

MINUTES OF THE SPELTHORNE BOROUGH COUNCIL

Minutes of the Extraordinary Council Meeting of Spelthorne Borough Council held in the Council Chamber, Council Offices, Knowle Green, Staines-upon-Thames on Thursday, 8 December 2022 at 6.00 pm

Present:

Councillors:

C.L. Barratt	T. Fidler	A.J. Mitchell
R.O. Barratt	N.J. Gething	S.C. Mooney
C. Bateson	M. Gibson	L. E. Nichols
I.J. Beardsmore	K.M. Grant	R.J. Noble
M. Beecher	A.C. Harman	O. Rybinski
J.R. Boughtflower	H. Harvey	J.R. Sexton
A. Brar	I.T.E. Harvey	R.W. Sider BEM
S. Buttar	K. Howkins	V. Siva
J. Button	N. Islam	B.B. Spoor
S.A. Dunn	V.J. Leighton	J. Vinson

Apologies: Apologies were received from Councillors S.M. Doran, D. Saliagopoulos, M.M. Attewell, C.F. Barnard, R. Chandler, J.T.F. Doran, R.D. Dunn and S.J Whitmore

135/22 Disclosures of Interest

It was proposed by Councillor Mitchell, seconded by Councillor Boughtflower and **resolved** that Councillor Robin Sider BEM be appointed as Chairman of the meeting in the absence of the Mayor and Deputy Mayor.

There were no disclosures of interest.

136/22 Council's Response to Public Interest Report

Council considered a report from the Chief Executive, The Chief Finance Officer and the Group Head Corporate Governance in response to the Public Interest Report issued by the External Auditors, KPMG.

18:21 – Councillor Siva arrived at the meeting. She was unable to vote in relation to the item as she was not present for the whole of the consideration of the item.

It was proposed by Councillor Boughtflower and seconded by Councillor H Harvey to note the external auditor’s report, and agree the response to the report and the five recommendations made in the report.

Councillor Nichols proposed an amendment to the motion to replace the second recommendation with “in accordance with the Local Audit and Accountability Act 2014, to request the local auditor (KPMG) for more time to consider the recommendations and for the Corporate Policy and Resources Committee to fully discuss the PIR before the Council is asked to approve the response.” This was seconded by Councillor Fidler.

A recorded vote was requested by Councillors Vinson, Nichols, and Boughtflower.

The vote to accept the amendment was as follows:

For:	C Bateson, M Beecher, J Button, S Dunn, T Fidler, M Gibson, K Grant, L Nichols, J Sexton, B Spoor, J Vinson
Against:	C Barratt, R Barratt, I Beardsmore, J Boughtflower, A Brar, S Buttar, N Gething, T Harmon, H Harvey, I Harvey, K Howkins, N Islam, V Leighton, T Mitchell, S Mooney, R Noble, O Rybinski, R Sider BEM
Abstain:	

The motion to approve the amendment **fell**.

The vote on the original motion was as follows:

For:	C Barratt, R Barratt, I Beardsmore, J Boughtflower, A Brar, S Buttar, N Gething, T Harmon, H Harvey, I Harvey, K Howkins, N Islam, V Leighton, T Mitchell, S Mooney, R Noble, O Rybinski, R Sider BEM
Against:	C Bateson, M Beecher, S Dunn, M Gibson, K Grant, L Nichols, J Sexton, B Spoor, J Vinson
Abstain:	J Button, T Fidler

Council **resolved** to note the External Auditor’s report and agree the response to the report and the five recommendations made in the report.

Response from the S151 Officer

Thank you Chair

The Public Interest Report sets out KPMG's conclusions to their Value for Money opinion for 2017-18 and makes 5 recommendations which it is proposed that the Council accept, as we either have always been applying the best practice suggested, or due to the time which elapsed before KPMG published their report we are have had in place for some while. It is very frustrating that KPMG have taken so long to reach their conclusions.

