



# Northumberland

## County Council

### **AUDIT COMMITTEE**

**DATE: 22 JANUARY 2020**

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### COUNTY COUNCIL PLANNING FUNCTION – INFORMATION RELEVANT TO THE FRAMEWORK OF GOVERNANCE, RISK MANAGEMENT AND CONTROL

#### **Report of the Chief Executive**

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#### **Purpose of report**

The purpose of this report is to inform Audit Committee of significant matters of concern which have been identified in relation to the discharge of specific aspects of the County Council's Planning function. The issues initially came to light following an investigation into a whistleblowing disclosure by an individual who raised concerns relating to the Planning function in 2017/18. Further issues and matters came to light during the initial whistleblowing investigation and further subsequent relevant investigations.

This report also outlines the actions which have since been taken by senior management to address a substantial number of serious significant weaknesses identified in systems of control relating to planning. These matters of concern are directly relevant to the County Council's framework of governance, risk management and control.

This report is made to Audit Committee so that oversight and transparency of process and expenditure in relation to legal responses made on behalf of the County Council, the Chief Executive (Head of Paid Service), the Leader of the Council and the Cabinet Member for Planning and Resilience can be assured as being made appropriately, proportionately and in line with the expectations of good governance. The report sets out context and the difficult circumstances in which senior staff and members have been operating whilst seeking to ensure that poor practice of individuals has been eradicated, and that open and transparent processes become embedded.

This report also confirms that the legal action taken against Northumberland County Council, the Chief Executive (Head of Paid Service), the Leader of the Council and

the Cabinet Member for Planning and Resilience has been withdrawn in the High Court by Lugano Dissington Estate Ltd.

This report is made to Audit Committee in order that the Committee can be aware of these matters, the risks inherent in these and their subsequent impact on the County Council, as part of the Audit Committee's ongoing consideration of the Council's framework of governance, risk management and control.

## **Recommendations**

### **It is recommended that Audit Committee:**

- (a) receives and evaluates the information in this report as part of its ongoing consideration of the Council's framework of governance, risk management and control, in accordance with the Committee's Terms of Reference as stated in the Constitution
- (b) notes that due to the significance of the weaknesses identified in the County Council's planning functions, specific reference to this matter will be included in the Annual Governance Statement for the 2019/20 year
- (c) notes that swift action was taken by senior management to address and correct all irregularities, once identified; and that new senior personnel and supervisory arrangements have subsequently been introduced within the Authority's planning department. Adherence to proper systems and processes is being carefully monitored and enforced and the Director of Planning will ensure that all the necessary steps are taken to strengthen systems of control
- (d) notes that the conduct of a number of senior officers previously employed by the County Council has fallen short of expected standards of behaviour, conduct and ethics and as a result significant concerns have been raised with Northumbria Police and an external referral has been made to the relevant professional body, given the nature of the concerns which have arisen.

## **Link to Corporate Plan**

The work of Audit Committee contributes to the achievement of all priorities in the Council's Corporate Plan 2018-21.

## **Key issues**

### **Background**

- 1 The County Council has become aware that a number of letters and documents have been circulated to and amongst elected members and others regarding a specific planning application for a major residential development. This development was the proposal for Dissington Garden Village. In addition there has been widespread reporting and comment on the planning matters in question via a variety of websites and online 'blogs' as well as through other media platforms.
- 2 The majority of letters and documents which the County Council has sighted have originated from sources outside of the County Council. Much of the

content has not been accurate and at times, it has been wholly incorrect and fundamentally misleading.

- 3 The Chief Executive recognises that the content of the information (and in particular, incorrect information) circulated to elected members and others in this highly irregular and unusual way has the potential to raise concern and alarm in the minds of members and the public as to the County Council's framework of governance, risk management and control, as this relates to the Authority's planning functions. Accordingly, the Chief Executive considers it appropriate to provide a factual report to Audit Committee in order that the Committee can consider this as part of its duty to maintain an ongoing review of the County Council's framework of governance, risk management and control.
- 4 This report therefore sets out the background to the planning application in question, the context and issues faced by senior staff and members and a number of serious irregularities and matters of concern related to the noted planning application (for Dissington Garden Village). This report also explains enquiries undertaken by the County Council's senior management in response to concerns identified, the outcomes of those enquiries and action taken by management to address weaknesses identified and strengthen systems of control as these relate to planning functions.

