be acting in the interests of a private individual or the private company owned by that individual, instead of the public interest and appear to have deliberately misrepresented issues and facts. The case before you shows that planning officers' advice to the planning committee was seriously flawed in numerous ways (and that some planning committee members failed to properly assess the appropriateness of the evidence placed before them). Councillors need to be able to trust the Council's planning officers and, at the moment, as illustrated by the evidence outlined in the attached case, the position is that we are unable to do this'* and *'A common response in relation to planning matters is that things are a matter of subjective judgement. If a scientist said the moon was made of "cheese", on the basis of what someone else had told them, that would be incompetence or malpractice, it's not a matter of opinion. If a scientist ignored the evidence of their own eyes to tell you that there are two moons around the Earth, they would be knowingly telling a lie. Saying things are a matter of judgement is nonsense when the truth has been twisted or ignored. Residents' concerns cannot be dismissed by simply saying the planning officers have complete discretion to judge what the truth is'*. These statements are an expression of opinion and not evidence of maladministration.
40. Likewise whilst the complaint document goes into great length setting out references to Planning policy, the interpretation of such policies, factual matters and historic matters it does not seek to create an argument to support a claim of maladministration. It should be noted that when carefully considered the complaint document seeks to be an alternative report on Planning Application RU.22/2211 rather than presenting evidence of maladministration. I will deal with the contents of complaint document later in this report.

#### **CONSIDERATION OF THE CLAIM OF MISCONDUCT IN PUBLIC OFFICE**

41. I have set out above a detailed explanation of what constitutes misconduct in public office. It may assist readers if I provide some examples of actual cases where the offence has been found to have been committed so there is some context to the comments I will subsequently make. I set out those cases below:
- Case of Llewellyn-Jones concerned a registrar of a county court who was convicted on six counts of an indictment charging him with misbehaviour in a public office. The counts described conduct involving the improper making of

orders for the release of money which had been paid into court in respect of damages to injured persons.

- The case of Dytham stands as probably the clearest articulation that the offence can include a positive duty to act. In this case, the defendant was a police officer who failed to intervene during a disturbance in which a man was kicked to death. He was found guilty of misconduct in public office.
- The case of Bowden concerned the limits of what could make holders of positions liable to the offence. The defendant was a maintenance manager of a local authority works department. He had improperly caused work to be carried out for his girlfriend in the course of his employment for Stoke-on-Trent City Council.
- The case of Belton involved a volunteer with the Independent Monitoring Board who was charged with misconduct in public office connected with inappropriate relationships they developed with prisoners.

42. What is clear from a consideration of the legal framework surrounding the offence of misconduct in public office and the cases cited above is that in order to demonstrate an offence has been committed one must show:

- a public officer acting as such;
- wilfully neglects to perform his duty and/or wilfully misconducts himself;
- to such a degree as to amount to an abuse of the public's trust in the office holder;
- without reasonable excuse or justification

43. Whilst Cllr Berardi's email refers to misconduct it does not explain how such an offence has been committed or set out the evidence to support such an accusation. Whilst it is the role of an elected member to have regard to issues raised with them by their constituents and, where appropriate, refer the matter to the relevant authorities they must also exercise caution in the views they express. Clearly misconduct in public office is a criminal offence and any investigation would be conducted by the Police. By making allegations widely known there is a risk that evidence could be tampered with or concealed. The normal approach in such matters would be to make the Head of Paid Service aware of such allegations so they can investigate rather than notifying all Councillors. Councillors are not involved in the investigation process and in reality RBC would not be involved. If RBC suspected an offence had been committed they would refer the matter to the Police for investigation.

44. I would now turn to the complaint document. As indicated the document is some forty-five pages long and broken down into headed sections. The claim of misconduct in public office is only referred to twice in the whole document. Given the serious nature of such an allegation it is extremely surprising that it is only mentioned twice. The first reference to the issue appears in the first section of the document headed '**Summary of issues**' in the first sentence of the document which states '*The failures are so egregious, we believe there is a case for misconduct in public office.*' It is not obvious what failures are being referred to. As has been noted above the offence of misconduct in public office can be committed if a post holder fails to act in an appropriate fashion (see case of Dytham above).

