



**Report in the Public Interest under Section 8
Audit Commission Act 1998 (as amended)**

In respect of Dilwyn Parish Council

**Audit of the accounts for the year ended 31
March 2013**

23 March 2015



Summary

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1. Introduction

- 1.1. Grant Thornton UK LLP was appointed by the Audit Commission as the auditor of Dilwyn Parish Council, Herefordshire for the audit year ending 31 March 2013 and thereafter.
- 1.2. This report is made under Section 8 of the Audit Commission Act 1998 (the Act) which requires us, as the appointed auditor, to consider whether we should report in the public interest on any matter coming to our attention. This is so that the matters may be considered by the body concerned and brought to the attention of the public. This report is prepared in the context of the Statement of Responsibilities of Local Councils and their Auditors issued by the Audit Commission.
- 1.3. Dilwyn Parish Council (the Council) is required by Section 11 of the Act to consider our report at a full meeting of the Council, at which the public are present, before the end of one month of this report being sent. The Council must then decide and inform us of the action it proposes to take in response to our recommendations.
- 1.4. This report is made under Section 8 of the Act. This means that the Council is required by Section 13 to advertise the subject matter of the report and its availability in a local newspaper. Members of the public may inspect the report and request copies from the Council.



2. Background

- 2.1. In early 2012 the Council decided to buy a public house in the village (The Crown) with the purpose of renovating and reopening it. The Council set up a committee to deal with the purchase, renovation and leasing of the pub. The Council sought advice from the local county association, Herefordshire Association of Local Councils (HALC). At a Council meeting on 26 March 2012 a committee was established and called the Crown Community Hub (the Hub Committee). At the same meeting the guidelines for the Hub Committee were set out and adopted. The Crown was purchased for £250,000.
- 2.2. However, the Hub Committee did not abide by the guidelines adopted by the Council in its meeting in March 2012 and in late 2012 concerns were brought to our attention by an elector about unlawful expenditure and the Hub Committee acting outside of its delegated powers.
- 2.3. We made enquiries of the Council. HALC became aware that further audit action was being taken and approached the Council offering to look into the issues raised. On 8 October 2013 the Council commissioned HALC to undertake a detailed investigation and prepare a report for the Council. HALC agreed but requested that the Hub Committee cease making decisions and for all business to be conducted through the full council. The Council agreed.
- 2.4. The Hub Committee did not meet between 24 July 2013 and 27 February 2014, and during that period all business relating to The Crown was conducted through the full council.
- 2.5. The HALC report was issued in February 2014 and noted several serious failings in governance and procedures. HALC made recommendations to the Council including that all business relating to The Crown continued to be conducted through the full council. At a meeting of 11 February 2014 the Council accepted all the HALC recommendations, except that business relating to The Crown be conducted through full council. At that meeting the Council resolved that the Hub Committee be re-instated with immediate effect.
- 2.6. We have considered the findings of the HALC report and all other matters that have come to our attention, either through contact from electors or arising from our own audit work. We have made enquiries of the Council and requested evidence and comments from the Council.



3. Summary Findings

- 3.1. There have been a number of serious failings in governance and procedures at the Council.
- 3.2. The Council has failed to properly comply with its with Standing Orders and Financial Regulations. These failures include:
 - a) failure to obtain quotes for work in accordance with Financial Regulations 11.3 and 12.1(h);
 - b) failure of the Council to pass a resolution authorising the signing of the lease agreement between the Council and the landlord of The Crown;
 - c) failure by councillors to make proper declarations of interest at meetings at which payments were made to them;
 - d) failure by the Council to ensure that the Responsible Financial Officer took responsibility for all cash income received by The Crown to be properly counted and banked.
- 3.3. Action was taken by councillors between council and committee meetings without proper authorisation from either the Council or the Hub Committee.
- 3.4. The Council did not undertake an adequate risk assessment in relation to the operation of The Crown. As a consequence of this the pub was under-insured and compensation was subsequently reduced when a claim was made as a result of a chimney fire. The additional costs would normally have been borne by the Council and local taxpayers, but on this occasion it has been paid voluntarily by customers of The Crown.
- 3.5. There were inappropriate procedures in place for the payment of VAT, in that VAT due to HMRC was paid out of the clerk's own personal bank account and the clerk then reclaimed from the Council.
- 3.6. The Hub Committee acted outside of its delegated powers and did not abide by its guidelines.
- 3.7. Payments were made without proper approval by the Council or the Hub Committee.
- 3.8. We have identified that the Council made expenditure in the year ended 31 March 2013 amounting to £34,689 excluding VAT that was potentially unlawful. In our view there is no benefit from seeking a declaration from the court that the expenditure is unlawful, as the costs to the taxpayer of doing so would outweigh any potential benefits.