#### **Local Planning Authority**

- 5 Northumberland County Council is the Local Planning Authority for the Northumberland area. As Local Planning Authority, Northumberland County Council is defined under the National Planning Policy Framework as "the public authority whose duty it is to carry out specific planning functions" for Northumberland. The County Council has specific duties to discharge these planning functions fairly and in accordance with prevailing laws, policy and due process.
- 6 There is now significant evidence that appears to suggest that attempts were made to subvert these functions in respect of a major planning application, namely the application for Dissington Garden Village. This is clearly of significant concern and is explained in detail further below.
- 7 Whilst the planning application in question has now been withdrawn by the applicant, mitigating the otherwise significant strategic risks which the Authority would have faced, the failures in control identified are so significant that:
  - (a) it is essential that the Authority reports on these governance matters to the Audit Committee, in the interests of transparency
  - (b) it is recognised that Audit Committee will require ongoing information and assurance on the actions taken to improve control and strengthen systems in place within Planning
  - (c) the Authority must learn the appropriate organisational lessons from what has occurred in order to safeguard the proper delivery of its planning functions both at the present time and into the future.

## **Identification of Concerns and Approach to Investigation**

- 8 In 2017 the County Council introduced a system called Safecall. Safecall is a recognised worldwide whistleblowing system which promotes and encourages ethical transparency. Its introduction in Northumberland County Council was widely publicised. The County Council made clear that any genuine concerns relating to the County Council and its work would be taken seriously and would be examined thoroughly and impartially. Concerns could be raised by any officer, elected member or indeed by any stakeholder of the County Council.
- 9 Following publicity around Safecall, an individual came forward to highlight a range of practices which they considered were unethical and of concern, specifically relating to the Authority's planning functions. Given the seriousness of the allegations received, the County Council appointed an independent investigator to meet with the individual who had whistleblown and to determine whether there was any objective evidence to confirm or deny those allegations which had been made.
- 10 Initial analysis demonstrated that facts available corroborated the concerns raised. A detailed independent whistleblowing investigation was therefore commissioned. In accordance with proper investigative process, no assumptions were made and the investigation was performed entirely objectively by the external investigator. The independent investigator undertook a detailed investigation (gathering documentary evidence and interviewing key individuals) to ensure that all findings – whatever those findings might be – would be entirely evidence based.
- 11 At around the same time, independent information was also sought from the Planning Officers Society. This information sought to understand the approach which a reasonable Planning Authority would be expected to adopt to the consideration of the planning application in question; and whether the advice provided by senior officers in the County Council's planning function had been in accordance with the approach which would have been expected given the circumstances of the case and having regard to the specific material planning considerations which should have been highlighted.
- 12 The outcomes from both externally commissioned independent sources are summarised below.

## **Planning Application and Planning Process – Summary of Investigation Findings**

- 13 The independent investigation report found that, in respect of the specific planning application (which was for a large residential development of some 257 hectares on a green field site), decisions and conduct in relation to that planning application were not transparent or appropriate.
- 14 It appears that significant efforts were made by several persons in positions of authority and control within the County Council to collude with and secure a

number of inappropriate advantages for the planning applicant / developer in the application in question. Such advantages would not be conferred on any other planning applicant in the normal conduct of the Authority's planning functions.

- 15 Of particular concern is the advice provided by the Planning Officers Society, that when objective criteria (including the County Council's own existing policies and reviews) was applied to the circumstances of the planning application the evidence clearly shows that this would have almost certainly meant that any reasonable Planning authority would have recommended the planning application in question for refusal. Instead, planning officers recommended that the application should be approved. This recommendation is entirely perverse given the evidence available.

### **Planning Application and Planning Process – Specific Concerns**

- 16 There are a number of very specific areas of concern which have contributed to the overall governance concerns highlighted above.