45. The section headed Summary of issues talks about the changes to the Fairmont site since its acquisition by its present owner, expresses an opinion on whether the proposed development dealt with in Planning Application RU.21/2211 meets a certain planning law test and makes certain assertions about Planning law in respect of temporary buildings. The section goes on to talk about the Planning test to justify development in the Green Belt, makes reference to the contents of the report considered by the Planning Committee. There is then a reference to government guidance relating to the way in which planning applications for unauthorised development should be considered. Reference is made to the height of the new structures compared to old buildings and floor area. The section continues with how the volume of buildings should be calculated for Planning purposes. Mention is made about vegetation screening that was proposed as part of Planning Application RU.21/2211. A question is posed next as to why Planning enforcement action was not taken when residents first notified RBC of development taking place. The section continues with reference to various unauthorised development which has taken place on the site. Mention is then made of national planning policy and why planning permission granted for other development on the site was not considered in this case. The section goes on to talk about a case in an adjoining authority which was mentioned in the report to the Planning Committee. A reference is made to economic matters. One aspect of Planning Application RU.21/2211 was a proposal to demolish existing buildings and comment is passed on this aspect. There is a paragraph which alleges that certain unauthorised developments have taken place on the site and no enforcement action has been taken by RBC.
46. The next paragraph in this section is the second and final occasion on which reference is made to the offence of misconduct in public office. It refers back to the alleged unauthorised development which has taken place on the site and a failure on the part of RBC to take enforcement action. It alleges that false information was given to the Planning Committee and claims that this was a deliberate attempt to mislead the Planning Committee and constitutes the offence of misconduct in public office. The paragraph continues to talk about harm to the Green Belt and that action should be taken to address alleged breaches by the site owner.
47. The section concludes by requesting the re-training of RBC staff so, in the words of the document '*they know how to understand and apply planning guidelines*'. The final paragraph then explains that the rest of the document will contain material to demonstrate what material was not presented to the Planning Committee when it considered Planning Application RU.21/2211.
48. I have deliberately dealt with the contents of the section headed Summary of issues in some detail because it starts with and culminates with a claim that the offence of misconduct in public office has taken place. However when one carefully analyses the contents of the section it does not demonstrate that fact. Rather this part of the document makes various references to Planning policy, comments about how the size of buildings are calculated, references to vegetation, the mention that a previous Planning Permission authorised the increase of the building, mention of matters contained in the report presented to the Planning Committee and questioning the exercise of the discretion granted to RBC to determine when to take enforcement action. What is lacking is evidence to support a claim of misconduct in public office. The questions raised in this section may be perfectly valid representations concerning a planning application but they are not evidence of a criminal offence.

49. As outlined at the start of this section of my report the offence of misconduct in public office is an extremely serious matter. The liberty of a person could be at stake. Criminal investigations into such claims can take a substantial amount of time and incur large costs. Such claims should not be made lightly. What is clear is that the material contained in Cllr Berardi's email and the section in the complaint document which talks about the offence of misconduct in public office does not identify which officers it is alleged have committed an offence or disclose evidence to show an offence has been committed. The complaint document, in the section headed Summary of issues, does raise questions about Planning policy and its application to a particular factual situation but that is completely different to claiming misconduct in public office.

### **CONSIDERATION OF CONTENT OF REPORT ON PLANNING APPLICATION RU.21/2211**

50. At the core of this complaint is the material contained in the report which was prepared by Planning officers and submitted to the RBC Planning Committee on the 22<sup>nd</sup> June 2022. I think it would assist if I briefly explained what a report on a Planning Application should look like. The approach that should be adopted in relation to the officer's report to members of a planning committee was summarised in the case of R (Trashorfield Ltd) v Bristol City Council and others [2014]:

