

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.