

UPDATE ON COUNCIL DECISIONS FOLLOWING THE INDEPENDENT INVESTIGATION INTO THE WOKING FOOTBALL CLUB AND ASSOCIATED DEVELOPMENTS

[NOTE: DECLARATIONS OF INTEREST

In accordance with the Officer Employment Procedure Rules, the Director of Finance, Leigh Clarke, has declared a disclosable personal interest (non-pecuniary) in this item arising from (i) her husband having a small shareholding in Woking Football Club and (ii) being a Council appointed director of Kingfield Community Sports Centre Limited. The interest does not prevent Mrs Clarke from advising on this matter.

Executive Summary

At its meeting on 7 January 2021, Full Council considered Dr Gifty Edila's recommendations following her independent investigation into the Woking Football Club and associated developments. Council resolved that Dr Gifty Edila's recommendations should be accepted and that Officers should report back to Council, on 29 July 2021, on progress made against the recommendations. This report outlines the steps the Council has undertaken in respect of the adoption of the recommendations and to ensure continuing compliance with the same.

Recommendations

Council is requested to:

RESOLVE That

- (i) the report be noted;
- (ii) the Overview and Scrutiny Committee be allocated an annual budget of £20,000;
- (iii) the Legal Services department shall take steps to seek Lexcel accreditation and budget shall be allocated to cover the costs of the appointment of a consultant and an Administrative Officer;
- (iv) the Overview and Scrutiny Procedure Rules in the Council's Constitution be updated;
- (v) An update report on the recommendations set out in Dr Gifty's report is reported to Council in February 2022.

Reasons for Decision

Reasons: To provide Full Council with a comprehensive update in respect of the recommendations made by Dr Gifty Edila.

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The Council has authority to determine the recommendations above.

- Background Papers:** None.
- Reporting Person:** Joanne McIntosh, Director of Legal and Democratic Services/
Monitoring Officer
Email: joanne.mcintosh@woking.gov.uk, Extn: 3038
- Contact Person:** Joanne McIntosh, Director of Legal and Democratic Services/
Monitoring Officer
Email: joanne.mcintosh@woking.gov.uk, Extn: 3038
- Portfolio Holder:** Councillor Ayesha Azad
Email: cllrayesha.azad@woking.gov.uk
- Shadow Portfolio Holder:** Councillor Ann-Marie Barker
Email: cllrann-marie.barker@woking.gov.uk
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1.0 Introduction

- 1.1 At its meeting on 7 January 2021, Full Council considered Dr Gifty Edila's recommendations following her independent investigation into the Woking Football Club and associated developments.
- 1.2 Full Council resolved that Dr Gifty Edila's recommendations should be accepted and that Officers should report back to Council, on 29 July 2021, on progress made against the recommendations. This reports outlines the steps taken by the Council to date together with measures put in place to ensure continuing compliance with the recommendations. For ease of reference, the recommendations have been addressed in turn below together with a thorough explanation as to the steps taken and measures put in place to ensure compliance with the recommendations.

2.0 Dr Edila's Recommendations

2.1 Recommendation 1

2.2 Recommendation 1 was that:-

- “(i) All major development projects however initiated should be recognised as a project and the Council's project management tools such as Prince 2 should be adopted to manage the project.”*
- “(ii) Internal training on project management should be provided to the Corporate Management Team and their deputies.”*

2.3 Recommendation 1(i) is consistent with the earlier decision of Council, on 30 July 2020, when it resolved that:-

“the Woking Borough Council Project Management Framework be adopted for all projects and programmes including those that are not initiated by the Council.”

2.4 A report was presented to the meeting of the Executive on 15th July 2021 highlighting the key activity and developments to the Council's approach to project management in response to the recommendations in this report, the Corporate Plan priority Effective Use of Resources and the Medium Term Financial Strategy.