- Regard to all material considerations (section 70, TCPA 1990).
- The weight to be given to such considerations.
- To be sufficiently clear and full to enable the decision-making councillors to understand the important issues and the material considerations.
- How much and what information should go into a report is a matter for the individual preparing the report, exercising their own expert judgment.
- An application for judicial review based on criticisms of a report will not usually begin to merit consideration unless the overall effect of the report significantly misleads the decision-maker about material matters which are then uncorrected at any meeting where the decision is taken.
- If challenged, a report that has been prepared by an officer is not to be subjected to the same critical explanation or examination that might be appropriate for the interpretation of a statute. What is required is a fair reading of the report as a whole.
- Councillors on a planning committee are likely to have a substantial local and background knowledge, which will include a working knowledge of the statutory test for determining a planning application.
- Deciding whether such individuals have sufficient information to make a properly informed decision involves the exercise of judgment on their part - case law demonstrates that the courts are cautious about interfering when considering a challenge to such a decision.

51. Whilst I have experience of dealing with Planning matters from a legal perspective I am not a qualified Town and Country Planner. Clearly it would assist in any consideration of this complaint if a review of the report was undertaken. To assist me RBC has appointed an independent external Town Planner to undertake the following exercise '*to consider whether maladministration and*

*unreasonable/unethical behaviour have occurred in relation to the processing of application RU.21/2211 by the Runnymede Borough Council Planning Department. The complaint that this review relates to is a document submitted by Councillor Andrea Berardi on 25 January 2023 prepared by local residents. The brief requires consideration of the process followed, the way the matter was reported to the Planning Committee, the recommendation to the Planning Committee and the way the Local Planning Authority (LPA) has dealt with enforcement matters in relation to this site'.*

52. The person appointed to discharge this function was a Mr Keith Holland. I attach at Appendix 3 a copy of the report prepared by Mr Holland. I have read the report and am happy to adopt the contents of Mr Holland's report.
53. I would not propose to set out in this report the details of Mr Holland's report but just quote the conclusions Mr Holland has reached, which are as follows:

4.1 *The initial and subsequent applications that allowed for the redevelopment of the hotel site were based on a sound consideration of Green Belt and national planning policy issues. Account was taken of the existing development on the site, whether the proposed development was appropriate in the Green Belt, the degree of harm that could be caused and whether there were any very special circumstances that clearly outweighed the identified harm to the Green Belt. The very special circumstances identified were justified.*

4.2 *As regards application RU.21/2211, I do not consider that there is any convincing evidence that the Planning Department deliberately sought to mislead the Runnymede Planning Committee or unduly favoured the applicant's case. The report to the Committee identified and fairly dealt with the relevant important national and local planning considerations. The recommendation, although not accepted by the Committee, was based on planning judgments that the Planning Department was entitled to make. The arguments advanced in the report to support the recommendation were reasonable and comprehensible.*

54. In summary Mr Holland is of the view that the recommendations that led to the granting of consent for original development of the Fairmont Hotel were based on sound planning considerations. In respect of the report prepared for Planning Application RU21/2211 Mr Holland does not believe it sought to mislead the Planning Committee. Mr Holland does accept that it was open to the Planning Committee to reach a different conclusion from the recommendation contained in the report. Mr Holland has mentioned that certain issues related to Planning Application RU.21/2211 could have been explained in more detail but concludes '*The identified lack of explanation in the report does not negate the conclusions reached by the Planning Department nor does it point to a clearly unjustified conclusion regarding the weight to be attached to the removal of buildings/structures on the site. The Planning Department report is based on a planning judgement about this matter and the extent of the harm to the Green Belt.*'

55. Mr Holland has also briefly touched on the issue of how RBC dealt with Planning enforcement issues associated with this site. The comments which Mr Holland makes are contained within guidance issued by central government on dealing with Planning Enforcement matters. The specific guidance is contained within a document entitled Enforcement and post-permission matters issued by Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government Published 6 March 2014 Last updated 22 July 2019. I attach a link to that document <https://www.gov.uk/guidance/ensuring-effective-enforcement#planning-enforcement--overview>

56. The following points should be noted from material contained within that document:

- Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.
- In most cases, development becomes immune from enforcement if no action is taken:
  - within 4 years of substantial completion for a breach of planning control consisting of operational development;
  - within 4 years for an unauthorised change of use to a single dwellinghouse;
  - within 10 years for any other breach of planning control (essentially other changes of use).
- Nothing in this guidance should be taken as condoning a wilful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.
- A local planning authority can invite a retrospective application. In circumstances where the local planning authority consider that an application is the appropriate way forward to regularise the situation, the owner or occupier of the land should be invited to submit their application (section 73A of the Town and Country Planning Act 1990) without delay.

