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Kirby Muxloe Parish Council: Public Interest Report for the year ended 31 March 2021

Introduction

As auditors appointed to undertake an assurance engagement in respect of the Annual Governance and Accountability Return (AGAR) of Kirby Muxloe Parish Council (the Council) for 2020/21, we are required:

- under Paragraph 1 of Schedule 7 of the Local Audit and Accountability Act 2014 (the Act), to consider whether, in the public interest, to report on any matter coming to our notice and relating to the Council or an entity connected with the Council, so that it can be considered by the Council or brought to the public's attention; and
- under paragraph 5.3 of the Code of Audit Practice issued by the Comptroller and Auditor General, where any representations are made to us or information provided that is relevant to the assurance engagement, or relevant matters otherwise come to our attention, to consider whether the matter needs investigation under our additional powers and duties, including our power to issue a public interest report.

We have received representations in our capacity as appointed auditor that we have considered and undertaken such further enquiries as we consider necessary.

We have formed the view that our findings taken together indicate that there are weaknesses in the governance of the Council that, taken together, warrant a public interest report (PIR). This letter constitutes a PIR under Schedule 7 of the Act.

Background

We note that the Council has previously been subject to PIRs regarding failures in governance and accountability. These were issued by an officer of the Audit Commission in respect of 2011/12 and by Grant Thornton UK LLP in respect of 2013/14.

We further note that the previous auditors (Grant Thornton UK LLP) are still considering objections raised by local electors in respect of the Annual Returns for 2014/15, 2015/16 and 2016/17. As appointed auditors for the years 2017/18 onwards, we have also received a significant number of objections to the AGARs for the years 2017/18, 2018/19, 2019/20 and 2020/21.

Until the previous auditors have completed their work on the years for which they have not yet certified completion of the audit, we are unable to complete our additional work in respect any of the objections to AGARs raised with us; however, we believe that the representations that we have received concerning matters that are ongoing warrant consideration in advance of completion of the audits for earlier years.

Confidential business

As a general principle, meetings of the Council are open to the public; however, Section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 recognises that there are circumstances where this will not be appropriate:

A body may, by resolution, exclude the public from a meeting (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings; and where such a resolution is passed, this Act shall not require the meeting to be open to the public during proceedings to which the resolution applies.

The form and content of local council minutes are not prescribed in legislation; however, they should include resolutions passed by the Council. In the view of the National Association of Local Councils, minutes should be 'informative and relevant, yet concise'. Comprehensive, concise and unambiguous minutes provide clarity about the decisions made by the Council and the basis on which the decisions were made.

We are concerned that:

- resolutions to exclude members of the public and the reasons for their exclusion, as required by Section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 are not clearly recorded in minutes of the Council. In some cases, for example in relation to employment matters, the reason is evident from the subject matter being discussed, but in others it is not; and
- minutes of the portions of meetings from which the public are excluded are inadequate and do not clearly record resolutions passed by the Council.

Recommendation 1: We recommend that the Council adopts and applies clear standards for the minuting of meetings, including in particular:

- resolutions for exclusion of the public; and
- recording resolutions adopted when the public are excluded.

Transparency and accountability

Transparency is an underlying principle of local government. There is no statutory requirement to publish agendas and agenda papers on the Council's website and the Council has not published agenda papers, although it now publishes agendas. In our view, consistent with the principles of transparency and accountability, there would be advantages in publishing agenda papers.

Recommendation 2: We recommend that the Council routinely publishes agenda papers on its website.

Freedom of Information Act 2000

The Council is required by the Freedom of Information Act 2000 to adopt and maintain a Publication Scheme that specifies the information that it publishes or intends to publish and the manner in which it is, or is intended to be, published.

The Council has adopted such a Scheme; however, it faced difficulties in loading information on its website and is not in a position to confirm that all information that it stated would be published on its website has been so published.

Recommendations 3 and 4: We recommend that the Council:

- undertakes a systematic review to confirm that information that it specified in its Publication Scheme would be available on its website is so available; and
- repeats this exercise annually.

Determination of Council Tax precept

The Council has a power to issue a 'precept' request to Blaby District Council. The effect of the precept is to include an element within the Council Tax for properties within the Council's area to fund the Council's activities.

Local government finances are conducted on an annual basis with a conscious decision required either to plan for an increase in or use of reserves. This is reflected in section 49A of the Local Government Finance Act 1992, which specifies the calculations that the Council must perform in order to determine the precept. Essentially, in setting its precept, the Council is required to calculate:

- its estimated expenditure for the next year plus an allowance for contingencies;
- the reserves which it is appropriate to raise for meeting estimated future expenditure;
- its estimated non-precept income for the year; and
- the reserves held which it is prudent to use in the year.