Firstly, it is important to note that the Auditors are not saying that we have a financial black hole as is the case with a few other councils who have been in the news. The auditors acknowledge that the rent income does currently comfortably more than covering the financing costs relating to the borrowing financing the acquisition of the assets. We have never approached the Government for any emergency funding. In our response we do highlight that despite the extreme stress test of the economic impacts of COVID-19 we achieved 100% collection of investment assets rental invoiced in 2020-21 and 99.98% in 2021-22. Within the portfolio we do have some challenges with some churn of some tenants but that is why we have been building up our sinking funds reserves balances by setting aside each part of the income, to ensure we have a safety net to cover dips in income. This enables us to manage those challenges without impacting on the Revenue Budget.

By the end of 2022-23 we anticipate that we will have £36m in the sinking funds reserves. It is due to our sinking funds reserves that we have the highest ratio of revenue reserves to net revenues budget of any district or borough council in the country. The Auditors' report does not make a single reference acknowledging our sinking funds approach as a key part of our risk mitigation strategy – an approach not all councils with investment assets have in place. The Auditors equally fail to acknowledge our prudent approach to Minimum Revenue Provision under which we are paying down our debt on an annual basis, like a mortgage, again in contrast to some councils.

We do not have any issue agreeing to any of the 5 recommendations as we are already doing what the recommendations are asking.

It is very important that the Council agrees to accept this evening the recommendations, as this will in turn enable KPMG to conclude their work on the 2017-18 Statement of Accounts, they have indicated that they are aiming to issue an unqualified opinion on the Accounts by the end of December. This will then in turn enable BDO in the New Year to start the work of clearing the backlog of audits. It is important that this catchup process starts as soon as possible

Dealing with the three recommendations with financial aspect:

Recommendation 3 - The Council should ensure that it has regard to all relevant statutory guidance, including specific aspects of that guidance that apply to particular decisions or transactions, and specifically record its reasons for departing from such guidance if it decides to do so

We agree the recommendation The Council has always had regard to all relevant statutory guidance seeking relevant expert advice and will continue to do so. It will in future more clearly record reasons for departure, not that we are anticipating any departures from statutory guidance. Note moving forward the Council's Capital Programme and Capital Strategy is focused on ensuring that all capital spend is consistent with the revised terms of the Public Works Loans Board and the CIPFA Prudential and Treasury Management Codes. We run our Treasury Management and Investment strategy reports past our professional advisers to ensure that appropriately reference and comply with statutory guidance. We will seek early discussions with our auditors if we have concerns about issues of interpretation with respect to interpretation of guidance, a recent example being discussing risks around abortive capitalised costs.

Recommendation 4: The Council should develop its investment property portfolio modelling to bring these in line with the expected practice of an institutional investor. This should include robust stress testing and sensitivity analysis which incorporates scenarios that cover the highest level of risk for expenditure, revenue, tenant behaviour and external socio-economic factors. Consideration should also be given to the diversification of the portfolio and whether this should be addressed over medium to longer term.

We agree the recommendation. The Council since the commencement of the Pandemic in March 2020, has been refreshing and reviewing on a weekly basis scenario modelling on a worst case and expected case basis to assess the adequacy of its sinking funds reserves. It is notable the PIR report omits to make any reference to the Council's use of Sinking Funds reserves as its key mitigation measure against the risk of not being able to cover financing payments at any point in the future.

The Council sought to invest within the borough and close to the Borough within the Heathrow Economic Functional area which it understands well and which drives the prosperity of the Borough. This is the rationale for the geographic concentration of the portfolio. Whilst the Council is managing a small number of investment assets it has a considerable number of tenants who are operating across a wide range of economic sectors this is monitoring in the investment reports. There is therefore considerable diversification by tenant sector.

The Council is already committed to undertaking a review of its Sinking Fund Strategy covering the next 50 years bringing independent consultants to review assumptions about future income levels, rental activity and to make recommendations around levels of sinking funds contribution to reserves to ensure that we continue to have a sufficient level of reserves to cover any dips in income and to cover all financing and management costs. For the sinking fund review we are considering the option having outside experts review the methodology and make recommendations to feed into the refresh of the modelling. The modelling refresh will include stress testing.