2.5 The Council's project management system is based on Prince 2 principles and is embedded in the Council's systems of monitoring and reporting. The Council has taken this opportunity to review its processes and procedures with a view to implementing improvements to ensure that it has a robust project management system in place. All major development projects however initiated shall be recognised as a project and subject to the Council's project management system. A member of the Corporate Leadership Team shall sponsor each project and ensure that the Portfolio Holder and relevant ward members are regularly updated. Further to this, the Corporate Leadership Team shall sit as a programme board monthly to collectively oversee development projects. These steps shall strengthen compliance, provide a strategic overview of all projects and provide a better understanding of the collective implications of all projects on resources and finances.

2.6 With regard to Recommendation 1(ii), training on the Council's project management system has been provided to the Corporate Leadership Team and Senior Managers. The Council recognises the importance of continuing professional development and shall ensure that further training will be provided as and when required. A specification for a project management training module is being reviewed and considered for commissioning subject to a review of costs and budget provision.

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2.7 Recommendation 2

2.8 Recommendation 2 was that:-

“(i) The report writing template for committees, the Executive and Full Council should be amended to include a legal implications comments section. All reports should have legal implications comments and when proposals in a report do not have any legal implications, the comment “None” should be inserted to provide clarity.

“(ii) If the WFC project proceeds to implementation, in the event of planning permission being obtained, an updated report should go to the Executive and Full Council and it should include confirmation of the legal powers on which the agreements were made.”

2.9 The Council's report writing template has been changed to include a section on legal implications. All reports now include a legal implications section which shall be completed by the Legal Services department. Legal Services shall review each report and include comments on any legal implications and constitutional matters. Care will be taken to provide comments on matters wherever possible and in the event that none are identified an informative shall be included to that effect. As such, recommendation 2(i) has been complied with.

2.10 Recommendation 2(ii) is contingent on planning permission being obtained for the Woking Football Club development. The Council is awaiting the outcome of the recent Planning Inquiry and as such cannot take steps to comply at this time. In the event that the Secretary of State grants permission a report shall be scheduled to go to the Executive and Full Council without delay. The report shall provide an update in respect of the project, the legal agreements in place and confirmation of the legal powers on which the agreements were made.

2.11 It is difficult to estimate the date of a decision from the Secretary of State in respect of the planning permission however it is hoped that a decision shall be made before the end of the year. Councillors will, of course, be kept informed on the outcome of the Planning Inquiry.

2.12 If, Planning Permission is granted, the Council has made a commitment to take the steps outlined above and as such recommendation 2(ii) will be complied with at that time.

2.13 Recommendation 3

2.14 Recommendation 3 was that:-

“All major projects should have a completed risk management template that identifies all the relevant risks, and which should be supported with contingency plans for managing the risks.”

2.15 Recommendation 3 is consistent with the Council's project management framework. As outlined above, the Council is strengthening its project management framework. The Council's Corporate Leadership Team now sit as a programme board on a monthly basis. This will provide an oversight, at a senior level, of the Council's project management framework and will ensure that risks are identified and managed. As such, recommendation 3 has been complied with.

2.16 Recommendation 4

2.17 Recommendation 4 was that:-

“(i) Major development projects should have project groups with scheduled meetings and minutes taken.

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(ii) Legal Services should seek Lexcel accreditation from the Law Society of England and Wales.”

