



30 July 2020

Dear 

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### **Exeter City Council: Objection to audit of the accounts 2018-19**

I am writing further to your previous correspondence with my predecessors  and  and, in particular, your e-mail to  dated 19 January 2020 and his subsequent response via e-mail on 21 January 2020. I apologise for the delay in responding to you whilst the Council provided us with responses to our questions.

You have requested that we prepare a report in the public interest under schedule 7 of the Local Audit and Accountability Act 2014 ('the Act') and also seek a declaration from the High Court under section 28 of the Act. This letter sets out our decision in respect of your objection and the reasons for that decision.

#### **The objection**

The objection was made in your e-mail dated 11 June 2019, which was subsequently clarified by you on 19 January 2020, in respect of the 2018/19 accounts of Exeter City Council (the Council).

The objection relates to the Council's support for the Pinhoe Community Hub. In June 2016, the Council approved £100,000 to be set aside in an earmarked reserve to support the building of a Community Hub in Pinhoe to replace the existing Library.

Up to the date of your objection, payments totalling £23,680 have been made as follows:

- £10,000 in 2017/18; and
- £13,680 in 2018/19 – the year of account to which your objection relates.

Specifically, your objection relates to assertions that:

- The £100,000 funding was only to be released when an updated business plan was presented. However, you allege that no business plan has been produced and that, in your view, money appears to have been released without the power to do so by the Council and therefore it appears possibly unlawful to you.
  - The £10,000 paid in 2017/18 was made in the absence of supporting invoices.
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- The £13,680 paid in 2018/19 was purportedly for architect expenses, although the invoices include one showing £3,780 due 31/07/2018 for a marketing company called [REDACTED]. You allege at the time that another Councillor was shown as being a member of the [REDACTED] team.
- The £76,320 remaining from the earmarked £100,000 contribution towards a Community Hub planned for Pinhoe was dependent on an updated business plan and in your view this should not appear as if it has been agreed for release.

You also state that the Pinhoe Hub was registered as a charity in Spring 2019 (Charity number 1182544) and that you understood that Councillor Wood is one of the trustees, with his home address given as the public address for the charity.

### Work carried out

In the course of our inquiries we have considered:

- the objection made in your e-mail dated 11 June 2019, which was subsequently clarified by you on 19 January 2020;
- various e-mails from yourself to [REDACTED] dated June 2019 and October 2019;
- e-mail correspondence received by us from Council officers;
- the Pinhoe Community Hub Building Design Brief dated February 2018
- the report issued by the Council's Internal Auditors regarding its support for the Pinhoe Community Hub dated 4 June 2019;
- an independent review into the Council's grant-making procedures, dated May 2019; and
- the Council's revised policy and procedures – the Exeter Grants Programme – dated July 2019.

### Background

In July 2016, the Council approved £100,000 to be set aside in an earmarked reserve to support the building of a Community Hub in Pinhoe to replace the existing Library. The Council's minutes stated that "the funding will be released when the **updated** Business Plan is presented" [our emphasis].

We have been advised by the Council's Chief Finance Officer that there was no formal application made for this funding and that "the Deputy Chief Executive and Leader [at that time] are no longer at the Council, therefore any documentation is no longer held".

It is therefore unclear on what basis the funding decision was made. Although the reference to the requirement for an 'updated plan' suggests that some materials were available to support the decision, it has not been possible to confirm this.

The term 'business plan' is vague and this lack of clarity means that it is not possible to be clear on the level of information the Council was expecting in order to be able to release the payment.

An initial payment of £10,000 was paid to Pinhoe Community Hub on 27th February 2018, although there was no invoice to support this expenditure. The Council's Internal Auditors have reported that this payment was paid via BACS to a bank account in the name of Pinhoe Community Hub. The payment was raised by the Council's Chief Finance Officer and authorised by one of the Council's Directors.

The Council's Chief Finance Officer has advised us that he felt it was an appropriate balance to allow a small up-front payment to enable the project to start. It was expected that all future payments would be supported by invoices.