In determining its precept for 2020/21, the Council has not performed these calculations. Whilst it has estimated expenditure and other income, it has not made determination of the reserves that it would be appropriate to raise or prudent to use, having regard to the estimated level of reserves at the end of the financial year. The items specified in legislation are not set out in the relevant agenda papers or minutes.

Recommendations 5 and 6: We recommend that in future the Council:

- in determining its annual precept, consciously considers its level of reserves; and
- in the agenda papers and minutes, sets out the specific items to support the determination of the precept specified in applicable legislation.

Consultation on planning applications

Although the Council does not determine planning applications, it may make observations on planning applications to Blaby District Council. Planning applications are often subject to differing views and are sometimes contentious.

In consequence, it is important that the Council can demonstrate that it has systematically considered planning applications on which it has been consulted and that, where it has expressed a view on an application, this has been communicated to Blaby District Council. The Council does not currently have a systematic mechanism in place for doing so.

Recommendation 7: We recommend that the Council establishes a register in which it records:

- each planning application on which it is consulted;
- the date of the Council's consideration of each planning application;
- the view that the Council took; and
- the date of communication of the view to Blaby District Council.

Overall view

In conclusion, it is our view that we have seen evidence that there are multiple governance issues that suggest that there are deficiencies in the Council's overall governance arrangements.

Recommendation 8: We recommend that the Council engages with the Leicestershire and Rutland Association of Local Councils (LRALC) with a view to arranging for LRALC to carry out a comprehensive review of the Council's internal control, governance and accountability arrangements.

Next steps

The Act requires the authority to consider this public interest report at a public meeting within one month of the date of this letter. The requirements of Schedule 7 are attached, and the authority should ensure that it complies with all requirements regarding publicity of the report, consideration at a meeting and publicity of decisions taken at that meeting. The Council must:

- in accordance with paragraph 4(2) of Schedule 7 of the Act, as soon as practicable publish the report;
- in accordance with paragraphs 4(2) and 4(7) of Schedule 7 of the Act, publish on its website a notice identifying the subject matter of the report and stating that any member of the public may inspect the report and make a copy of it or any part of it between the times and at the place or places specified in the notice;
- in accordance with paragraph 4(3) of Schedule 7 of the Act, as soon as practicable after receiving the report, supply a copy to each of its members;
- in accordance with paragraph 4(5) of Schedule 7 of the Act, ensure that any member of the public may inspect the report without payment, make a copy of the report, or any part of it, and be supplied with a copy of the report, or any part of it, on payment of a reasonable fee;
- in accordance with paragraph 5(5) of Schedule 7 of the Act, consider the report at a meeting held before the end of a period of one month beginning today;

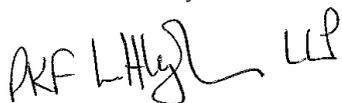
- in accordance with paragraph 5(6) of Schedule 7 of the Act, at that meeting to consider whether the report requires the Council to take any action and, if so, what action;
- in accordance with paragraphs 8(1) to 8(4) of Schedule 7 of the Act, give notice on its website of the meeting at which it is to consider the report before the beginning of the period of eight days ending with the day of the meeting;
- in accordance with paragraph 10 of Schedule 7 of the Act, as soon as practicable after the meeting notify us of the decisions made by the Council and publish on its website a notice that we have approved containing a summary of the decisions made by the Council.

This report gives rise to additional fees payable by the Council, for the additional work involved in reviewing the representations received, the information provided to us by the Council and in the production of this report.

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. We are therefore sending a copy to:

- Secretary of State – Department of Levelling Up, Housing and Communities (DLUHC)
- National Audit Office
- Smaller Authorities' Audit Appointments Ltd
- Monitoring Officer of Blaby DC
- LRALC
- Grant Thornton UK LLP

Yours faithfully



PKF Littlejohn LLP

cc Secretary of State – DLUHC, National Audit Office, Smaller Authorities' Audit Appointments Ltd, Monitoring Officer of Blaby DC, LRALC, Grant Thornton UK LLP

Extracts of Schedule 7 of the Local Audit and Accountability Act 2014:

Public interest reports

1 (1) A local auditor of the accounts of a relevant authority must consider whether, in the public interest, the auditor should make a report on any matter coming to the auditor's notice during the audit and relating to the

authority or an entity connected with the authority, so it can be considered in accordance with this Schedule or brought to the public's attention.

(2) A report under sub-paragraph (1) is referred to in this Act as a public interest report.