4. Recommendations

Measures already taken

- 4.1. The Council has changed its procedures relating to VAT. All VAT claims and payments are now made through the Council's own bank account.
- 4.2. A number of Councillors have received training on the Code of Conduct. Training is ongoing and following the election in May 2015 it is planned that all councillors will be provided with formal induction and Code of Conduct training.

Further recommendations

- 4.3. The Council re-adopted its existing Standing Orders, Financial Regulations and Internal Controls in May 2014, "pending review". This review has not yet taken place. The current Standing Orders are dated April 2011 and the current Financial Regulations are dated June 2009. The Council must review these documents as soon as practicably possible and update them as necessary. Model Financial Regulations, revised April 2014 are available from the NALC.
- 4.4. The Council should periodically review the guidelines for the Hub Committee to ensure that they remain adequate and appropriate.
- 4.5. All expenditure must be properly authorised and approved at a properly convened Council or committee meeting.
- 4.6. Declarations of interest must be properly made at all appropriate stages, that is in discussions regarding the award of contracts, authorisation of expenditure and authorisation of payments.
- 4.7. Risk assessments must be undertaken annually and should consider all aspects of the Council's business including the operation of The Crown.
- 4.8. Should the Council consider embarking on other high profile major projects in the future, a risk assessment should be undertaken specifically in respect of that project, to ensure that the Council is properly informed should it be required to make a decision whether or not to go ahead.
- 4.9. The Council should document all its day to day internal controls and review them periodically.
- 4.10. The Council should retrospectively authorise the signing of the lease and record this in the minutes.

5. Detailed findings

Failure to follow Standing Orders and Financial Regulations

a) Failure to obtain tenders or quotes

- 5.1. The Financial Regulations in place at the time the Crown Community Hub project was underway state at paragraph 11.3 that an officer issuing an official order shall ensure, as far as reasonable and practicable, that the best available terms are obtained in respect of each transaction, usually by obtaining three or more quotations or estimates from appropriate suppliers, subject to any de minimus provisions.
- 5.2. The minutes of the Hub Committee meetings record several instances of work being done and costs incurred, without any prior comparison on quotes or obtaining tenders for the work. Quotes are first mentioned in the minutes of the March 2013 Hub Committee meeting, by which time £39,708 including VAT had already been spent on the refurbishment of The Crown.

b) Failure to pass a resolution authorising the signing of a lease

- 5.3. The lease between the Council and the tenant of The Crown was signed on 1 August 2012. The chair of the Council and the clerk signed on behalf of the Council. The tenancy agreement was discussed at the Hub Committee meetings prior to signing, and reports were made to the Council at council meetings.
- 5.4. Standing Orders in place in 2012 state at 14a that "a legal deed shall not be executed on behalf of the Council unless the same has been authorised by a resolution".
- 5.5. No resolution was made at either a Hub Committee meeting or a full council meeting to authorise the chair and clerk to sign the lease on behalf of the Council.
- 5.6. The failure to properly authorise the signing of the lease could potentially cause problems should there be any issues with the tenant in the future requiring formal enforcement of the terms of the lease.