The subsequent payment of £13,680 was made in March 2019 and your e-mail to [REDACTED] (07:47, 30 October 2019) confirms that you have seen the paperwork that supports this payment.

The Chief Finance Officer has advised us that the invoice in respect of [REDACTED] (for £3,780) was poor in quality and not one he would accept for payment if the Council were paying direct, but as this was a reimbursement to the Hub, and there were no VAT implications for the Council, it was accepted.

The Chief Finance Officer also advised us that a new Business Plan was provided (in paper copy) to the Director responsible for Communities, Health, Well-being, Sport & Leisure prior to the payment of £13,680 being made. We have seen a copy of the Pinhoe Community Hub Building Design Brief, which is dated February 2018, although we have not been able to confirm when this was received by the Council. The Council has not provided us with any other document purporting to be a business plan. The Council accepted this Design Brief as meeting the requirements of the Business Plan necessary for releasing any of the funding that it had previously approved.

### Subsequent Events

The Council recognised that there were weaknesses with its grants application and approval process and in April 2018 it commissioned a firm of external consultants to review this area, undertake public consultation and to help inform the Council's future policy in this area. The consultants reported their findings and recommendations in May 2019.

The Council's revised policy and procedures – the Exeter Grants Programme – was subsequently approved by the Council in July 2019, having previously been considered by the People Scrutiny Committee in June 2019 and the Executive in July 2019. The Exeter Grants Programme sets out the framework to be followed for all future grant funding. In particular, the new policy reflects the fact that for larger grants, there is an expectation that pledges would only be made once an element of the funding had already been achieved from alternative sources.

<b>Grant</b>	<b>Maximum Amount</b>	<b>Pledge Threshold</b>
Exeter Small Grants Fund	£3,000	Pledges will only be made once 10% of the project target has been met.
Exeter Large Grants Fund	£30,000	Pledges will only be made once 25% of the project target has been met.

Under this new policy applications such as that for the Pinhoe Community Hub would be encouraged to be for a modest sum initially to support the development of a feasibility study, rather than for a project in its entirety.

The policy also states that, following the annual review, where there are sufficient funds available in the Neighbourhood Community Infrastructure Levy, calls will be made for applications to a Strategic Fund which will allow Members to consider the merits of large or unusual funding requests. Details of any such fund opening will be placed on the Council website and widely promoted through social media and community networks.

Also, and as a direct result of the concerns you raised, the Council's Internal Auditors reviewed the procedures in place for the for the Pinhoe Community Hub and issued their report in June 2019.

## Findings

The next section of this document seeks to consider each of the specific matters which you have raised in your objection, along with our views on each one.

**The £100,000 funding was only to be released when an updated business plan was presented. However, you allege that no business plan has been produced and that, in your view, money appears to have been released without the power to do so by the Council and therefore it appears possibly unlawful to you.**

As noted above, the Chief Finance Officer advised us that a new business plan was provided (in paper copy) to the Director responsible for Communities, Health, Well-being, Sport & Leisure prior to the payment of £13,680 being made. We have seen a copy of the Pinhoe Community Hub Building Design Brief, which is dated February 2018, although we have not been able to confirm when this was received by the Council.

The Council accepted this Design Brief as meeting the requirements of the 'business plan' it determined was necessary before releasing any of the funding that it had previously approved.

Although the term 'business plan' is open to interpretation, the Design Brief presented to Exeter City Council does not meet our understanding of what a business plan should encompass. In particular, the design brief is silent on how the remaining funding (estimated to be in the region of £900,000) would be raised. In our view, this is essential in order to ensure that the payments made by the Council were not potentially fruitless.

The other crucial part of a business plan is an assessment of the ongoing viability of the facility. Again, this is critical to ensuring that the Council's contribution is not fruitless and that there is not expected to be an ongoing call on public funds. Although the design brief does refer to future income and expenditure this is very brief and in our opinion is very optimistic as to the likely running costs, which are estimated to be £3,200 in year one. For a building valued at £1 million, we would expect insurance and utilities alone to exceed this.