(3) A public interest report may be made during or after the end of an audit.

(4) A local auditor must notify a relevant authority's auditor panel (if it has one) as soon as is reasonably practicable after making a public interest report relating to the authority or an entity connected with it.

(5) A local auditor may recover from a relevant authority—

(a) the reasonable costs of determining whether to make a public interest report relating to the authority or an entity connected with it, and

(b) the reasonable costs of making a public interest report relating to the authority or an entity connected with it.

(6) Sub-paragraph (5)(a) applies regardless of whether the report is in fact made.

Supply of public interest reports

3 (1) If a local auditor makes a public interest report arising out of the audit of the accounts of a relevant authority, the auditor must send the report to—

(a) the authority, and

(b) where the report relates to an entity connected with the authority, to that entity and to any other relevant authority with which the entity is connected.

(2) The local auditor must also send the report—

(a) to the Secretary of State,

(b) where the relevant authority is itself a connected entity, to its related authority or authorities,

...

(3) A report required to be sent under sub-paragraph (1) or (2) must be sent as soon as is reasonably practicable after it is made.

...

(5) If paragraph 5 applies to a relevant authority to which a report is sent under this paragraph, it must, if required by that paragraph to do so, take the report into consideration in accordance with that paragraph.

...

Publicity for public interest reports

4 (1) This paragraph applies to a relevant authority if a local auditor has made a public interest report relating to the authority or an entity connected with it.

(2) As soon as is practicable after receiving the report, the relevant authority must publish the report and a notice that—

(a) identifies the subject matter of the report, and

(b) unless the authority is a health service body, states that any member of the public may inspect the report and make a copy of it or any part of it between the times and at the place or places specified in the notice.

(3) As soon as is practicable after receiving the report, the relevant authority must supply a copy of the report to—

(a) each of its members (if it has members), and

(b) its auditor panel (if it has one).

(4) Sub-paragraph (3)(a) does not apply in relation to a parish meeting.

(5) From the time when the report is received, the relevant authority, unless it is a health service body, must ensure that any member of the public may—

(a) inspect the report at all reasonable times without payment,

- (b) make a copy of it, or any part of it, and
- (c) be supplied with a copy of it, or any part of it, on payment of a reasonable sum.
- (6) The local auditor may—
 - (a) notify any person the auditor thinks fit of the fact that the auditor has made the report, and
 - (b) supply a copy of it or any part of it to any person the auditor thinks fit.
- (7) A notice or report required to be published under this paragraph must be published—
 - (a) if the authority has a website, on its website;
 - (b) otherwise, in accordance with sub-paragraph (8).
- (8) A relevant authority publishes a notice or report in accordance with this subparagraph if—
 - (a) in the case of an authority other than a health service body, it publishes the notice or report in such manner as it thinks is likely to bring the notice or report to the attention of persons who live in its area;
- ...
- (9) Nothing in this paragraph affects the operation of paragraph 9.

Consideration of report or recommendation

- 5 (1) Subject to sub-paragraphs (2) and (4), this paragraph applies to a relevant authority if—
- (a) a local auditor has made a public interest report relating to the authority or an entity connected with it,
 - or
 - (b) a local auditor has made a recommendation relating to the authority or an entity connected with it.
- ...
- (5) The relevant authority must consider the report or recommendation at a meeting held before the end of the period of one month beginning with the day on which it was sent to the authority.
- (6) At that meeting the relevant authority must decide—
- (a) whether the report requires the authority to take any action or whether the recommendation is to be accepted, and
 - (b) what, if any, action to take in response to the report or recommendation.
- ...
- (8) If the local auditor is satisfied that it is reasonable to allow more time for the relevant authority to comply with sub-paragraph (5) or (7), the auditor may extend or further extend the period of one month mentioned in that subparagraph.
- (9) This paragraph does not affect any duties (so far as they relate to the subject matter of a report or recommendation sent to a relevant authority) which are imposed by or under—
- (a) this Act,
 - (b) sections 114 to 116 of the Local Government Finance Act 1988 (functions and reports of finance officers),
 - (c) section 5 of the Local Government and Housing Act 1989 (functions of monitoring officers), or
 - (d) any other enactment.
- (10) The Secretary of State may by regulations provide for this paragraph to apply with modifications in relation to a relevant authority specified, or of a description specified, in the regulations.
- (11) The Secretary of State may by regulations provide for any provisions of the following that do not otherwise apply to a meeting of a relevant authority under this paragraph to apply (with or without modifications) to such a meeting—
- (a) the Public Bodies (Admission to Meetings) Act 1960;
 - (b) Part 5A of the Local Government Act 1972 (access to meetings and documents);
 - (c) Schedule 12 to that Act (meetings and proceedings of local authorities).
- ...