57. The guidance goes on to deal with a range of other matters. The purpose of highlighting the above elements of the guidance is to explain that when dealing with a breach of Planning control it is not an automatic response of a Local Planning Authority to take formal action. Attempts can be made to resolve matters through discussion or inviting a retrospective application. Clearly if discussion does not achieve the desired outcome and a retrospective application is refused then formal action can be pursued.

58. I would conclude this section of my report by stating that based on the opinion of a highly experienced Town and Country Planner and my own consideration of the report submitted to the Planning Committee in respect of Planning Application RU.21/2211 there is no evidence to suggest that maladministration has occurred or that the offence of misconduct in public office has been committed. Could the report

have been better? In reality there will never be the 'perfect' report because an author may decide to focus or emphasis a particular issue and a reader may disagree with the approach taken. As highlighted in the case of R (Trashorfield Ltd) v Bristol City Council and others [2014] mentioned above one is looking for a report to tick certain boxes.

### **CONSIDERATION OF THE COMPLAINT DOCUMENT**

59. As previously mentioned the complaint document runs to some forty odd pages. If I sought to address every single paragraph in the document, I could potentially create a document that might be three to four times longer than the original document. What I will seek to do is to comment on the various sections included in the document. I have already addressed the section headed **Summary of issues** above.
60. There is a section headed **Overview of Planning decisions**. It refers to a quote from the National Planning Policy Framework about views expressed by the courts. I have word searched the 2021 version of the National Planning Policy Framework using a variety of search criteria and cannot find that quotation. This section talks about the planning system not benefiting an owner of a business or private individual. This is a distorted impression of the Planning system. Large numbers of applications are submitted by businesses or private individuals with the aim of securing a benefit e.g. a factory extending its premises or a homeowner extending their home. Each is seeking to secure a benefit in some way. The role of the Planning system is to ensure that any application delivers one of the overarching objectives. Thus the expansion of the range of facilities offered by a hotel could fall within the objectives.
61. The next section is headed **Background**. This looks at the former Savill Court site. It refers to the development which has taken place on the site and cites various Planning Permissions which have been granted. It appears to be a factual section.
62. There then follows a section headed **Intentional unauthorised development**. This section in the main contains references to the introduction in 2015 by the Government of new Planning Policy that unauthorised development is a material consideration in considering a Planning Application. The section concludes by asking why it does not appear in the report on Planning Application RU21/2211. I am given to understand that there is not a great deal of judicial guidance on the application of this Planning Policy. Whilst it can be a material consideration it does not mean that an application will automatically be refused. Rather it will form one of the various material considerations which will be taken into account when considering an application. With the benefit of hindsight the report would have benefited from an explanation as to whether it was considered and if so why it was not applied. The fact it is not mentioned in the report would not be fatal to the validity of the report and any recommendation it might contain.
63. The next section is headed **Green Belt** and merely contains quotes from the National Planning Policy Framework. This is followed by a section headed **Very Special Circumstances** and in essence sets out when development might fall within the ambit of this provision. This section states that the authors and RBC officers agreed on certain issues. The section then advises that on certain issues the authors diverge from the interpretation RBC officers adopted.