You subsequently provided us with a further document 'Pinhoe Community Hub Business Strategy' which you state had been provided to you by Exeter City Council. We had not previously had sight of this document and this had not been referred to in our previous correspondence and discussions with the Council. Notwithstanding that, our view is that this 'Business Strategy' also does not meet our understanding of what a business plan should encompass.

For expenditure to be lawful, the Council needs to have the necessary legal powers to incur it, to have acted rationally in exercising those powers and to have followed appropriate authorisation processes. Local Authorities have wide-ranging powers to make community grants of this nature, including the 'general power of competence' under section 1(1) of the Localism Act 2011.

In this case, the Council has the legal powers to incur the expenditure. We have found no evidence that it took into account factors which it should not have taken into account in deciding to support the Pinhoe Hub project, or that it failed to take account factors which it ought to have taken into account. However, incurring the expenditure without being provided with an updated business plan, which was a condition of the approval of the expenditure, would arguably amount to the expenditure not having been properly authorised and hence being unlawful.

This judgement is complicated, however, by the lack of clarity in the approval decision about what constitutes a business plan. It is clear that officers were not provided with something that we would consider to meet the requirements of being a business plan, but it is hard given the lack of definition to reach a clear conclusion that the expenditure was not properly authorised and hence unlawful.

Ultimately, only a court can determine whether or not the expenditure is unlawful. Irrespective of whether the expenditure was unlawful, we have decided not to apply to the court for a declaration to that effect, because the cost of seeking such a declaration would be disproportionate to the sums involved in the payments, and the Council has already taken action to improve its processes to prevent a recurrence.

**The £10,000 paid in 2017/18 was made in the absence of supporting invoices.**

It is important to recognise that the objection can only relate to items of account in 2018/19. As such, this payment is outside the scope of our review because it was made in the previous financial year.

However, the Council's Chief Finance Officer has advised us that he felt it was an appropriate balance to allow a small up-front payment to enable the project to start.

**The £13,680 paid in 2018/19 was purportedly for architect expenses although the invoices include one showing £3,780 due 31.7.18 for a marketing company called [REDACTED]. You alleged at the time that another Councillor was shown as being a member of the [REDACTED] team.**

The Chief Finance Officer has acknowledged to us that the invoice in respect of [REDACTED] (for £3,780), was poor in quality and that the supporting paperwork was poorly completed. The Chief Finance Officer has advised us that the reference to an architect called 'Mr D Sign' was intended to be illustrative to assist with the completion of the Grant Drawdown Claim Form and that no payment was made to such an individual. [REDACTED] were involved with public consultation exercises which were undertaken to help shape the proposed project.

The evidence you provided to support the allegation that another Councillor was a member of the [REDACTED] team was a link to that organisation's website. Councillor [REDACTED] was not a member of the Committee that approved the initial earmarking of the reserve or the subsequent creation of the expenditure budget and was not present at either meeting. As such there is no further action we propose to take in this respect as the Councillor was not part of the decision-making process.

**The £76,320 remaining from the earmarked £100,000 contribution towards a Community Hub planned for Pinhoe was dependent on an updated business plan and in your view this should not appear as if it has been agreed for release.**

As noted above we have seen a copy of the Pinhoe Community Hub Building Design Brief. Although the Council's expectations regarding the contents of the 'business plan' were not clear in the original minutes, our view is that the Design Brief does not meet the requirements that could reasonably be expected to be included within a business plan. We have recommended this is requested before additional funding is released by the Council.

With regards to your statement that the Pinhoe Hub was registered as a charity in Spring 2019 (Charity number 1182544) and that you understood that Councillor Wood is one of the trustees, with his home address given as the public address for the charity, the Charity Commission website confirms this. The Charity 'Pinhoe Community Hub' was registered on 19

March 2019, with five Trustees, including a Mr Duncan Wood. The Charity Commission website also notes that the Charity is also known as 'Friends of Pinhoe Library'.

