

Goring-on-Thames Parish Council 2017/18

Consideration of an Objection made under Section 27 of the Local Audit and Accountability Act 2014 (the Act)

1. As External Auditor of Goring-on-Thames Parish Council we received two formal objections from Parishioners in respect of the 2017/18 Annual Governance and Accountability Return completed (AGAR).
2. The objections received were found to satisfy the requirements of Section 27 of the Act and has been accepted subject to limiting it to items within the 2017/18 audit period and those within our remit to review under the Limited Assurance Review arrangements.
3. The point(s) accepted for objection are:
 - Restrictions on who can obtain legal advice on behalf of a council.
 - Lawfulness of decisions made regarding the taking of a legal action and the authority used to spend Council's funds.
4. The point(s) not accepted for objection are:
 - Adherence to the publications scheme.

This is outside the scope of objection criteria under the Limited Assurance Review regime, this will instead be reviewed and, if necessary, commented on as part of the annual review process.

5. You asked us to consider:
 - issuing a public interest report on those matters; and
 - applying for a declaration that the related council spending was unlawful.

Restrictions on who can obtain legal advice on behalf of a council

Consideration of the issue

6. It has been suggested as part of the objections that it is only appropriate for the Clerk obtain legal advice on behalf of a council.

7. We are not aware that there is a specific regulation stating that legal advice can only be obtained by the Clerk to the Council.
8. Therefore, whilst it may be customary for the Clerk to the Council to undertake this duty, we cannot see that it is a legal requirement.

Decision on the issue

9. Our decision is that the any member of the Council or the Clerk may seek legal advice on behalf of the Council, if the Council requires it.

Authority and lawfulness for the taking of decisions relating to legal action and the related costs

Consideration of the issue

10. Under s222 LGA 1972 it is stated that “Where a local authority consider it expedient for the promotion or protection of the interests of their area they may prosecute or defend or appear in any legal proceeding, and in the case of civil proceedings, may institute these in their own name...”
11. This appears to provide broad powers to the Council regarding their ability to undertake such an action.
12. The matter then turns to whether the decisions/actions were taken lawfully and authorised appropriately.
13. The initial action was taken in 2016/17. We therefore have no remit as External Auditor for 2017/18 to raise specific enquiries relating to a closed year.
14. However, the case continued into 2017/18 and further costs were incurred during this year and so we consider the objection is relevant regarding any active reviews being undertaken relating to these ongoing legal costs.
15. The costs involved are significant in proportion to the income and expenditure of the Council as whole.
16. A detailed review of minutes throughout the period from both the Weir Committee and Goring Parish Council show regular discussion and voting occurred regarding the taking of legal action.
17. The public were invited to, and took part in, the public element of these meetings and time was provided for questions to be raised and answered.

18. Various meeting minutes during 2017 and 2018 reflect elements of confidential business where the public and press have been temporarily excluded.
19. There are no published minutes which clearly refer to the legal action following the Court of Appeal's decision in February 2017 until after the final Court decision handed down on 25 April 2018.
20. This has been explained by the Council/Clerk that they received a direction from the Court that they were forbidden to speak publicly about the 52.30 application and any potential appeal until or unless permission was granted by that Court.
21. The Council have explained they were advised by their lawyer(s) this direction also prevented them from notifying SODC and the Sustainability Group, who were a named interested party in the legal action.
22. We have been provided with written confirmation from the legal firm acting for the council of the need for this matter to not be disclosed to any other party.
23. We have also received a copy of the Court of Appeal application.
24. This clearly states that it must not be served on any other party subject to the original application/appeal until or unless directed to do so by the court.
25. If this matter was discussed in an open council meeting it could be witnessed by the public or press, which could effectively provide notice of the Court of Appeal application to those other parties.
26. Whilst the subject of the confidential business discussions is not recorded or reported, the results of any decisions taken following those discussions have been in so much as whether the matter was resolved positively or negatively.
27. Whilst these minutes only reflect that they relate to confidential business, the timeframe of those minutes accords with the timeline provided to us as when these discussions and decisions took place.
28. Accepting the limitation of these minutes, this does appear to support the Council's assertion that the sub-committee known as the 'Weir Committee' undertook the day-to-day overview of the legal action on behalf of the full council.