64. The following section is headed **Temporary buildings** and seeks to argue that certain structures which RBC officers included should not have been. Mr Holland in his review of the report dealt with this matter so I would not propose to repeat his comments.
65. We then have a section headed **Counting non-existent buildings**. I am given to understand that the RBC officers are of the view that the buildings did exist and could be considered in relation to this application. It is however an area where a planning judgement has to be made. It is not as the author/authors suggest a clear cut matter.
66. There then appears a section headed **Counting additions to buildings as well as reductions**. The contents of this brief section suggests an approach to considering a Planning Application and claims it is supported by case law but does give details of the case law. I am not aware of any case law which supports the proposition put forward in this section.
67. The following section is titled **It's not complicated, it's just counting** and deals with how the size of a structure is calculated for Planning purposes. The section questions why internal floorspace is used and not external. If one looks at the application form submitted for Planning Permission it requires internal floorspace to be stipulated and not external. This applies to various categories of development and not just treehouses. This is a model document created by central government. I attach a link to the model document  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1005135/App\\_for\\_planning\\_permission\\_form\\_NEW\\_190721.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005135/App_for_planning_permission_form_NEW_190721.pdf)
68. The next section is headed **Combining different sites**. Although this is a very short section it highlights a misunderstanding by the author/authors of Planning law principles. Whilst originally Savill Court and Dell Park were owned by different people and put to different uses they have now been merged into one planning unit and this was expressly part of the description of the development which Planning Application RU.21/2211 referred to. Whilst physical development is restricted to a small area of the overall site actions on other parts of the overall site can count in support of the Planning Application.
69. We then have a section which is headed **Hear no evil, see no evil, speak no evil**. In essence this section deals with various unauthorised developments on the site. The matter before the Planning Committee was a consideration of Planning Application RU.21/2211 and not unauthorised developments on the site. Whilst such matters may exist case law is clear that they are not of relevance to the consideration of RU.21/2211. All the Planning Committee can consider is the application for retrospective consent for the tree houses. As mentioned in the complaint document there was scope for the Local Planning Authority to treat the fact that the tree houses had been built without planning permission as a material consideration in the assessment of the application. It would have assisted an understanding of matters if it had been explained in the report why that was not done. However the other unauthorised developments could not be taken into account.
70. The next section is headed **Visual openness**. It is not clear what issue this section seeks to raise. It talks about the change to the site following development

undertaken by the current owner, mentions the removal of certain trees and the planting of Leylandii, the size of the tree houses and the issue of internal floorspace versus external floor area and finally unauthorised developments on the site. One major criticism which is raised in this section revolves around the planting of Leylandii. The authors criticise RBC Planning officers for saying it can screen the tree houses and saying that the officers fail to take into account the harm caused by Leylandii because it is not a native species. This discloses an ignorance of the Planning law as I am not aware of any Planning Policy or caselaw which currently entitles a Local Planning Authority to prohibit the planting of Leylandii. There is scope for Local Planning Authorities to require landscaping schemes in respect of developments and they must discuss the suitability of certain types of species in the context of approving such schemes. The question of floorspace and unauthorised developments I have touched on above.

71. There is then a section headed **The future?** which does not raise issues of maladministration or misconduct in public office but just poses questions about possible future development.
72. The next section is entitled **The Environment**. This section seems to deal with historic Planning Applications and the current application RU.21/2211. The material in this section does not support a claim of maladministration or misconduct in public office but rather expresses the opinions of the author/authors on environmental matters. All that can be considered is material relevant to Planning Application RU.21/2211 and no other Planning Applications. Tree and environmental matters were considered by RBC's Tree Officer and Surrey Wildlife Trust, who act as advisers to a number of local authorities on ecological matters. Whilst the author/authors may disagree with their interpretation of matters they do not produce evidence to show they were incorrect in the views they expressed or recommendations they made.
73. We then have a section headed **The Economic objective** which deals with economic benefits associated with the proposed development. In the report presented to the Planning Committee officers broke down the elements associated with economic benefits and noted that Moderate weight would be given to two arguments put forward and no weight would be given to a third argument. Such matters are ultimately a question of judgement on the part of a Planning officer.
74. The next section is called **The Public** and does not produce any evidence to support the claims of maladministration or misconduct in public office.
75. There is then a section entitled **A legal perspective** which sets out a series of matters which it claims are relevant to this case and then undertakes an analysis of those matters. In essence these headings are repetitions of matters raised in the body of the document with reference to legal cases which enunciated certain legal principles but did not deal with the instant Planning Application.
76. The following section is headed **Harm vs. benefits** and is a review of matters mentioned previously and expresses opinions about various matters. What is concerning is that this section seeks to draw in matters which RBC could not take into account when considering Planning Application RU.21/2211. By way of example it talks about unauthorised development on the site which cannot be considered as

part of this application and the future intentions of the site owner, again something which cannot be considered.