- 2.18 Prior to Dr Gifty Edila’s report, not all major development projects had defined project groups with scheduled meetings and minutes. Changes have now been implemented to ensure that all major development projects have defined project groups with scheduled meetings and minutes. A member of the Corporate Leadership Team shall be the lead sponsor for the project and shall insure that the portfolio holder and ward members are kept updated.
- 2.19 Recommendation 4 (ii) concerns Lexcel. Lexcel is the Law Society’s legal practice quality mark for practice management and client care. It defines quality management procedures in seven areas: structure and strategy, financial management, information management, people management, risk management, client care and file and case management.
- 2.20 Achieving Lexcel accreditation involves the submission of an application and subsequent assessment by an independent assessment body. Lexcel accreditation is awarded for three years, with annual re-accreditation and monitoring inspections to ensure continued compliance. In-house legal departments are required to achieve and maintain stated requirements in the Lexcel standard. The independent assessment validates that these requirements have been met.
- 2.21 The Law Society advises that it takes around six months to become Lexcel accredited. The first step is for Legal Services to complete a self-assessment checklist. This will identify any areas that need to be addressed before the application is submitted. Once this has been done, the requirements of the Lexcel standard must be operated for a minimum of three months before the date of the first assessment. An assessor, allocated through an approved assessment body, will visit Legal Services to assess whether their policies, procedures, plans and case management meet the requirements of Lexcel. The Law Society, following consideration of the assessment report, will then determine whether Lexcel accreditation is granted.
- 2.22 Guidance recommends that a Lexcel-trained consultant is employed to assist organisations in meeting the Lexcel requirements and applying for the initial assessment. The cost of retaining a consultant is estimated to be £20,000. The assessor charges a fee to carry out the assessment. This is estimated to be £5,000. An application fee of £270 is payable. There will be recurring annual assessment fees (payable to the assessor).
- 2.23 The client care and file management requirements of Lexcel are considerable and will necessitate the employment of a Legal Support Officer to deal with the additional clerical/administrative tasks resulting from Lexcel. This would be on a W2 grade (at an annual cost, including on-costs, of £30,000). Should the Council wish to proceed, budgetary provision shall be made in respect of these costs.
- 2.24 The Legal Services team is confident that, given the resources mentioned above, it can achieve accreditation. The Legal Services team shall take steps to achieve Lexcel accreditation and report back to Council to confirm that it has been awarded accreditation.
- 2.25 Recommendation 5
- 2.26 Recommendation 5 was that:-
- “(i) WBC should be joint partners on community engagement in development projects in the borough. If necessary, a developer could be asked to fund any additional staff needed to support the community engagement task.*

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- (ii) *WBC should set up a Residents' Panel to facilitate regular consultation with residents, and to use the panel to commence wider community engagement on development projects."*

2.27 Community engagement is at the forefront of the Council's Corporate Plan. The Council's ambition is to embed a culture of consultation into the decision-making process so that councillors will have residents' feedback on any subject available to them. The Council will seek funding from developers towards the costs of community engagement in future projects. The Council's recent increased focus on community engagement will ensure that recommendation 5(i) is complied with when the Council is next involved in a development project.

2.28 The first Resident's Panel was held on 7 July 2021 and a programme of engagement is being put in place.

2.29 Recommendation 6

2.30 Recommendation 6 was that:-

"Part II confidential information in reports dealing with development projects should be limited to information that should not be in the public domain at that point in time and should not apply to the entire report."

2.31 The Council aims to consider all matters concerning development projects or otherwise in the public domain but sometimes this is not possible, particularly given the nature of commercial developments. The use of Part II will be kept to a minimum and carefully considered by the Monitoring Officer in line with the statutory framework. This recommendation reflects the statutory provisions that apply to Part II information and the Council's practice in respect of it (as described in the Confidentiality Protocol adopted by the Council on 15 October 2020). Since the Council adopted the protocol, all Part II reports are held in a register by the Monitoring Officer. The need for an item of business to remain subject to Part II designation shall be reviewed annually by the Monitoring Officer and the outcome of that review shall be recorded. An annual report shall be submitted to the Executive in respect of Part II items held in the register.

2.32 Recommendation 7

2.33 Recommendation 7 was that:-

"WBC to consider amending the Ostensible Authority arrangement and instead to delegate powers to Officers when considering reports and to stipulate the use of the delegated power in consultation with a named councillor."

2.34 Future reports will incorporate a request to seek a specific delegation in consultation with the leader and/or portfolio holder to enable projects to be implemented without the need to revert back to Full Council or the use of ostensible authority in respect of matters directly arising from or in connection with a project.

2.35 Recommendation 8

2.36 Recommendation 8 was that:-

- (i) *In future development projects where a Special Purpose Vehicle company is set up to deliver a project, a risk template must be produced, and a presentation made to councillors, particularly addressing viability and identifiable risks to the project.*

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(ii) *Consideration should be given to the SPV company providing a bond, insurance or a parent company guarantee, if there is a parent company. If none of these are realistic or achievable, other assurance should be sought and put in place."*

2.37 Recommendation 8 is contingent on the Council participating in a special purpose vehicle for a future development project. The Council has accepted these recommendations and officers shall ensure that recommendation 8 will be complied with if, and when, that happens.