#### ***Acceptance of Hospitality***

- 17 There is evidence that a former very senior Planning officer has accepted substantial hospitality (including first class rail travel, hotel accommodation and fine dining in a private room of a London restaurant owned by a Michelin starred chef) from the planning applicant / their agents in this specific planning application. The level of hospitality extended is excessive; and appears to have been paid for by those associated with the application. The senior Planning officer had not however declared this, contrary to the County Council's procedures; and despite having earlier been formally reminded (in writing) by the current Chief Executive that any offers of hospitality must be recorded in line with the County Council's established procedures.
- 18 There is consequently doubt on the behaviour and impartiality of this very senior Planning officer, who was in a significant position of authority and control, regarding the planning application in question. A formal referral to the relevant professional body in relation to this matter has now been made.

#### ***A loan to fund the development, from the County Council to the Planning Applicant***

- 19 There is evidence that discussions between the previous executive / senior management of the County Council and the developer / planning applicant had been ongoing and in addition to other discussions reached an advanced stage regarding the provision of a loan, from the County Council to the planning applicant concerned. This loan, for which heads of terms and other correspondence have been obtained, offered the planning applicant an initial £34million from the County Council to fund the development with further funding of 55% of the site value "once outline planning permission was granted". The 'site value' is not clear but the planning applicant has indicated that the site was forecast to "have a gross development value of c.£772million".

This correspondence was conducted by a former chief officer of the County Council, on that chief officer's personal email account (not that officer's County Council email account). It is now clear that senior officers within the Planning department were similarly using personal email accounts to transact County Council business in respect of this same planning application, this is further outlined at paragraph 21 below.

- 20 It would be highly irregular for any local authority to enter into a funding arrangement such as this with any planning applicant. That Northumberland County Council appears to have been offering such substantial funding to a planning applicant – and that the Authority is the Strategic Planning Authority which would determine the planning application in question – may well raise valid questions as to the impartiality and objectivity with which the application would be determined. In terms of financial governance, the values concerned in turn were likely to represent a serious financial risk to public finances.

***Instruction to Communicate via Personal, non-Council non-secure Email***

- 21 A very senior Planning officer had instructed their staff that Council business regarding the specific planning application would be transacted via personal, non-secure email accounts, rather than the County Council's secure email system – in order that the correspondence would be hidden and not be able to be subjected to potential scrutiny through the expected routes such as audit or Freedom of Information processes.
- 22 It is to the credit of junior planning officers that they brought this matter to senior management's attention and provided copies of the correspondence in question. However, the practice that these officers had been instructed to follow highlights extremely serious governance failings. As well as disguising unethical behaviour, transmission of confidential data via non-secure email systems runs a real risk to information governance and the potential for data breach.
- 23 The nature and tone of the correspondence viewed, furthermore, demonstrates a colloquial and inappropriate familiarity between senior Planning officers and the planning applicant in question. The Planning applicant had been made party to information which other planning applicants would not enjoy. For example, a senior Planning officer shared colloquial gossip regarding information from another planning application made by other developers to the planning applicant / their agents, for purposes which are unclear but which was not appropriate; and there is also evidence of different levels of scrutiny / judgement applied to different developers.

***Threats to Independence of Authorship of reports to Strategic Planning Committee***

- 24 There is evidence that the applicant and / or their advisers in the specific planning application were invited / allowed by a very senior officer in the Planning department to write and alter parts of the Planning officers' report to the Strategic Planning Committee. This report ultimately recommended

approval of the application. The applicant was also allowed to view confidential drafts of the report which would not normally be published outside of the County Council.

- 25 There is therefore serious concern of undue influence / conflict of interest on the part of the planning applicant, enabled by a senior officer in the Planning department having already offered and given significant hospitality to a very senior officer.

### ***Disregard of Material Planning Considerations***

- 26 A Green Belt Review had been carried out in 2015 which concluded that the land concerned in the planning application made a high contribution to the purposes of the green belt in Northumberland. It was therefore clear that the development in question was likely to cause substantial harm to the green belt (indeed, removing a significant number of hectares of green belt land).
- 27 However significant efforts appear to have taken place by those in positions of influence and control within the County Council with a view to subverting the evidence of the County Council's own Green Belt Review in the report to the Strategic Planning Committee. The interests of the communities whom the County Council as Strategic Planning Authority exists to serve were not safeguarded by the actions of officers in this matter.

