

Agenda Item No: 9

Report No: 177/14

Report Title: Summary Audit Report - Investigation into the relationship between the Council and Seaford and District Constitutional Club as to possible development opportunities at the site

Report To: Audit and Standards Committee Date: 1 December 2014

Ward(s) Affected: All

Report By: Head of Audit and Performance

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Purpose of Report:

To inform Councillors on the outcome of the investigation carried out by the Head of Audit and Performance.

Officers Recommendation(s):

- 1 To note the summary findings and recommendations (as shown in Section 3 of the report at Appendix A).
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Reasons for Recommendations

- 1 The remit of the Audit and Standards Committee includes the power to consider the significant findings of Internal Audit investigations and the responses of Chief Officers to those findings.

Information

2 Background

- 2.1 During April 2014, the Council was made aware of a number of concerns regarding a purported relationship between the Council and the Seaford and District Constitutional Club as to development opportunities at the club site. These concerns were raised by Liberal Democratic Councillors, including Councillor Osborne, Leader of the Liberal Democrat Group, and by a member of the public.
- 2.2 The Chief Executive commissioned an independent investigation by the Head of Audit and Performance. In summary, the aim of the investigation has been to examine the relationship between the Council and the Seaford and District Constitutional Club, and determine whether officers and Councillors had acted in accordance with their roles and responsibilities as set out in the Council's Constitution.

2.3 A summary report on the results of the investigation is given at Appendix A. The report contains nine recommendations which are being actioned by senior Council officers.

3 Financial Appraisal

3.1 There are no additional financial implications from this report.

4 Sustainability Implications

4.1 I have not completed the Sustainability Implications Questionnaire as this report is exempt from the requirement because it is an internal monitoring report.

5 Risk Management Implications

5.1 If the Audit and Standards Committee does not ensure proper oversight of the results of Internal Audit investigations there is a risk that key aspects of the Council's procedures and controls may not comply with best practice.

6 Legal Implications

6.1 There are no legal implications arising from this report.

7 Equality Screening

7.1 This report is for information only and involves no key decisions. Therefore, screening for equality impacts is not required.

8 Background Papers

8.1 None.

9 Appendices

9.1 Appendix A – Summary Audit Report – Investigation into the relationship between the Council and Seaford and District Constitutional Club as to possible development opportunities at the site.



Lewes District Council

AUDIT AND PERFORMANCE DIVISION

SUMMARY AUDIT REPORT

**Investigation into the relationship between
the Council and Seaford and District
Constitutional Club as to possible
development opportunities at the site**

31 October 2014

**David Heath
Head of Audit and Performance**

1 INTRODUCTION

- 1.1 On 30 April 2014, the Chief Executive received an email from Councillor Osborne, Leader of the Liberal Democrat Group, which set out her concerns about rumours of an agreement between the Council and Seaford and District Constitutional Club for the joint development of the Club site.
- 1.2 The Chief Executive (CE) commissioned an independent investigation by the Head of Audit and Performance. This report summarises the results of that investigation. A draft of this summary report has been reviewed by the CE, Director of Finance and Assistant Director Corporate Services (ADCS).
- 1.3 A detailed remit for the investigation is given at Section 4. In summary, the aim of the investigation has been to examine the relationship between the Council and the Seaford and District Constitutional Club (the Club), and determine whether officers and Councillors had acted in accordance with their roles and responsibilities as set out in the Council's Constitution.
- 1.4 The investigation has been conducted via interviews with key officers, Councillors and representatives of the Club and the proposed developer, an analysis of correspondence and the minutes of meetings, and the examination of relevant parts of the Constitution.
- 1.5 This investigation has been conducted in conformance with the Public Sector Internal Audit Standards (PSIAS).

2 BACKGROUND

- 2.1 During April 2014, the Council was made aware of a number of concerns regarding a purported relationship between the Council and the Club as to development opportunities at the club site. These concerns were raised by Liberal Democratic Councillors, including Councillor Osborne, Leader of the Liberal Democrat Group, and by a member of the public in a Freedom of Information (FOI) request. In summary, the concerns included:
 - The Club, which is politically affiliated to the Conservative Party, had agreed to enter into a partnership with Lewes District Council with the aim of providing a new club with similar facilities and an income for the Club in future.
 - The discussions with the Club have been undertaken directly by the Conservative Leader (Councillor Blackman), initially in his role as Lead Member for Regeneration¹, without the involvement of senior officers and without informing the then Leader of the Council, Councillor Page.
 - The Conservative Leader of the Council had, in his official Council capacity, embarked upon a process that if successful would benefit the Club affiliated to his party.
- 2.2 In response to Councillor Osborne's email of 30 April, 2014 the ADCS wrote back to her on 2nd May 2014 to advise that Internal Audit would be asked to investigate the concerns and report. On 6 May 2014 there was a media release by Lewes Liberal Democrats detailing these concerns, and there have been subsequent articles in

¹ From 8 May 2013 to 13 February 2014 Councillor Blackman was Cabinet member for Business, Economic Development, Tourism and Housing Strategy.

the local media regarding these matters. At Full Council on 7 May 2014 these concerns were raised again by the Liberal Democrat Councillors.