Recommendation: The Council should develop an action plan as part of the management of its investment portfolio which addresses each of the weaknesses identified in paragraph 6.9. This should be linked to a portfolio risk register, which monitors each of the KPIs, tenant performance and risk to the debt repayment strategy for each investment property asset

Whilst we believe we undertake actions which address the risks set out in in 6.9 of the report, we will, linked to the sinking funds reserves review, undertake an action plan to identify the scope for any improvements. Relevant points to notes with respect to the issues in 6.9 are as follows:

- The investment assets portfolio is constrained geographically by a desire to be focused within our local Heathrow functional economic area (an area which the Council has a good understanding of and which drives the economic prosperity of the Borough), however the tenants by sector are relatively diversified.
- The sinking fund strategy review looking at a) short term 5 year perspectives, b) medium term 5 to 30 years and c) 30 years plus. Since 2019 the Council has diversified its overall portfolio by its regeneration acquisitions. , with regular reporting against KPIs of the overall portfolio and of individual tenants, along with maintaining five yearly business plans plus five year refreshing of the sinking fund reserves modelling. As stated above we will undertake an action plan to review the portfolio linked to the sinking fund review and look to draw out from the risk analysis in the individual business plans an overall portfolio risk register
- We already undertake regular worst case and expected case sensitivity analysis on a rolling 10 years basis
- The Assets team has increased significantly in size since 2017/18 with the addition of a number of skilled assets professionals with private sector experience of managing portfolios of office and retail assets. A testament to the skills of the team and their proactive approach to managing the portfolio and engaging with tenants are the investment asset rental collection percentages of 100% and 99.98% for the years 2020-21 and 2021-22
- The building up of sinking funds reserves balances (anticipated to be £236m at end of 22-23) is design to mitigate against repayment risk.

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Chief Executive's Response

Chair

At 8pm on the 12th October 2022, KPMG released their 2017/18 Public Interest report, concluding their Value for Money process. The report literally came out of the blue without any prior indication of its intended release.

Regrettably, the timing coincided with the pre-election period for Spelthorne's most recent by-election, hence the delay in the report's release until immediately after the polls for the by-election closed on the 30th November. This was agreed with the auditors and the Department for Levelling Up, Housing and Communities.

The audit report presented to this chamber tonight, has taken our auditors over four and a half years to produce.

Audit congestion and lengthy tailbacks are endemic in the sector with only 9% of local authority audits currently being completed within the 6 months statutory deadline.

This is by far the lowest percentage on record since the introduction of the Local Audit and Accountability Act 2014 which saw the abolition of the Audit Commission and the transfer of all audit work to private sector companies.

However, by any measure the release of this report, virtually half a decade after the audit year in question, is in itself a remarkably poor turnaround, posing significant concerns in both the 'timely value' of such audits and their associated 'cost value'.

The Public Sector Audit Appointments company believes that such delayed audit opinions have a real public-facing impact, undermining the ability of local authorities to account effectively for their stewardship of public money to taxpayers.

Notwithstanding the contextual factors, this Extraordinary Full Council Meeting has been called to formally note and respond to the audit report that has been issued as a Public Interest Report.

The Council's draft response has been compiled and overseen by an informal cross-party Working Group comprising of The Leader and Deputy Leader as well as the Chair and Vice-Chair of the Audit Committee.

Monitoring Officer's Response

Receipt of a Public Interest Report ("PIR") triggers certain legal requirements upon the authority.

Schedule 7 to the Local Authority Audit and Accountability Act 2014 sets out the requirements in respect of public interest reports and written recommendations

In summary, the key requirements for the authority to action following receipt of the PIR are:

- a) As soon as practicable, we must publish the PIR on our website
- b) As soon as practicable, we must provide a copy of the PIR to each of the Council's Members.
- c) Ensure that any member of the public may inspect it at all reasonable times without payment
- d) Before the end of one month beginning with the day on which the PIR is sent, we must consider the PIR and recommendations at a meeting of the Council

At the meeting, the Council must decide:

- 1. Whether the PIR requires the Council to take any action OR whether the recommendations are to be accepted; and
- 2. What, if any, action to take in response to the PIR and recommendations.

f) As soon as practicable after making the above decisions, we must notify the Auditors of those decisions and publish them.