### ***Legal Advice***

- 28 There is evidence that County Council officers sought to obtain legal advice to support the planning applicant's stance, contrary to the interests of the County Council as Local Planning Authority; and to ignore objections and sound advice raised by officers; and to overturn decisions made within the wider Planning team without any fair or reasonable rationale. There is also evidence that such privileged legal advice was then privately shared outside of the County Council's communications systems, for purposes which are not known.
- 29 This privileged legal advice was obtained without authority of the Interim and then Chief Executive, Mrs Daljit Lally, who had stipulated to the very senior Planning officer that should legal advice be required, she would need to understand and agree the instructions of advice being sought, the rationale for this, and also to authorise this.

### **Legal action initiated and then withdrawn by the Planning Applicant**

- 30 In August 2018, Northumberland County Council received notice that the Planning applicant had commenced legal action by issuing a writ in the High Court against the County Council and a specified senior officer and elected members.
- 31 The County Council, and the officer and members named in the claim, have always maintained that this legal action was both spurious and speculative, and further that it was made in bad faith. The High Court writ was subsequently

withdrawn by the applicant. However prior to its withdrawal, the County Council was put to significant cost in defending the spurious court action which had been commenced against it, its officer and members. It should be noted that at no time has the County Council initiated legal action; but it has been put in the position of having to defend such legal action.

- 32 The County Council is aware that the planning applicant went to extraordinary lengths to publicise its legal action, which included sending information on the High Court writ to all members of the County Council, as well as promulgating this information widely in the media.
- 33 Whilst the County Council was in the position of responding to the legal action notified, and was addressing the internal governance matters outlined earlier in this report, it would not have been appropriate to comment publicly on the speculative claims as set out in the High Court writ.
- 34 As explained earlier, however, it is recognised that the (often misleading) communication on these matters, which the County Council contends was brought by an applicant with a significant vested interest, might cause alarm in the minds of elected members and the public who have read this communication. The County Council also contends that this communication may adversely and unfairly impact the reputation of the County Council and the officer and elected members who were named in the legal action brought by the planning applicant. As such it is now considered appropriate to comment on these matters at this juncture.
- 35 Regarding the content of the applicant's claim in the High Court writ, comments on the substance of the writ are set out below:
- That the draft Local Plan Core Strategy was withdrawn – this was a manifesto pledge of the Conservative group in the run up to the 2017 County Council election, and part of the platform on which this political group stood and was subsequently elected. It is entirely appropriate for any political group on the County Council, of any persuasion, to develop a political stance of their choosing on any matter of policy. Proper officers of the County Council advised that withdrawal of the draft local plan core strategy was permissible. There was a clear evidence base for the withdrawal as set out in reports to County Council in July 2017. As such, legal action in connection with the withdrawal was unwarranted. This was particularly so given that the draft Local Plan Core Strategy had been given such limited weight in formal reports to Strategic Planning Committee.
  - Anonymous Allegations – in December 2017, two anonymous letters were sent on to the County Council by two elected members. However these elected members then circulated the anonymous letters widely, not only sharing these with the External Auditor, but also the (then) Police and Crime Commissioner, many officers, and a number of elected members. The anonymous letters were clearly politically motivated and much of the content was pejorative in nature. Notwithstanding this, those aspects of

the anonymous letters which were capable of checking back to facts were thoroughly examined. This involved interviews with officers and elected members, as well as gathering and analysis of all available supporting information.

Following this detailed, impartial and evidence based investigation, it was established beyond any doubt that the anonymous letters were wholly without basis. However, that these letters were relied on so prominently in the legal action brought against the County Council and others, again the Authority would contend is further evidence of the spurious nature of the claims made against it in the writ and underlines the lack of any evidence to substantiate those spurious claims.

- 36 It is perhaps appropriate at this juncture to make clear that all allegations received by the County Council will be considered and examined appropriately. However, particularly in the case of anonymous allegations, the County Council must be alert to the possibility of malign motives on the part of the anonymous author. There may for example be motives of bias or malice which, when an allegation is made anonymously, may impact the evidential value of those allegations and reduce their credibility. Most importantly, it is essential to remember that allegations are just that, rather than proven statements of fact, and should not be presented as if they are fact until fully investigated and proven as such.