- 2.3 In the period in which the development opportunities at the Club were considered there were significant changes in those officers and Councillors who had an interest or direct involvement in these matters. At the Full Council Meeting of the 26 February 2014 Councillor James Page resigned as Leader of the Council and Councillor Rob Blackman was elected as the new Leader of the Council. Prior to this in February 2014 Councillor Page dismissed Councillor Rob Blackman as Deputy Leader of the Council. In November 2013 the Director of Business Strategy and Development joined the Council. However in mid-December 2013 the Corporate Head – Communities and Enterprise left the employment of the Council.

3 SUMMARY FINDINGS AND RECOMMENDATIONS

Overall

- 3.1 From late September 2013 to early May 2014, Councillor Blackman (and very briefly at the beginning Councillor Page) and a small group of officers were working on aspects of a potential development of the Club site. The prospect of development opportunities at the Club had generated proposals from a local businessman to develop the site into a location for business, arts and housing, at the same time as helping the Club financially. This proposal was adopted by Councillor Blackman as a way of ensuring that the building would be retained as a community asset. Officers were asked by Councillor Blackman to explore the potential for development and, subsequently, to work with a local developer to prepare assessments of the site as a location for affordable housing.
- 3.2 At an early stage, officers had expressed concerns at the risks involved for the Council in being seen to provide financial support for a political organisation. In early November 2013 a detailed business case was prepared that acknowledged the risk of the Council's potential involvement with a political organisation. In November or December 2013, Councillor Blackman was advised of these concerns and he has confirmed that he understood that position. In an attempt to overcome this risk and continue momentum in the potential development of the Club site Councillor Blackman introduced the Club to a developer. There was consideration of other options, including the Council leasing the housing properties from the developer, but it is not clear that there was a proper understanding among the parties of their respective roles. Work continued on the potential development, including detailed discussions and correspondence between the developer and Council officers on housing matters, until early March 2014. In early May as a result of a notice put up by the Club referring to a relationship between the Council and the Club, the ADCS advised the Club that the Council had made no decision to enter into any arrangement with the Club, and that it would be inappropriate to enter into a relationship with the Club that might be construed as supporting the Club's finances.
- 3.3 The ways in which the work on the proposed development has been managed and the close personal involvement of Councillor Blackman has made it difficult for officers to exercise effective judgement at key stages of the process. This situation contributed to a lack of clarity as to whether the Council should continue to be

involved in the development, and this allowed work on the proposals to carry on when it should have been apparent that Council involvement was not appropriate. This situation was not helped by the changes that took place among the senior officers that were dealing with the proposals. The Council's Constitution sets out the Council's governance arrangements and makes clear who (i.e. Officer or Councillor) and which part of the Council (i.e. Council or Executive) is responsible for carrying out particular functions. The Constitution already includes a Protocol for Councillor/ Officer Relations and this sets out the relative roles of each, explaining that the Leader is accountable for proposing the Council's policy framework and setting priorities and objectives: the CE is accountable for the implementation of the same.

- 3.4 This investigation has found no breaches of the Code of Conduct by Councillors. However, the investigation has highlighted the need for both Councillors and officers to clearly understand how development proposals of this type should be handled and how relationships with developers should be managed. The programme of major regeneration projects now underway is requiring Councillors and officers to work in ways not previously envisaged, and this needs to be addressed by further guidance and training.
- 3.5 The findings that give rise to this view are outlined below. Where relevant, recommendations are provided below the finding.

Status of Seaford and District Constitutional Club

- 3.6 The Club rules establish that it is affiliated to the Association of Conservative Clubs promotes Conservative Party Policies and the principles of conservatism, and that only conservatives are eligible for membership. The Club is clearly a political organisation.

Involvement of Councillors with officers

- 3.7 Councillor Page had little involvement with officers on matters relating to the development proposals after the initial stages because he became aware that the Club was a political organisation and considered the Council could therefore not be involved with it. Councillor Blackman's dealings with officers were initially at CMT level but he then dealt directly with more junior officers as the work progressed. This was with the full knowledge of the appropriate CMT member, but it can be argued that the respective CMT members should have maintained closer oversight of the work that had been delegated to more junior officers.
- 3.8 The Protocol for Councillor Officer/ Relations sets out clear guidance on these relations which includes that Councillors should not exert any undue pressure or influence on officers. Emails and contacts between Councillor Blackman and officers could be construed as appearing to place pressure on officers to progress an initiative with the Club although there is no evidence to suggest that this was intentional. There is a need for additional training for Councillors and officers in developing and maintaining proper officer/member relationships.