Bar on delegation of functions relating to meetings

- 7 ... (2) If a relevant authority is a local authority within the meaning of section 101 of the Local Government Act 1972 (arrangements for discharge of functions), that section does not apply to its functions under paragraph 5.
- (3) The functions of a parish meeting under paragraph 5 are to be exercised by the parish meeting itself (and not by its chairman on behalf of the parish meeting).

...

Publicity for meetings

8 (1) If a relevant authority is required to hold a meeting under paragraph 5, it must publish a notice in compliance with sub-paragraphs (2) to (4).

(2) The notice must be published—

(a) if the relevant authority has a website, on its website;

(b) otherwise, in such manner as the authority thinks is likely to bring the notice to the attention of persons who live in its area.

(3) The notice must—

(a) state the time and place of the meeting,

(b) indicate that the meeting is to be held to consider a local auditor's report or recommendation (as the case may be),

(c) if the meeting is to be held to consider a report, describe the subject matter of the report, and

(d) if the meeting is to be held to consider a recommendation, set out the recommendation or, where this is not reasonably practicable, describe its subject matter.

(4) The notice must be published before the beginning of the period of 8 days ending with the day of the meeting.

(5) The agenda supplied to the members of the relevant authority for the meeting must be accompanied by a copy of the report or recommendation (as the case may be).

(6) Sub-paragraph (5) does not apply in relation to a parish meeting.

...

(9) This paragraph applies in addition to any provision made in relation to the relevant authority in question by or under the Public Bodies (Admission to Meetings) Act 1960, the Local Government Act 1972 or any other enactment.

Access to meetings and documents

9 (1) Where a public interest report or a recommendation is to be considered under paragraph 5 by a relevant authority to which the Public Bodies (Admission to Meetings) Act 1960 applies, the report or recommendation is not to be excluded from the matter supplied under section 1(4)(b) of that Act (supply of agenda etc to newspapers).

...

(3) Sub-paragraphs (4) to (6) apply in relation to the consideration under paragraph 5 or 6 of a public interest report or a recommendation by a relevant authority to which Part 5A (access to meetings and documents) of the Local Government Act 1972 applies.

(4) Information contained in the report or recommendation is not to be treated as exempt information for the purposes of that Part.

(5) The report or recommendation is not to be excluded—

(a) from the documents open to inspection under section 100B(1) of that Act (public access to agenda and reports before meetings), or

(b) from the matter supplied under section 100B(7) of that Act (supply of agenda etc to newspapers).

(6) Part 5A of the Local Government Act 1972 has effect in relation to the report or recommendation as if section 100C(1)(d) of that Act (public access to copies of reports for six years after meeting) were not limited to so much of the report or recommendation as relates to an item during which the meeting was open to the public.

(7) Information contained in a public interest report or a recommendation is not to be treated as exempt information for the purposes of any Act or instrument made under an Act that applies in relation to exempt information within the meaning of Part 5A of the Local Government Act 1972.

(8) References in this paragraph to a public interest report or a recommendation include any report on the report or recommendation.

Publicity for decisions under paragraph 5 or 6

10 (1) As soon as is practicable after making decisions under paragraph 5(6) or (7) or 6(6), a relevant authority must—

- (a) notify the authority's local auditor of those decisions, and
 - (b) publish a notice containing a summary of those decisions which has been approved by the auditor.
- (2) The notice under sub-paragraph (1)(b) must be published—
- (a) if the relevant authority has a website, on its website;
 - (b) otherwise, in such manner as the authority thinks is likely to bring the notice to the attention of persons who live in its area.
- (3) The notice required by sub-paragraph (1)(b) in relation to a meeting need not summarise any decision made while the public were excluded from the meeting—
- (a) as the result of a resolution under section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 (protection of public interest),
 - (b) under section 100A(2) of the Local Government Act 1972 (confidential matters), or
 - (c) as the result of a resolution under section 100A(4) of that Act (exempt information).
- (4) If sections 100C and 100D of the Local Government Act 1972 (availability for inspection after meetings of minutes etc) apply in relation to a meeting under paragraph 5 or 6, the notice required by sub-paragraph (1)(b) must indicate the documents in relation to the meeting that are open for inspection in accordance with those paragraphs.
- (5) This paragraph applies in addition to any provision made in relation to the relevant authority by or under the Public Bodies (Admission to Meetings) Act 1960, the Local Government Act 1972 or any other enactment.