

MAIDSTONE BOROUGH COUNCIL

AUDIT, GOVERNANCE AND STANDARDS COMMITTEE

MINUTES OF THE MEETING HELD ON MONDAY 19 MARCH 2018

Present: Councillor McLoughlin (Chairman) and
Councillors Adkinson, Butler, Coulling (Parish
Representative) Fissenden, Harvey and Webb

**Also
Present:** Mr Darren Wells of Grant Thornton – External
Auditor

78. APOLOGIES FOR ABSENCE

It was noted that apologies for absence had been received from Councillors English, Mrs Gooch and Perry.

79. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

80. URGENT ITEMS

There were no urgent items.

81. NOTIFICATION OF VISITING MEMBERS

There were no Visiting Members.

82. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

83. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

84. EXEMPT ITEMS

RESOLVED: That the items on the agenda be taken in public as proposed.

85. MINUTES OF THE MEETING HELD ON 15 JANUARY 2018

RESOLVED: That the Minutes of the meeting held on 15 January 2018 be approved as a correct record and signed.

86. QUESTION AND ANSWER SESSION FOR MEMBERS OF THE PUBLIC

There were no questions from members of the public.

87. COMMITTEE WORK PROGRAMME 2018/19

Mr Mark Green, Director of Finance and Business Improvement, advised the Committee that the Officers were putting together the Work Programme for 2018/19. The Chairman had suggested that the following items be included:

- Update on Contract Monitoring (a new Contract Monitoring Officer had been appointed)
- Maidstone Property Holdings – Governance Arrangements

Details of the Work Programme, once finalised, would be circulated to Members.

The Chairman said that if any other Members wished to include items in the Work Programme, then they should forward them to the Director of Finance and Business Improvement.

88. COMPLAINTS RECEIVED UNDER THE MEMBERS' CODE OF CONDUCT

Mrs Christine Nuttall, Senior Corporate Governance Lawyer, presented the report of the Head of Legal Partnership and Monitoring Officer on complaints received under the Members' Code of Conduct between 1 November 2017 and 28 February 2018. It was noted that:

- In the last report to the Committee on 20 November 2017, it was stated that two complaints were still awaiting initial assessment. The final decision in relation to both complaints (one relating to a Borough Councillor and one relating to a Parish Councillor) was that there had been no breach of the Code of Conduct.
- Whilst it was stated in the current report that no new complaints had been received since the last meeting, this was no longer the case as a complaint relating to a Borough Councillor had been received that day. No further information could be provided at this stage of the process.

RESOLVED: That the report be noted.

89. GENERAL DATA PROTECTION REGULATION PREPARATION UPDATE

Mrs Angela Woodhouse, Head of Policy, Communications and Governance introduced the report providing an update on the General Data Protection Regulation (GDPR) that would replace the Data Protection Act (DPA) 1998, with effect from 25 May 2018.

Mrs Woodhouse advised the Committee that the report outlined progress made on raising awareness and training, auditing information held by the

Council, information sharing and the documentation the Council was required to have on processes. A third of the total action plan had been completed. The Information Commissioner's Office had been very clear that organisations did not have to be fully compliant by 25 May 2018. However, the Council had to be able to demonstrate that it had a clear plan and preparations in place for compliance. A lot of work had been undertaken, but there was still a lot to be done going beyond 25 May 2018.

In response to questions, the Head of Policy, Communications and Governance/Policy and Information Manager explained that:

- The GDPR Practitioner course had been provided by Act Now and details could be made available. The Council was still awaiting an e-learning module for Councillors from the Local Government Association. The module had already been delayed once, and was now expected by Easter. As soon as the module was available on-line, a link would be sent to Members. Earlier in the year, Officers had attended a conference which included a basic introduction to the GDPR. A link to YouTube videos of speakers could be sent to Members to enable them to learn more about the GDPR.
- In terms of risk management, it was a major concern that suppliers might not be able to demonstrate compliance with the GDPR. The risk related to the lack of control and the possibility of having to make new arrangements in future. There might be additional costs involved that could not have been planned for. Discussions were taking place with suppliers and the ICT and Procurement Teams, but there were unknown elements at the moment.
- The Information Commissioner's Office had made it very clear that so long as the Council had a plan and could demonstrate that it was making preparations for the GDPR, taking account of the risks involved and planning appropriate mitigation, then there was leeway in being fully compliant by 25 May 2018.
- Work had not started yet on shared service arrangements in the context of GDPR, but risks would start to reduce as discussions took place with MKS partners, and areas of concern were identified.
- The Officers would be more than happy to provide advice and information to Parish Councils through KALC, in addition to information that was available from the Information Commissioner's Office, having regard in particular to their responsibilities as providers of devolved services.
- In terms of progress against the action plan, some actions might be delayed, such as the provision of guidance on the Council's website and additional guidance and training for staff. The record of processing activities would be completed in time and whilst some privacy notices might be delayed, overarching ones would be in place.

- The penalty for data breaches would increase significantly from up to £500k now to up to 20m euros depending on the issue and the impact on the individual.

RESOLVED: That the update on the Council's preparation for the GDPR be noted.

90. INTERNAL AUDIT & ASSURANCE PLAN 2018/19

Mr Rich Clarke, Head of Audit Partnership, introduced his report setting out the Internal Audit and Assurance Plan 2018/19, including the intended project list.

It was noted that:

- The Public Sector Internal Audit Standards (the Standards) required an Audit Service to produce and publish a risk based Plan at least annually for approval by Members. It was necessary to consider input from senior management and Members.
- In Mid-Kent Audit, planning was a continuous activity, but the team began the programme working towards the 2018/19 Plan document in late 2017. Although the Plan had been the subject of broad consultation with management, it had been compiled independently and without being subject to inappropriate influence.
- It was a requirement of the Standards to begin Internal Audit Planning with a risk assessment. This assessment must consider risks to the Council from global changes as well as those recognised within its own risk management. It was also necessary to keep that risk assessment current. Mid-Kent Audit would continue to consider responses as risks and priorities might change throughout the year. Global risks identified included the General Data Protection Regulation, cybersecurity, political uncertainty, vendor risk, workforce planning and the evolving role of Internal Audit in understanding and providing assurance against a wide range of corporate risks.

In response to questions, the Head of Audit Partnership/Audit Manager explained that:

- In terms of Member reporting, Mid-Kent Audit reported in summary the outcome of each project to the Committee in June/July and November/December each year. If Members were interested in specific reports, they could be circulated upon request.
- Delays in the Local Plan being adopted and subsequently delivering the desired outcomes had been included as a corporate risk in the Risk Register. The Council's Corporate Leadership Team would be reviewing the Risk Register the next day, and consideration could be given to factoring in the risks associated with any delays in undertaking the first review of the Local Plan.

The Committee thanked the Head of Audit Partnership for a very good report, presented in an understandable format.

RESOLVED:

1. That the Internal Audit and Assurance Plan for 2018/19, attached as Appendix 1 to the report of the Head of Audit Partnership, be approved.
2. That the view of the Head of Audit Partnership that the Partnership currently has sufficient resources to deliver the Plan and a robust Head of Audit Opinion be noted.
3. That the Head of Audit Partnership's assurance that the Plan is compiled independently and without inappropriate influence from management be noted.

91. ANNUAL ACCOUNTS PREPARATION

Miss Ellie Dunnet, Head of Finance, presented her report setting out the proposed process for the preparation, audit and approval of the 2017/18 Statement of Accounts and summarising the changes to the Local Audit Regulations under the Local Authority Audit and Accountability Act which would come into effect later this year.