### **Financial Expenditure**

- 37 The Audit Committee are invited to review the following table of expenditure which is a summary of the legal costs incurred by Browne Jacobson LLP and Anthony Collins LLP who were acting on behalf of Northumberland County Council, the Chief Executive (Head of Paid Service), the Leader of the Council and the Cabinet Member for Planning and Resilience in response to the High Court action brought by Lugano Dissington Estate Ltd.

**Table 1: Summary of Legal Costs Incurred by Northumberland County Council in response to legal action brought against the County Council, Officers and Elected Members by Lugano Dissington Estate Ltd (in administration)**

	Net Amount Paid	VAT Amount Paid	Total Amount Paid
Browne Jacobson LLP	£53,230	£10,595	<b>£63,825</b>
Anthony Collins Solicitors LLP	£174,735	£34,829	<b>£209,564</b>
<b>TOTAL</b>	<b>£227,965</b>	<b>£45,424</b>	<b>£273,389</b>

- 38 The Audit Committee should note that Lugano Dissington Estate Ltd subsequently transferred its assets and liabilities to Matterhorn Capital and has now gone into liquidation / administration.

- 39 As set out above, Northumberland County Council and the officer and elected members against whom Lugano Dissington Estate Ltd issued legal action have always maintained that this legal action was both spurious and speculative, and entirely without basis. It is suggested that Lugano Dissington Estate Ltd's withdrawal of that legal action supports this position. Once Lugano Dissington Estate Ltd withdrew its legal action, the County Council was entitled to apply to the court for recovery of all costs it had incurred in responding to the spurious / withdrawn legal action, and the County Council duly made an application for reimbursement of these costs from Lugano Dissington Estate Ltd. However in a Statement of Affairs filing recorded at Companies House on 10 September 2019, the administrators for the estate have confirmed that Northumberland County Council is one of 27 unsecured creditors with financial claims against Lugano Dissington Estate Ltd. As such it is highly unlikely that the County Council will be able to recoup any of the funds spent defending the high court action due to the poor financial condition of the company.
- 40 The Audit Committee should also note that the County Council has been informed by the Administrators for the estate that they are now formally investigating the Company Directors of Lugano Dissington Estate Ltd and a report regarding those Directors' conduct has been formally submitted to the Department for Business, Energy and Industrial Strategy (BEIS). This report is referenced in a publicly available record held by Companies House, which is attached as **Appendix 1**.

### **Other Issues**

- 41 During the above period numerous attempts were made to seek to discredit and/or intimidate senior council officers and members. These included the circulation of misleading/false information, intimidating individuals and seeking to discredit individuals with external parties. The Council took a number of actions including reporting concerns to the police and adopting enhanced security measures in order to support staff and members during this period.

### **Implications**

<b>Policy</b>	This proposal is relevant to the 'being efficient, open and work for everyone' priority in the NCC Corporate Plan 2018-2021.
<b>Finance and value for money</b>	It is part of the Audit Committee's role and remit to assess the economy, efficiency and effectiveness with which County Council resources are deployed.
<b>Legal</b>	The County Council is required under the Accounts and Audit Regulations 2015 to maintain a sound system of internal control which facilitates the effective exercise of its functions and the achievement of its aims and objectives; ensures that the financial and operational management of the Authority is

	effective; and includes effective arrangements for the management of risk.
<b>Procurement</b>	None
<b>Human Resources</b>	The advice of the Human Resources and Organisational Development Team has been sought relating to all relevant matters highlighted in this report.
<b>Property</b>	None.
<b>Equalities</b> (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Not applicable.
<b>Risk Assessment</b>	Any risks and opportunities identified will be managed in accordance with the County Council's existing risk management arrangements.
<b>Crime &amp; Disorder</b>	The matters highlighted in this report have been notified to Northumbria Police where appropriate.
<b>Customer Consideration</b>	None.
<b>Carbon reduction</b>	None.
<b>Health and Wellbeing</b>	None.
<b>Wards</b>	All

**Background papers**

None

**Report sign off**

	Full Name of Officer
Monitoring Officer/Legal	Not applicable
Executive Director of Finance & S151 Officer	Not applicable
Relevant Executive Director	Not applicable
Chief Executive	Not applicable
Portfolio Holder(s)	Not applicable

## **Author and Contact Details**

Daljit Lally, Chief Executive

Telephone: 01670 622669

Email: Daljit.lally@northumberland.gov.uk