This authority considers that the requirements under the Local Authority Audit and Accountability Act have been met, and has cooperated with the Auditors and the Department for Levelling Up Housing and Communities – on its timetable for doing so.

It was not practicable to comply with the requirements to publish the report and corresponding notice as soon as the PIR was issued as to do so would have breached section 2 of the Local Government Act 1986 which concerns publicity during pre-election periods. This provision places a duty on councils 'not to publish

any material which, in whole or in part, appears to be designed to affect public support for a political party’.

Following the funeral of late Councillor Todd on 17th October 2022, a by-election was held on 30th November 2022. The Code of Recommended Practice on Local Authority Publicity recommends that local authorities should generally not issue **any material** which seeks to influence voters during a period of heightened political sensitivity.

The PIR makes several references to investment decisions made in the period of 2017/18 which in the Auditor’s view were unlawful. At this time the Council operated a strong leader and cabinet style of governance, and the investment decisions were largely carried by one particular political party. If we had published the PIR at this stage, this could be seen to unduly influence voters, which would have undermined the democratic process. On this basis, the Auditors granted the Council an extension of a further month within which to hold a council meeting to discuss the recommendations made in the report. That extension expires this Sunday on 11th December 2022 and therefore this agenda item must be considered today.

The PIR was received after close of business on 12th October 2022. We immediately advised the Auditors and DLHUC regarding the imminent funeral of the said late councillor and that a notice of vacancy was due to be published the following day. Therefore just for clarity, in light of the bi-election was imminent, the Council under the guidance of the Working Group, constantly appraised both the Auditors and DLUHC on its proposals to delay certain requirements under Schedule 7 to the Local Authority Audit and Accountability Act 2014 and acted within advice received.

Now turning to the report itself, you will note that it provides a conclusion based on legal opinion together with five recommendations.

I will now comment on the legal opinion

The Auditors assert that the Council did not seek proper legal advice prior to borrowing and purchasing the properties. This is incorrect. The Council sought legal advice on 19th July 2016 and

21 March 2017 and on four further occasions, the latest being November 2022 all from James Goudie KC, a **leading** local government counsel and experienced head of chambers.

The Auditors also conclude that the council firstly did not, in the circumstances, have the necessary legal powers to borrow and then purchase the properties; and secondly even if it did have the power, it exercised the power unlawfully, by failing to “have regard” to relevant statutory guidance at the time.

James Goudie, the council’s KC is of the opinion that the Council **did possess** the necessary powers and **could rely** on the general power of competence conferred by the Localism Act 2011 as it was not trading/acting for a commercial purpose but was investing. **That does not entail the use of a company.**

The Auditors took issue with the 2017/18 purchases being outside of the borough stating that section 120 LGA 1972 could not be relied upon as the acquisitions were not directly “for the purposes of any of the local authority’s functions, any enactment, or for the benefit, improvement or development of their area”

However that is not agreed by James Goudie, the council’s KC as he advises “there can be no greater benefit for an authority and its residents than an improvement in its general financial position and ability to fund services, at any rate if there is an identified and reasonably well-defined outcome in terms of benefit”

In essence the authority’s KC strongly maintains his previous advice and is unpersuaded by the Auditors legal findings. Taking into account that the council’s KC is one of UK’s top legal advisors in the arena of local government law, the council acted absolutely reasonably in accepting his advice as an accurate interpretation of the law.

In response to the legal recommendations in the report - there is no disagreement about these. Recommendation at 4.1.2 PIR The Council has always obtained legal advice prior to entering into specific transactions and will continue to do so.

Recommendation at 4.1.3 PIR – relates to Officer reports. All reports to committees and council are published on the council’s website which includes the legal considerations. This section of

the report sets out the legal powers relevant to the issues in the report.

Lastly with regards to the recommendation at 4.7.7 PIR the council has considered all relevant statutory guidance and sought relevant expert advice and will continue to do so. Should the Council decide to depart from guidance in future, this will be recorded more clearly stating the reasons for doing so.