It was noted that:

- The impact of these changes meant that the timetable for producing, auditing and signing off the Statement of Accounts had been accelerated to meet the new deadline of 31 July.
- Given the reduced timeframe, it would not be practical for a draft version of the Accounts to be formally considered by the Committee, which represented a change to the current process. There was no legal requirement for the Committee to review the draft Accounts prior to approving the final version, although in the past it had been considered useful to allow early consideration of the draft document by Committee Members. Plans were in place to accommodate this through an informal briefing session for Members in June. In addition, the draft Accounts would be available on the Council's website and for inspection by the public from 31 May onwards.
- Grant Thornton, the External Auditor, would commence work on 9 July, in advance of the meeting of the Audit, Governance and Standards Committee to approve the accounts on 30 July. It had not been possible to bring forward the start date of the audit, as Grant Thornton was heavily committed at this time of year. Grant Thornton would be carrying out early audit testing in March in order to reduce the volume of work to be carried out at the final audit.
- As the audit would still be in progress at the agenda deadline date, it was likely that the External Auditor's Audit Findings report would be

presented as an urgent update to the agenda for the July meeting, in order to ensure that it included the most up to date information that might be of use to Members in considering their decision to approve the accounts.

In considering the revised timetable for producing, auditing and signing off the Statement of Accounts, Members expressed a preference for an informal briefing in June, rather than a formal meeting.

RESOLVED:

1. That the arrangements for preparation and sign off of the 2017/18 Statement of Accounts be noted, specifically:
 - That the Committee will no longer be asked to formally consider the draft version of the Accounts; and
 - That the External Auditor's Audit Findings Report will be presented as an urgent update to the agenda for the July meeting due to the timing of external audit work.
2. That representatives of the External Auditor be invited to attend the informal briefing on the draft Statement of Accounts in June.

92. EXTERNAL AUDIT PROGRESS REPORT MARCH 2018

Mr Darren Wells presented the report of the External Auditor on the progress to date against the 2017/18 audit plan. The report also provided a summary of emerging national issues and developments of relevance to the local government sector.

RESOLVED: That the External Auditor's progress report, attached as Appendix A to the report of the Director of Finance and Business Improvement, be noted.

93. EXTERNAL AUDITOR'S AUDIT PLAN 2017/18

Mr Darren Wells presented the External Auditor's Audit Plan for delivering the audit of the 2017/18 financial statements and value for money conclusion in order to meet the statutory deadline for publication of audited local government accounts which had been brought forward to 31 July 2018. The report included details of the significant risks identified, the reasonably possible risks identified, the concept of materiality and the anticipated audit fee.

In response to questions by Members, Mr Wells explained that:

- The risks identified were fairly generic across all local authorities and were not unique to Maidstone.
- The reason for identifying employee remuneration as a reasonably possible risk was because payroll expenditure represented a significant

percentage (16%) of the Council's operating expenditure, which included Housing Benefit.

- The External Auditor had determined planning materiality to be £1.813m (PY £1.787m) which equated to 2% of the Council's forecast gross expenditure for the year. The External Auditor was obliged to report uncorrected omissions or misstatements other than those which were "clearly trivial" to those charged with governance. Clearly trivial had been set at £90,700 (PY £89k). Trivial was based on total expenditure and total income reflected in the Statement of Accounts. Whilst £90k might not seem trivial to the public, the External Auditor had to frame the audit based on spend. Triviality was calculated as a % of materiality (5%) and provided a basis on which the External Auditor could then report back and ask Officers to make changes. If the level was set lower, the impact would be that for every error in the notes or main statements found, the External Auditor would be asking the Officers to make those changes, thereby potentially increasing the amount the External Auditor had to do and report back. The aim was to strike a balance between ensuring that the Statements were fairly presented, but in the most economic and efficient way.

RESOLVED: That the External Auditor's Audit Plan for the year ending 31 March 2018, attached as Appendix A to the report of the Director of Finance and Business Improvement, be noted.

94. BUDGET STRATEGY - RISK ASSESSMENT UPDATE

Mr Mark Green, Director of Finance and Business Improvement, introduced his report providing an update on the budget risks facing the Council. It was noted that:

- There continued to be inherent risks from uncertainty about the national economic position and the future funding of local government. The Government would be looking at options for dealing with negative Revenue Support Grant (RSG), and since the Council was facing £1.6m of RSG in 2019/20, this was very welcome.
- The wider economic climate impacted the Council in particular through exposure to fluctuations in business rates income. Around 35% of the Council's business rates income came from the retail sector which was particularly exposed to economic fluctuations and general trends in consumer behaviour.
- The increasing size of the Capital Programme and its importance to delivering the Council's strategic objectives meant that the impact of an inability to fund the Capital Programme would be significantly greater in future. Mitigation of the risks was being addressed through such measures as careful investment appraisal and strong project management.