Recommendation 1

Training should be provided to both Councillors and officers on Councillor/ officer relations as outlined in the Council's Constitution.

Recommendation 2

Members of CMT should ensure that they maintain regular oversight of areas of work when Councillors are dealing directly with more junior officers.

Recommendation 3

Councillors should take care in the language used in emails to avoid the impression that they are placing pressure or undue influence on officers.

Instructions from Councillors to officers

- 3.9 The Protocol for Councillor/ Officer Relations in the Constitution sets out that Councillors should have regard to the seniority of the officer they are dealing with. No evidence has been found that Councillor Blackman or Councillor Page gave direct instruction to officers below CMT level.

Involvement of Councillors with the Club and third parties

- 3.10 Councillor Blackman attended several meetings with representatives of the Club at which it is understood that the potential developer and an architect were sometimes also present. Councillor Page attended one meeting. Officers were not present at any of these meetings. No evidence has been found that improper conduct has taken place. However, by not having Officers present and having discussions about possible opportunities at the Club site Councillor Blackman placed himself at risk that assertions of improper conduct could be made in respect of paragraph 6a)(using position as a member improperly to secure an advantage for a third party) and/or paragraph 6b) (using resources of the authority improperly for party political purposes) in the Code of Conduct for Members of the Council.

Recommendation 4

The ADCS (in her capacity as Monitoring Officer) should add to the existing Protocol on Councillor/Officer Relations to make clear that it is the role of officers, not Councillors, to negotiate on behalf of the local authority, to evaluate proposals and to ensure that any proposal is brought into the Council's governance system so that any decision relating to it is properly taken.

Recommendation 5

- 3.11 **To support the Constitutional change in the recommendation above separate guidance should be developed to help Councillors to understand the potential risks of meeting and undertaking discussions with third parties such as developers, land and property owners, potential consultants or contractors or other such interested parties where there is potential for direct involvement of the Council. Such guidance should not stifle the need of Councillors to develop a vision for the authority but clearly define where the involvement of officers is required.**

Recommendation 6

Training for all current and new Councillors after the May 2015 elections should be provided on any new guidance arising from recommendations 4 and 5.

Application of the Council's normal reporting procedures

- 3.12 Executive decision - making power is invested in the Leader personally. The Leader may choose to exercise these powers himself or he/she may choose for these decisions to be taken as a whole by Cabinet. If he/she chooses to exercise this power then the Council's own constitutional procedure rules require the decision taken to be brought back to the next available Cabinet for noting. When reaching such a decision Councillors must have regard to advice from the Chief Finance Officer and Monitoring Officer. No executive decision has taken place in relation to development opportunities at the Club or any other matters in relation to the Club.
- 3.13 The development opportunities at the Club were frequently discussed between officers and Councillors, and the issue was raised as an item at three CMT meetings, and a draft business case was prepared. So far as can be determined the proposals were not taken to the Nexus Board or Cabinet. It is the case that the proposals were not made a Nexus project, and so were not subject to the project management methodology and reporting arrangements that normally apply to developments of this kind.
- 3.14 A letter from the Developer of the 3 February 2014 proposed that the Developer in conjunction with the Council redevelop the Club site. This letter indicated that the Council would have a direct relationship with the Club. This proposal was copied to Councillor Blackman. He did not realise that the Developer's proposal would mean a direct relationship between the Council and the Club. Neither the CE, ADCS or Head of Regeneration and Economic Development received a copy or were given sight of this letter and were therefore completely unaware that the proposal envisaged a direct relationship for the Council. This was contrary to their understanding that the development was no longer a matter for the Council, which was confirmed at a meeting with Councillor Blackman in January /February 2014. As the Housing Policy and Development Manager's (HPDM) focus was on the viability of housing he would not be aware of the significance of the proposal and would have no reason to pass it onto anyone else. In this respect the handling of the proposals would have benefitted from the Corporate Head - Housing Services maintaining closer oversight of the work being undertaken by the HPDM in relation to potential developments at the Club site.

Officers acting within their power and remit in responding to any instructions from Councillors

- 3.15 There is no evidence that officers at CMT level acted outside of their remit when responding to instructions from Councillors.