29. It is explained both by the Clerk and in later minutes, that at least some of these exclusions for confidential business relate to the Judicial Review application and the Weir Committee's resolve to proceed with the action.
30. These resolutions, as far as is visible, have then been brought to Full Council at their next meeting for formal agreement/ratification, in line with proper practices.
31. The document headed 'REPORT – WEIR DECISIONS', dated 26 July 2018, was produced Cllr Bryan Urbick to provide an overview and timeline of the process undertaken by the Weir Committee and the Council.
32. This document was referred to on the agenda for the Council meeting of 3 July 2018 but withdrawn and presented instead at the Weir Committee Meeting on 31 July 2018.
33. The minutes of the meeting on the 31 July 2018 were presented at the council meeting on 13 August 2018.
34. It sets out that following the Court decision on 25 April 2018 they were released from the instruction not to discuss or make public and explained/evidenced how the necessary discussions were had as part of the confidential business section of various meetings' agenda and subsequently reflected in minutes.
35. In review, the actions discussed by the Weir Committee were duly resolved and their resolutions were then passed onward to the Full Council for a final decision, resolution or ratification to be provided.
36. The previous External Auditor raised a point in conclusion of its 2016-17 Limited Assurance Review, that it is good practice to record the power being used, particularly in cases of unusual and/or one-off expenditures.
37. Therefore, not generally recording the specific power under which each expenditure is being made is insufficient to make those payments unlawful.
38. It should be noted that the previous external auditor went on, that it is only necessary to record such powers when the expenditure related to the spending of S137 monies.
39. It is true that the council 'vired' funds to provide the balance of legal fees from a reserve earmarked as S137.
40. This was clearly identified and recorded within the agenda and minutes of the council.
41. A council is not required to isolate, identify or otherwise ringfence funds for S137 spending.

42. A council may earmark funds, as part of its budget process, as being available for spending under S137.
43. A council is entitled, as part of its in-year monitoring and budgetary processes, to repurpose unspent earmarked reserves as it sees fit.
44. This repurposing of earmarked S137 reserves does not amount to spending using S137 powers and therefore does not need to meet the statutory requirements for such a spend, nor be recorded as such a spend.
45. It has further been suggested as part of the objections that the decision(s) made by the Council to take the legal action it has could be considered so irrational and/or unreasonable as to be considered unlawful or require Public Interest Reporting.
46. There is a standard of unreasonableness used in assessing an application for judicial review of a public authority's decision.
47. Such reasoning or decision making is said to be Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223*).
48. This test is a different (and stricter) test than merely showing that the decision was unreasonable.
49. The information provided in the minutes provide a sufficient evidence that a reasonable process was followed prior to action being taken.
50. Throughout this process opportunities were provided at each the beginning of meetings for the local public, both for and against the action, to raise points and comments prior to agenda discussion taking place and the items being voted on.
51. There appeared to be sufficient support for the legal action to not support it as being Wednesbury unreasonable.

Decision on the issue

52. Our decision is that, we are satisfied that the Council went through due process in decision making and recording of spending sufficient to ensure the resulting decisions and spending were not unlawful.

Decision

53. Based on the information provided, we consider there are no grounds for a public interest report to be raised.
54. Nor for the reasons explained above do we believe there is justification to apply to the courts to have an item of account declared unlawful under section 28 of the Local Audit and Accountability Act 2014.

Right of appeal

55. You have the right, under section 28(3) of the Local Audit and Accountability Act 2014, to appeal our decision not to apply for a declaration. Should you wish to do so, you must issue your appeal with the High Court within the period of 21 days beginning with the date after you receive this document.
56. Should you wish to appeal this decision, we strongly recommend that you seek legal advice.
57. Please note, there is no right to appeal against the decision not to issue a public interest report.
58. We have copied this decision to Goring-on-Thames Parish Council

**Moore**

Issued on 28 June 2021

Material Documents relied upon:

- Documents provided by Mr. T Coombs and Mr. T Worthington in support of their objections
- Extraordinary Council Meeting (ECM) minutes 2/4/2016*
- Goring-on-Thames Parish Council minutes 13/06/2016 – 09/07/2018*
- Weir Committee Meeting (WCM) minutes 18/04/2016 – 31/07/2018*
- ‘Report – Weir Decisions’ from Cllr Urbick of 26/07/2018 – presented at the 31/07/18 WCM*
- Emailed letter from Clerk 04/02/2019 – in response to enquiries raised by auditor plus extracts from Parish Council and Weir Committee minutes with related decisions
- Email from Clerk 19/12/2019 – in response to additional enquires raised by the auditor in relation to budgeted costs and additional funding requirements incl. transfer of funds from CIL to EMR Weir Legal Fees.
- S222 LGA 1972*
- Letter from legal advisors confirming its instruction and the court’s requirement to maintain confidentiality for the appeal.
- Letter of acknowledgement of appeal bundle documents from Court of Appeal.**

* These documents are publicly available and so have not been provided

**This document has been withheld as legally privileged