

Our ref SH0151
SAAA ref SB07518

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16 April 2020

Dear Members

**Shrewsbury Town Council
Public Interest Report: Governance weaknesses in relation to the Annual Governance & Accountability Return (AGAR) for the year ending 31 March 2020**

As appointed auditors, we have a duty to consider whether to issue a report in the public interest when a matter comes to our attention which we believe the authority should consider or about which the public should be made aware.

This letter constitutes a public interest report under Schedule 7 of the Local Audit and Accountability Act 2014 (the Act), about serious governance weaknesses surrounding the sale of a plot of land to a third party in 2017.

Background

A judicial review was sought in respect of a decision made by Shropshire Council (Defendant), dated 8 November 2018, in which it granted planning permission with conditions, for a development of 15 dwellings and an access road, on land off Greenfields Recreation Ground, Falstaff Street, Shrewsbury, Shropshire (the Site). Shrewsbury Town Council (STC) was not the Defendant in this ruling but it was named as Interested Party 1 (IP1) as it previously owned the Site until 4 October 2017 when it sold it to CSE Developments (Shropshire) Limited, Interested Party 2 (IP2). The judgement was published on 19 December 2019 following hearings held on 17 July 2019 and 28 November 2019, case number CO/5071/2018 <https://www.bailii.org/ew/cases/EWHC/Admin/2019/3539.html>,

Paragraphs 36 to 38 of the judicial review explain the grounds of the challenge raised as follows:

“36 The Claimant's grounds for judicial review were that, in considering the application for planning permission Shropshire Council adopted and acted upon the flawed advice in the Officer's Report that the Site was not part of Greenfields Recreation Ground, and was not held under a statutory trust for local residents pursuant to the Open Spaces Act 1906 ("OSA 1906") or the Public Health Act 1875 ("PHA 1875"), and thereby acted unlawfully by failing to:

- i) Ask itself the right questions to establish the Site's history and status, in particular, whether the land was open space and subject to a statutory trust, and failing to take reasonable steps to*

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acquaint itself with the relevant information to enable it to answer those questions correctly; and/or

- ii) Take account of material considerations, including the existence of the statutory trust, and national and local planning policy on open spaces (paragraph 97 of the National Planning Policy Framework ("the Framework") and Core Strategy CS 6), which Shropshire Council failed properly to interpret and apply;*
- iii) Give adequate or intelligible reasons for its conclusions.*

- 37 *The Claimant contended that Shrewsbury Town Council failed to comply with the advertising and consideration of objections requirements in sections 127(3) and 123(2A) of the Local Government Act 1972 ("LGA 1972") before disposing of the land to CSE Developments (Shropshire) Limited, and so the land was not freed from the statutory trust under subsection 2B of section 123. By virtue of section 128 LGA 1972, this did not render the sale invalid, but the Site remained subject to the statutory trust and could not be developed.*
- 38 *The Defendant's response was that the Site was not part of Greenfields Recreation Ground, it was not open space, and it had never been held under a statutory trust for local residents pursuant to the OSA 1906 and/or the PHA 1875. In the alternative, even if such a statutory trust once existed, it ceased to have effect once the Town Council sold the Site to IP2 in 2017."*

Included below are extracts from paragraphs 101 to 118 of the ruling which address the disposal of the Site:

- Paragraph 101: *"STC disposed of the Site to IP2 in 2017, on the basis that it was not part of the Greenfields Recreation Ground. If, as the evidence strongly suggested, the Site was part of Greenfields Recreation Ground, Shropshire Council should have considered the legal implications of the sale."*
- Paragraph 103: *"Subsections (2A) and (2B) of section 123 LGA 1972 provide:*
 - 2A *"A principal council may not dispose under subsection (1) above of any land consisting of forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated and consider any objections to the proposed disposal which may be made to them.*
 - 2B *Where by virtue of subsection (2A) above a council dispose of land which is held –*
 - (a) for the purpose of section 164 of the Public Health Act 1875 (pleasure grounds); or*
 - (b) in accordance with section 10 of the Open Spaces Act 1906 (duty of local authority to maintain open spaces and burial grounds),**the land shall by virtue of the disposal be freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with the said section 164 or, as the case may be, the said section 10."*
- Paragraph 106: *"It was not in dispute that the Town Council did not comply with the requirements in subsection 123(2A) LGA 1972 to advertise its intention to dispose of the Site and to consider any objections to the proposed disposal. The Claimant submitted that, in consequence, the Site was not freed from the trust arising under the PHA 1875 or the OSA 1906, pursuant to subsection 123(2B) LGA 1972, when the Site was sold. He submitted that subsection 128(2) LGA 1972 only protected the validity of the sale to IP2. It did not extinguish the public's right to use the Site for recreational purposes, just as village green rights or highway rights could not have been extinguished merely by sale of the land."*

Whilst STC was not the Defendant in this ruling, serious governance failings within STC have been identified as a result of it as the Council failed to establish the legal status of the land prior to selling it and, in our view, it is a matter that should be drawn to the attention of the public.

It is our view that STC must put robust procedures in place to ensure that an oversight such as this is not permitted to recur. Where there should be any future sale of land STC must be able to demonstrate that it has taken sufficient steps to establish the legal status of that land and act in accordance with all relevant legislation prior to sale. STC should consider whether it has the legal power to proceed with any future

disposals and, for the sake of good governance, should formally document the powers on which it has relied when making any such decisions.

The Act requires STC to consider this public interest report at a public meeting within one month of the date of this letter. The full requirements of Schedule 7 can be found here: https://www.pkf-littlejohn.com/sites/default/files/media/documents/local_audit_and_accountability_act_20142_0.pdf, and the authority should ensure that it complies with all requirements.

This letter gives rise to additional fees payable by STC for the 2019/20 reporting year for the additional work involved in receiving and considering information brought to our attention and the production of this report.

STC should also note that, as a result of receiving this public interest report, it will not be eligible to certify itself as exempt from limited assurance review in 2020/2021 (if it would otherwise be eligible), as it will have failed one of the qualifying requirements set out in Regulation 9(3) of The Local Audit (Smaller Authorities) Regulations 2015.

We have a duty to send a copy of this report to the Secretary of State and the power to send a copy to anybody we think appropriate.

Yours faithfully

A handwritten signature in black ink, appearing to read 'PKF Littlejohn LLP', is written over a light blue horizontal line.

PKF Littlejohn LLP

cc Clerk - Shrewsbury Town Council, Secretary of State, National Audit Office, Smaller Authorities' Audit Appointments Ltd, Monitoring Officer of local authority (local councils only)