The Council's Internal Auditors reported that the allocation from New Homes Bonus monies to an Earmarked Reserve of 'Pinhoe Community Hub' in the sum of £100,000 was approved at Resources Scrutiny Committee on 29 June 2016. An expenditure budget of £100,000 was subsequently approved by Corporate Services Scrutiny Committee on 29th September 2016. Internal Audit reported that Councillor Wood is not a member of these committees and therefore was not present at either meeting.

However, this assertion does contain an error in that both approvals were made by the Corporate Services Scrutiny Committee. The Scrutiny Committee – Resources did not meet on 29 June 2016 and the Council's website states that this Scrutiny Committee was decommissioned on 7 May 2016. We have confirmed that Councillor Wood was not a member of the Corporate Services Scrutiny Committee and therefore was not present at either meeting.

We have therefore concluded that no further action is appropriate in this respect.

### **Conclusion – application to the Court**

If an item of account appears to us to be contrary to law, it is our discretion as to whether we apply to the Courts for a declaration under Section 28 of the 2014 Act to that effect. Relevant factors which we take into account in deciding whether to exercise our discretion to apply to the Court for a declaration include:

- the significance of the issue concerned;
- the level of the expenditure involved – which in this case is £13,680;
- the expense of an application, which ultimately falls to the Council Tax payers of Exeter;
- the practical consequences of any declaration;
- the national context of particular types of objections and how they have been treated by auditors and other regulators; and
- whether the Council agrees or not with our view on the unlawfulness of the item in question.

In this case, it is our view that, while the payment may be unlawful because the conditions of its authorisation were arguably not met, it is appropriate for us in the exercise our discretion in accordance with the above factors not to seek a declaration from the Court, given the level of expenditure incurred in the year to which your objection relates, the ambiguity associated with the Council's requirement that a 'business plan' is provided and the lessons already learned by the Council.

### **Report in the public interest**

Whether or not to issue a report in the public interest under schedule 7 of the 2014 Act is a matter for us in the exercise of our discretion. Relevant factors include the quantum of any loss, whether there were significant failings in governance, whether the matters that might be the subject of a report are on-going, whether there has been significant publicity in respect of the issues, whether we have recommendations to make to the Council and whether we believe that our independent view should be expressed in public.

We have carefully considered the above factors in relation to your objection. We do not intend to issue a report in the public interest on this matter because:

- in our view, the matters raised are not indicative of wider governance failings within the Council;
- the Council has acknowledged weaknesses with its procedures and has taken action to address these; and
- the remainder of the spend on this project will be covered by the Council's new process.

Nevertheless, we have made a number of recommendations to the Council and we will follow these up as part of our audit work. For the avoidance of doubt, these are not statutory recommendations made under schedule 7 (section 2) of the Local Audit and Accountability Act 2014.

We will also share this letter and the results of our follow-up work with the Council's Audit and Governance Committee.

## **Recommendations**

### **Recommendation 1:**

Before any additional expenditure is incurred, the Council should request a full business case for the project. As a minimum, this should clearly demonstrate:

- the full costs of the project
- how the project will be financed
- how the project will be financially viable in the future.

### **Recommendation 2:**

Internal Audit's report on the grant 'Pinhoe Community Hub - Review of grant award process' should be made available to the Council's Audit and Governance Committee.

### **Recommendation 3:**

The Council should ensure that there is an appropriate review of the implementation of the updated grants policy, assessing (a) the extent to which this is being complied with, (b) that any conditions associated with granting the funding are clearly articulated and (c) that an adequate audit trail is maintained.

### **Recommendation 4:**

The Council should ensure that its requirements for invoice approval are adhered to for all payments, irrespective of whether the Council is incurring the expenditure direct or is reimbursing a third party.

## **Right of appeal**

You have a statutory right of appeal against our decision not to make an application to the Court for a declaration that an item of account is contrary to law under section 28(3) of the Local Audit and Accountability Act 2014. Any appeal must be issued at Court within the period of 21 days beginning with the day after you receive this written statement of reasons. There is no right of appeal against the decision not to issue a public interest report.

We suggest that anyone considering an appeal should take their own legal advice.

Yours sincerely

*Jackson Murray*

Jackson Murray  
Director