c) Failure by councillors to make proper declarations of interest

- 5.7. Standings Orders, paragraph 7, required all councillors to observe the Code of Conduct adopted by the Council, which includes registering their interests and making declarations as appropriate. Councillors with a prejudicial interest in relation to any item of business being transacted at a meeting may make representations, answer questions and give evidence relating to the business being transacted but must, thereafter, leave the room or chamber.
- 5.8. £6,566 excluding VAT was paid to a councillor's heating and plumbing business for work undertaken at The Crown up to 31 March 2013. Insufficient or no declarations of interest were made at any of the meetings at which orders for required work were authorised or payments to the councillor were approved by the Hub Committee. Where a declaration of interest was made the nature of the interest was not recorded, and insufficient detail was given as to which councillor was making the declaration. The councillor did not leave the room, nor were they excluded from all discussions relating to the authorisation of work or approval of payments in which they had a prejudicial interest.
- 5.9. The Council has stated to us that the reason for giving the work to the councillor was because this gave the best value for money. The Council has told us that the work that was done by the councillor's business was charged to the Council at a rate that was lower than cost. There is no discussion or consideration recorded in the Hub Committee minutes or in any other minutes or reports as to whether the amounts charged to the Council by the councillor's business were reasonable or gave value for money. No other quotes were obtained. Therefore the Council is unable to demonstrate that the amounts it paid were reasonable and gave value for money as they were not compared to anything else.

d) Failure to ensure responsibility for collecting and banking sums due to the Council is taken by Responsible Financial Officer

- 5.10. Financial Regulations state at paragraph 10.1 that the collection of all sums due to the Council shall be the responsibility of and under the supervision of the Responsible Financial Officer.
- 5.11. At the meeting of the Hub Committee on 3 September 2012 it was agreed that a councillor would collect the September rental payment and other outstanding monies from the tenant and bank it in the Council's bank account without supervision. It is unclear why arrangements were not made for the monies to be paid into the Council's bank account by the Responsible Financial Officer as required by Financial Regulations.



Unauthorised action taken by individuals between meetings

- 5.12. At the first Hub Committee meeting on 2 April 2012 areas of responsibility were allocated to each member of the committee. Committee members appear to have taken this as being authorisation to make decisions on behalf of the Council.
- 5.13. It appears from the minutes of the Hub Committee that individual councillors and committee members were taking actions, including incurring expenditure and signing leases on behalf of the Council without having delegated authority to do so.
- 5.14. At the third meeting of the Hub Committee on 16 May 2012, some six weeks after the first meeting, the minutes record that there were two substantial invoices outstanding for the work of an electrician. The minutes of the two previous meetings do not indicate that any councillor was delegated responsibility to incur expenditure.

Risk assessment

- 5.15. The Council failed to undertake an adequate risk assessment before embarking on The Crown project. There is no formal documented risk assessment specific to The Crown project or recorded detailed discussion of the Council assessing all the risks associated with the project, such as the overall impact of the project on the Council's financial wellbeing, risk of business interruption or insurance against physical damage.
- 5.16. The Crown was insured for £216,000. Insurance was mentioned in the Hub Committee meeting of 25 April 2012. However there is no recorded discussion of what levels of insurance were appropriate. Insurance is not mentioned again in the minutes of the Hub Committee.
- 5.17. In 2013 there was a chimney fire at the pub which incurred damage, and an insurance claim for £4,716 was made. As the insured value of The Crown was significantly lower than its actual value the insurance company refused to settle the whole claim and would only pay £1,889.
- 5.18. The failure of the Council to undertake an adequate risk assessment and take out proper insurance has subsequently caused the council to be liable for costs of £2,728 that would otherwise have been reclaimable from the insurers. These costs have, on this occasion been paid voluntarily by customers of The Crown.

VAT procedures

- 5.19. VAT payments to HMRC were made out of the clerk's personal bank account and then reclaimed from the Council. In our view this practice is inappropriate.



VAT returns and any subsequent payments should be properly authorised by the Council, and paid out of the Council's own bank account.

- 5.20. The Council has now stopped this practice and all VAT payments and reclaims go through the Council's own bank account.