Professional advice given by officers

- 3.16 Significant meetings have taken place between officers and Councillors where no record has been made of key points, advice or actions agreed. These included three meetings where both the CE and the ADCS met with Councillor Blackman and in the third meeting the Director of Business Strategy and Development was also present. This appears to have created confusion as to what took place at the meetings. It is recognised that for some meetings, particularly those of an impromptu nature, the production of detailed minutes may not be practical. However, where key advice has been given or actions agreed with Councillors or

third parties, it is important that there is no misunderstanding as to what took place at the meeting.

- 3.17 In seeking to progress the proposals for the development of the Club site, Councillor Blackman has mainly worked with officers in Regeneration and Housing. The advice given by officers in these departments related directly to the questions they were asked in respect of regeneration procedures and housing matters. Advice was given to Councillor Blackman by the ADCS on the inappropriateness of funding a local political organisation and on the direct relationship that the proposed development would create between the Council and the Club. There is no evidence of advice being sought from officers in Finance or Democratic Services.

Recommendation 7

Where key advice or actions are agreed between Councillors and Officers a short summary should be provided to the Councillor/s or third party after the meeting.

The need for Constitutional amendment and adequacy of training

- 3.18 The training undertaken for Councillors on the Constitution after elections as part of their induction is a solid mechanism to support Councillors through their term of office. The investigation has identified that the Constitution in respect of the Protocol for on Councillor /Officer Relations could usefully be expanded and also that further training be provided in relation to this protocol. However, it is considered that Councillors in key new positions, particularly that of Leader or a Cabinet member would benefit from supplementary training recognising their high profile in leading the Council.

Recommendation 8

Additional training should be undertaken to help the Leader, Cabinet, Leader of the Opposition and other Committee Chairs to support and maximise their democratic roles within the Council. Consideration should be given to this being undertaken by an independent third party.

Other significant matters

- 3.19 The investigation has noted that officers and Councillors may meet at locations other than official Council premises, for example coffee shops and restaurants. Opinion on the use of unofficial premises is mixed – some senior officers believe that such contacts should be avoided whilst others accept that such meetings are now part of normal business practice. There is a risk that meetings at these locations could lead to the inadvertent disclosure of confidential information.

Recommendation 9

A protocol for meetings between Councillors and Officers in other than official premises should be set out to support the Constitution. This should define whether or not meetings should be held in other than official premises and if allowed the guidelines that need to be followed for this.

4 INVESTIGATION REMIT

4.1 On 14 May 2014, the ADCS wrote to the Head of Audit and Performance providing a suggested remit for the investigation subject to any comments received from Corporate Management Team (CMT). No further comments were received from CMT and the final remit was sent to CMT on 29 May 2014. The scope for the investigation is as outlined below.

Scope of the investigation

4.2 To carry out an independent investigation into the relationship between the Council and Seaford and District Constitutional Club as to possible development opportunities at the site.

4.3 The investigation to focus on:

- The nature and extent of the involvement of Councillors and whether this followed the guidance about the relative roles of Councillors and Officers as set out in the Council's Constitution. This will include whether Councillors had appropriate regard to the seniority of the officer with whom they were dealing, as set out in the Constitution.
- Whether Councillors had acted independently of the Council in dealing with any third parties e.g. undertaken discussions, negotiations, meetings or made purported decisions.
- The extent to which any proposals were considered in accordance with the Council's usual procedures e.g. reported to Corporate Management Team, discussed at Nexus Board, or were the subject of a report to the Executive (either a report to Cabinet or a report to the Leader).
- Whether Councillors had given instructions to staff and if so, whether any instructions were given after having sought and taken adequate professional advice.
- Whether officers had acted within their powers and remit in responding to any instructions from Councillors. This will include whether checks had been made with line managers and/or Directors if approached directly by Councillors and asked to undertake work.
- Whether officers sought appropriate professional advice from colleagues when dealing with this possible development opportunity.
- Whether relevant professional advice was given by officers and the adequacy of that advice e.g. from Legal, Finance or Democratic Services.
- Whether the Constitution requires amendment in the light of the investigation and whether training for Councillors meets current needs.
- To support the above a chronology of events will be prepared based upon documents identified and interviews undertaken.
- Any other significant matters that may come to light as a result of the investigation.

4.4 If in carrying out the audit investigation potential breaches of the Code of Conduct for Members of the Council are identified then these will be referred to the Council's

Monitoring Officer, setting out the relevant paragraph of the Code which may have been breached and the facts relevant to such potential breach. The Monitoring Officer will deal with alleged breaches of the Code, but will only do so on the basis of any relevant evidence which comes to light as a result of the audit investigation.

- 4.5 Eleven people were interviewed as part of the investigation, including seven officers, two Councillors, the secretary of the Club, and a representative of the proposed developer.

Chronology of events

- 4.6 A chronology of events was compiled for the investigation.