2.38 Recommendation 9

2.39 Recommendation 9 was that:-

"When purchasing land in the borough, an internal or external valuation should be sought to assist councillors in making a prudent decision on the purchase."

2.40 Recommendation 9 will be complied with on future land purchases. Valuation reports shall be sought and details of the same provided to Councillors to enable them to make a decision on land purchases.

2.41 Recommendation 10

2.42 Recommendation 10 was that:-

"The Council should avoid appointing statutory officers, especially the Section 151 Finance Officer and the Monitoring Officer onto external companies or trusts with whom the Council has or is likely to have an association."

2.42 The Council's three statutory officers are the Head of Paid Service (Chief Executive), Section 151 Officer (Director of Finance) and Monitoring Officer (Director of Legal and Democratic Services).

2.43 The main companies affected by Council's decision not to appoint statutory officers as directors are the Thameswey companies. These were set up by the Council to deliver its objectives, i.e. things that the Council would otherwise do for itself, but which can be better undertaken through a company structure. In short, the companies are vehicles to deliver service outcomes for the Council's residents. This approach was recognised in the Officer Conflicts of Interest Protocol adopted by the Council on 15 October 2020.

2.44 The relationship between the Council and its companies is governed in a number of ways. For the Thameswey companies, there are the "Thameswey Group Protocols". A copy of the same is attached at Appendix 1 for information. Paragraph 2 of this provides:-

"To the extent permitted by law, no Thameswey company shall undertake any project or activity to the detriment of the Woking Borough Council ("Council" or "WBC") or the wider interests of the communities which it serves."

2.45 The Council will ensure that the directors it appoints are able to act in the best interests of the Council. The Articles of Association for Thameswey Group of Companies include provisions which restrict the ability of the companies and their directors to act to the detriment of the Council. By way of example, Article 53.1(d) of the Articles for Thameswey Limited provides:-

"to the extent permitted by law and subject to their duties under the Act, the directors shall exercise all reasonable endeavours (having regard to the facts and circumstances known to them) to ensure that the Company does not undertake any project or activity which could reasonably be considered to be to the detriment of [Woking Borough Council] (taking into

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account the interests of the community it serves) without prior written approval of [Woking Borough Council].”

- 2.46 Statutory Officers fulfil an important role for the Council. They perform a similar role for the companies to which they have been appointed, by the Council, as directors. In the event that there is a conflict of interest, the director would owe his/her primary duty to the company. The director would either declare the interest and not act in respect of that matter, or resign the directorship (or be removed by the Council, as shareholder).
- 2.47 It is also considered that being able to appoint Statutory Officers as directors assists with satisfying what is known as the Teckal exemption (as codified in Regulation 12 of the Public Contracts Regulations 2015). The exemption allows the Council to enter into contracts with its subsidiary companies without having to go through (what was) an OJEU tender process. For the exemption to apply, it is necessary for the Council to exercise control over the company which is similar to that exercised by the Council over its own departments.
- 2.48 The Council will need to carefully consider the appointment of a statutory officer to any director role. Council will be able to take account of (i) any interests that would make it inappropriate for a particular person to be appointed a director of a particular company and (ii) any benefits arising from appointing a particular person as a director of a particular company. This can be done as part of the Selection Panel process, at the start of the Municipal Year, when directorships are routinely reviewed and determined by Council.
- 2.49 The Council shall consider, on a case by case, basis the appointment of directors onto external companies or trusts. The Council shall give careful consideration to the experience and expertise the officer shall be able to bring to the role as director of the company to which they are appointed and ensure that the most suitable officer is appointed in each instance.
- 2.50 Recommendation 11
- 2.51 Recommendation 11 was that:-
- “External training should be organised for Officers and councillors on the Code of Conduct, to include the Nolan principles and sitting on external bodies as directors of companies or trustees on trusts.”*
- 2.52 External training on the Code of Conduct and the Nolan principles was provided by Richard Lingard on 1 June 2021. Further training for directors and trustees will be provided once Full Council has appointed replacement directors to its companies (see item 12 on tonight’s agenda).
- 2.53 Recommendation 12
- 2.54 Recommendation 12 was that:-
- “(i) Members of the Planning Committee should not participate in an Overview and Scrutiny Committee’s review of a proposed development in which a planning application would be submitted.*
 - “(ii) Members of the Planning Committee should not sit on an Overview and Scrutiny Committee or Task Group meeting reviewing a development which had been determined by Planning Committee. They may give evidence at such meeting.*
 - “(iii) WBC should adopt the Local Government Association’s guidance document 2019 called “Probity in Planning” and arrange a presentation on it to Planning Committee members.*