Hub Committee did not follow its guidelines

- 5.21. Some of the Hub Committee guidelines were not followed at all, or were only followed occasionally.
- 5.22. Reports on progress at The Crown were made at full council meetings, however these do not appear to have been written reports, nor did they always cover all the points discussed at the Hub Committee meetings. The Hub Committee minutes do not appear to have been sent out for information with the agenda for the next available full council meeting on all occasions, as required by the Hub Committee guidelines. The minutes of six out of the ten Hub Committee meetings in the year ended 31 March 2013 are not recorded in the minutes of the next full council meeting as having been circulated. In particular the Hub Committee meetings of 16 May 2012, 25 June 2012, 2 July 2012, 17 July 2012, 23 January 2013 and 7 March 2013 do not appear to have been circulated to councillors prior to the next full council meeting.
- 5.23. The guidelines require a full financial report to the full council every six months. The first Hub Committee meeting was in April 2012, so a full financial report should have been made to the Council at the beginning of October 2012. The full council meeting met on 2 October 2012, but there was no full financial report, nor any mention of finances at all. The next full council meeting was on 13 November 2012. Again no full financial report was presented to the Council.

Payments for expenditure on The Crown were not properly approved

- 5.24. The Hub Committee guidelines state amongst other things that:
- a) "the Council will devolve the day to day decision making responsibility for The Crown to the Hub Committee; and
 - b) "the Committee may spend within the budget allowance designated by the Parish Council."
- 5.25. The Hub Committee collectively had responsibility to make decisions. The minutes of the Hub Committee indicate that individual councillors were authorising significant amounts of expenditure between meetings. These amounts were in some, but not all, instances approved retrospectively at the following Hub Committee meeting. The minutes do not indicate that the Hub Committee as a body had authorised the individual to incur the expenditure,



rather lists of invoices for expenditure already incurred were approved at the Hub Committee Meetings.

- 5.26. We have been supplied with a list of expenditure relating to The Crown Community Hub accounts. This indicates that in the year ended 31 March 2013 a total of £34,689 excluding VAT was spent on the refurbishment of the pub. However it is not possible to trace the approval of all of these payments to either Hub Committee meetings, or full council meetings.

Unlawful expenditure

- 5.27. Councils can only do that which they are empowered to do by law. It appears to us that all the expenditure on the refurbishment of The Crown is potentially unlawful.
- 5.28. Councils are elected to exercise their discretion on behalf of the community and taxpayers. Councils have powers to make decisions about what, in the council's opinion, is in the best interests of the community. In doing this councils act as a single corporate body. Decisions made outside meetings by committees are properly made decisions only if those committees have been given authority to do so through proper means.
- 5.29. Only the Council as a body can make decisions unless the Council collectively decides to delegate responsibility for making decisions to a committee. Decisions cannot be delegated to individual members.
- 5.30. The Hub Committee had powers delegated to it within guidelines that had been approved by the Council and on the advice of HALC. However the Hub Committee acted outside of these guidelines in that decisions were made by individual councillors on the committee; and it failed to follow its guidelines in that it did not properly approve and authorise expenditure, or ensure that proper declarations of interest were made when they should have been.
- 5.31. The Council has accepted that proper procedures were not always followed, but seeks to justify this on the grounds that there were time restrictions in place and speed was of the essence. The first Hub Committee meeting on 2 April 2012 allocated to one councillor responsibility for opening The Crown on 3 or 4 May 2012.
- 5.32. The Council has stated that some of the work that was undertaken and expenditure that was incurred could have been classed as emergency work to protect the property. We accept that some work such as attending to water leaks would be classed as emergency work. However this argument has been put forward after the event, in response to our enquiries and does not appear to have been a consideration at the time. If it was considered it was not recorded in the minutes as such.
- 5.33. In arranging for the purchase of The Crown and the necessary loan the Council did not allow sufficient time for proper governance procedures to be adhered to. This led to time pressure which could have been avoided with better planning. In any event, time pressure does not make it acceptable for individuals to make decisions and incur expenditure without the proper



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authorisation, approval of the Council or the proper declarations of interest being made.

- 5.34. Best practice in situations where time pressure is an issue is for a scheme of delegation to be drawn up, and approved, which authorises appropriate individuals, for example the chair or vice chair of the committee, to make urgent decisions in consultation with others, and then report back to the council or committee at the next appropriate meeting.

Barrie Morris
Director

23 March 2015

For Grant Thornton UK LLP – appointed auditors