In response to questions, Mr Green explained that:

- The risk matrix and the risk register covered the key budget risks over the period of the Medium Term Financial Strategy.
- Audit risks differed from budget risks. There were no “red” risks in relation to the budget strategy at present.
- The size of the Council’s Capital Programme was not unusual. Other Councils had bigger Capital Programmes and Maidstone’s was likely to be near the average.

RESOLVED: That the updated risk assessment of the Budget Strategy, attached as Appendix A to the report of the Director of Finance and Business Improvement, be noted, and that the risks should continue to be monitored.

95. APPOINTMENT TO ENFORCEMENT SUB-COMMITTEE ESTABLISHED BY A MEMORANDUM OF UNDERSTANDING IN RELATION TO THE DEVELOPMENTS AT BRUNSWICK STREET AND UNION STREET

Mr Mark Green, Director of Finance and Business Improvement, introduced his report concerning the appointment of an independent person to the Enforcement Sub-Committees established pursuant to Memorandums of Understanding to oversee the delivery and implementation of the planning mitigation required for the Council’s proposed developments at Brunswick Street and Union Street.

It was noted that:

- The Council would shortly be commencing two developments to provide a mix of affordable homes, homes for sale and homes for rent at Brunswick Street and Union Street. It was therefore landowner, developer and local planning authority in relation to these developments.
- The law allowed a local planning authority to grant planning permission to itself. On 19 December 2017, the Council’s Planning Committee resolved to grant planning permission for the Council’s proposed developments at Brunswick Street and Union Street subject to conditions and a legal agreement.
- In such situations where the Council was landowner, developer and the enforcing planning authority, the Council was unable to secure the required planning mitigation in the same way that it would be by a third party landowner/developer who had entered into a planning obligation with the Council pursuant to Section 106 of the Town & Country Planning Act 1990. Leading Counsel had advised that a solution which best fitted these circumstances was to have a Memorandum of Understanding (“MoU”) secured pursuant to other statutory powers which reflected the protections envisaged by Section 106 and was made between the landowning function and the planning decision making function of the Council. Two such MoUs had now

been drawn up for the proposed developments at Brunswick Street and Union Street respectively.

- As part of the Council's requirements to be open, transparent and accountable each MoU proposed the establishment of an Enforcement Sub-Committee that would ensure that the planning mitigation secured by the MoU was realised.
- It was a requirement that an independent person who was neither an employee nor an elected Member of Maidstone Borough Council be appointed to sit on each Enforcement Sub-Committee. It was considered appropriate, given the remit of the Audit, Governance and Standards Committee, for it to appoint the independent person.
- The Enforcement Sub-Committees would be stand-alone, created purely for the purpose of monitoring compliance with the respective MoU, resolving any disputes or differences and confirming the discharge of the planning obligations created by the MoU. They would not therefore report into any other Committee and would not form part of the wider Maidstone Borough Council committee structure.

RESOLVED:

1. That the requirement to appoint an independent person to the Enforcement Sub-Committees established pursuant to Memorandums of Understanding to oversee the delivery and implementation of the planning mitigation required for the Council's proposed developments at Brunswick Street and Union Street be noted.
2. That Councillor Peter Coulling, Parish Council representative on the Audit, Governance and Standards Committee, be appointed to serve as the Independent Person on the Enforcement Sub-Committees.
3. That, in the event of any conflict of interest in the roles becoming apparent, the Director of Finance and Business Improvement be given delegated powers to implement the process for making an alternative appointment.

Note: Councillor Coulling left the meeting whilst the appointment was discussed.

96. **COUNCILLOR DEREK BUTLER**

It was noted that this was Councillor Butler's last meeting of the Audit, Governance and Standards Committee as he would not be seeking re-election in May.

RESOLVED: That Councillor Butler be thanked for his contribution and diligence as a long serving Member of the Audit, Governance and Standards Committee.

97. DURATION OF MEETING

6.30 p.m. to 7.45 p.m.