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(iv) External training should be arranged for members of Planning Committee on the Code of Conduct, Nolan principles and the guidance called Probitly in Planning."

2.55 Recommendations 12(i) and 12(ii) are contingent on the Overview and Scrutiny Committee reviewing a future development project. To ensure that the recommendations are complied with during any future review of a development, it is proposed that these recommendations be incorporated into the Overview and Security Procedure Rules in the Council's Constitution.

2.56 The LGA document "Probitly in Planning was adopted" by Council on 7 January 2021. A presentation on it was provided by Richard Lingard on 1 June 2021.

2.57 External training on the Code of Conduct, Nolan principles and the guidance called Probitly in Planning was provided by Richard Lingard on 1 June 2021.

2.58 Recommendation 13

2.59 Recommendation 13 was that:-

"(i) WBC should allocate a reasonable budget to Overview and Scrutiny Committee for their work.

(ii) WBC should allocate a part-time Scrutiny Officer post to Overview and Scrutiny Committee to assist with their work."

2.60 A budget of £20,000 should be allocated to Overview and Scrutiny for their work.

2.61 To date, support for the Overview and Scrutiny Committee has been provided by a Democratic Services Officer. The Officer attends meetings of the Committee and its Task Groups, draws up the forward plan of activities in consultation with the Chairman and Vice-Chairman, oversees the publication of agendas, reports and minutes and supports the Members of the Committee with any enquiries. A Scrutiny Officer's role is wider, in that it includes (i) conducting research/investigations, as directed by the Overview and Scrutiny Committee and Task Groups and (ii) writing and collating reports for the Overview and Scrutiny Committee and Task Groups.

2.62 The Democratic Services Officer who provided support for the Overview and Scrutiny Committee has moved to another role in the Council. This has enabled a review of Democratic Services to be undertaken. It is proposed that the existing post of "Democratic Services Officer" be redesignated as "Scrutiny and Democratic Services Officer". The new post holder will spend fifteen hours per week on scrutiny and the remainder of their time on democratic services functions. This will allow the Council to employ a Scrutiny Officer. The job description has been approved and the recruitment process has started.

2.63 Recommendation 14

2.64 Recommendation 14 was that:-

"WBC should appoint an external facilitator to work with those involved in the project – Officers and the Executive, and the Task Group to rebuild the good working relationships that previously existed."

2.65 The purpose of this recommendation is self-explanatory, however bearing in mind the recent changes in personnel (Officers and Members), it is no longer considered necessary to pursue this recommendation.

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3.0 Conclusion

- 3.1 The Council has embraced the recommendations of Dr Gifty Edila and has taken a number of steps, as outlined above, to improve governance within the organisation. The Council has ensured compliance with the recommendations as listed above and taken steps which extend further than those recommended by Dr Gifty Edila. The Council has committed to a continuing programme of change and to report back the Full Council in respect of these recommendations in February 2022.

4.0 Corporate Strategy

- 4.1 The action taken in respect of Dr Edila's recommendations is consistent with the Council's Corporate Plan.

5.0 Implications

Finance and Risk

- 5.1 These are set out in detail in the main sections of this report. There are financial implications in respect of allocating a budget to the overview and Scrutiny Committee and in seeking Lexcel accreditation.

Equalities and Human Resources

- 5.2 These are set out in the main sections of this report.

Legal

- 5.3 These are set out in the main sections of this report.

6.0 Engagement and Consultation

- 6.1 Group Leaders have been consulted on the approach to Recommendations.

REPORT ENDS