77. The final section in the complaint document is headed **Conclusion** and raises issues beyond the manner in which Planning Application RU.21/2211 was dealt with. In essence the section seeks to achieve the removal of development which has already been granted permission and is not the subject of the current application.

### **CONCLUSION**

78. As explained at the beginning of this report this investigation concerns complaints of maladministration and misconduct in public office relating to the processing and consideration of Planning Application RU.21/2211. The development of the land, which has now become known as the Fairmont Hotel, has generated public concern. The development has altered the character of the land and clearly that will raise concerns on the part of certain individuals.
79. The approach adopted by the owner of site, in undertaking some development without securing planning consent in advance is clearly something which has to be frowned upon. Whilst the owner of the site may put forward various reasons for such actions nevertheless it is a course of action which the Government has made clear is not acceptable. Nevertheless it is accepted by Government that retrospective planning applications can be submitted to address such actions.
80. However, the focus of this investigation is not on the actions of the owner of the site but rather serious claims which have been made in respect of the conduct of RBC, as a corporate body, and of officers employed by RBC to discharge important functions. These claims have been put forward in an email by Cllr Berardi and in a document which has been authored by unknown individuals. I fully accept that people can be concerned by the reaction of other parties and if they are criticising those parties in documents they may not wish to reveal their identities.
81. In the body of this report I have set out the legal background to the issues raised and I have considered whether the material presented does contain evidence to support the claims which have been made. In my consideration of this matter I have been assisted by an experienced Town Planner who has considered the contents of the report which dealt with Planning Application RU.21/2211.
82. It has to be accepted that the determination of a planning application involves the consideration of a wide range of matters. There is a hierarchy of Planning Policies, there are a range of factual matters to take into account and decisions by the courts which have interpreted various matters. There will always be a need to exercise a judgement in respect of matters and it will not always be clear cut, as evidenced by the fact that a decision to refuse a planning application maybe reversed on appeal.
83. The issues raised in the complaint go to the interpretation of matters rather than producing evidence of maladministration or misconduct in public office. The consideration of this complaint has been made more complicated because rather than the complaint document focussing on issues related to Planning Application RU.21/2211 it sought to draw in matters related to previous Planning Permissions and matters which are currently the subject of enforcement investigations by RBC.

84. Was the report prepared in relation to Planning Application RU.21/2211 perfect? The answer has to be no but, in its defence, there is probably no perfect planning report ever produced. There will always be debate on what material can be included, the interpretation of material in a report and the conclusions reached which result in a recommendation. What is crucially important is that it did contain relevant material and set out a reasoned case for the conclusions it reached.
85. I would raise certain matters for noting by readers of this report. Any claim of misconduct in public office is extremely serious given the implications of such a claim. The liberty of an individual can be at stake and while such an accusation hangs over a person it can have an impact on their wellbeing. Before making any such accusation a person should ensure they have evidence to support such a claim. I am extremely surprised that neither the authors of the complaint document nor Cllr Berardi contacted senior officers at RBC about the matter. To submit a document containing such allegations to an elected representative who then emails it to all elected representatives in addition to senior RBC officers to my mind would defeat the purpose of enabling a confidential investigation to take place. It has to be remembered that misconduct in public office is a criminal matter and would be investigated by the Police. In respect of any investigation there is always a need to preserve evidence. The risk with the approach adopted by Cllr Berardi is that such evidence might be destroyed or tampered with.
86. To my mind the correct approach would have been to contact solely senior officers at RBC who could have considered the matter confidentiality and decided whether to contact the Police. It is not my place to comment on why Cllr Berardi and the residents who provided him with the complaint document decided to follow the path they did. If Cllr Berardi had been unsure about what to do he could have contacted senior officers at RBC on a confidential basis and sought advice.
87. It is my conclusion, based on my examination of the material supplied to me and a detailed analysis of it, aided by the work of Mr Holland, that there is no credible evidence produced to support a claim of maladministration and most importantly misconduct in public office by any RBC officer.