

Report in the Public Interest - Proposed relocation of Town Hall

Dawlish Town Council

Audit 2009/10

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Summary

1 The Council planned to close its Manor Road town hall and offices and build new purpose-built offices which would be cheaper and more efficient to run. It bought 34 Park Road to act as temporary offices to help its long-term plans.

2 The Council believed this had the potential to provide for the long-term benefit of the Council and its electorate. But the idea was not supported with proper financial plans and there were some significant failings by the Council which have led to the inefficient use of public money.

3 The Council abandoned its plans to move into Park Road because of strong public opposition to its plans. It has never occupied Park Road for its intended use as offices and the building stands empty. The Council has not yet decided what to do with Park Road.

4 The Council made decisions based on inadequate information and acted without regard to the minimum information it should have considered before proceeding. The Council was surprised by the extent of the adverse public reaction when its proposals became public knowledge late in 2009.

5 The principal failings of the Council were that:

- it did not prepare an acceptable financial plan to determine whether its strategy was workable;
- it did not maintain a proper capital programme for its capital expenditure;
- it had little or no evidence on which it could determine the financial viability of its strategy for a new town hall and office accommodation;
- it had not widely consulted on its proposals for moving from the Manor House;
- the Council went ahead and entered into a substantial financial commitment to buy Park Road as part of its strategic plan without seeking the appropriate information;
- it acted imprudently in the purchase of Park Road by not getting an up-to-date valuation or survey of the structural condition, or of any other works necessary to enable it to be used as Council Offices; instead it relied on a survey and valuation from 2005 and the Council's knowledge of the local property market;
- it did not formally consider the implications of buying Park Road without current redevelopment permission, although it did receive advice from its solicitors that it could apply for a certificate of lawfulness to use the property as offices; and

- the publicity material for the parish poll did not present all the issues clearly, fairly and as simply as possible in accordance with the Code of Publicityⁱ requirements in force at the time and was intended to persuade in direct contravention of the Code.

6 Because of these actions the Council has taken out loans totalling £165,000 and incurred extra one-off set up costs. The budgeted costs in 2010/11, including loan repayments of over £10,000 are more than £27,000. The property remains empty and the Town Council's valuers have expressed reservations on the financial viability of the Town Council redeveloping Park Road or using it as offices.

7 This report is issued in the public interest under section 8 of the Audit Commission Act 1998 (the 1998 Act). This section of the 1998 Act requires me to consider whether, in the public interest, I should make a report on any significant matter coming to my attention to bring it to the notice of the audited body and the public. I am making this report in the public interest because the Council acted imprudently in the purchase of 34 Park Road and failed to follow the standards expected. This has been a difficult and expensive venture for the Council and led to adverse publicity, reputational damage and added expense.

8 This report is to be dealt with in accordance with section 10 of the 1998 Act, which in part requires my report to be considered by the Council at a public meeting. The report also includes recommendations under section 11 of the 1998 Act, which the Council must consider and decide what action it will take in response within one month of receipt of the report.

Recommendations

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- R1** The Council should review and make the necessary improvements to its financial management arrangements. The improved arrangements should ensure the Council in future:
- prepares a proper financial plan and feasibility study before it embarks on any major projects;
 - has a capital programme in place covering its capital projects; and
 - only proceeds with any major projects having considered all relevant facts and prepared proper financial plans.
- R2** The Council should improve its arrangements for the acquisition and disposals of properties. The improved arrangements should ensure the Council in future:
- obtains an up-to-date professional valuation before purchasing any property;
 - obtains a structural survey before purchasing a property;

ⁱ (Code of Recommended Practice on Local Authority Publicity- Circular 20/88 Department of the Environment)

Recommendations

- acts prudently and undertakes proper levels of due diligence for any major acquisition or disposal;
- gives proper consideration to planning conditions and requirements;
- undertakes adequate levels of consultation;
- obtains and acts on professional advice; and
- clarifies which committee has the authority to purchase and dispose of land, properties and other assets.

R3 The Council should ensure that it follows the requirements of any publicity codes in force.

R4 The Council should urgently consider the future of Park Road and consider both short and longer term solutions.

Introduction

9 I am the external auditor appointed by the Audit Commission to audit the accounts of Dawlish Town Council (the Council) for the financial year ended 31 March 2010.

10 In August 2010 local government electors made three objections to the Council's 2009/10 accounts under Section 16 of the Audit Commission Act 1998 (the Act). The objectors asked me to:

- issue a report in the public interest under section 8 of the Act to bring the matter to the attention of the public.

11 The objections related to the Council's decision to buy 34 Park Road to provide a temporary replacement town hall and office accommodation. One of the objectors also objected to the Council's publicity material issued about the parish poll on the Manor House. The Manor House serves as offices for the authority and a community centre for the Town.

12 I describe below the background and the objectors' concerns and the approach I have taken to conducting this review. The remaining sections of this report contain my detailed findings and conclusions.

Background

13 Dawlish Town Council owns 'The Manor House'; a grade II listed building which serves as offices for the Council and a community centre for the Town.

14 The Council aspired to build a new town hall with shared offices on another site. This would be part funded with the money from selling the Council's existing property at the Manor House, Dawlish.

15 The Council decided to buy 34 Park Road in October 2009 for £165,000 and completed the purchase in February 2010. It intended to use the building to provide interim offices for the Council before building a new town hall. Since the purchase, 34 Park Road has remained empty.

16 The Council exchanged contracts for 34 Park Road on 6 January 2010 and completed the purchase in February 2010 while community consultation on the issue of whether to keep the Manor House was in progress. A Parish Poll was called on 28 January. The Poll was held on the 4 March 2010 and 1,515 electors supported the resolution to keep the Manor House and 96 voted against.

17 The objectors' asked me to make a Public Interest Report on the Council's actions in buying Park Road and its plans for replacing the Manor House because, the Council:

- took decisions hastily and without consultation with the many community groups and organisations that regularly used the Manor House;
- failed to examine options for remaining at the Manor House before committing to buy 34 Park Road;
- failed to obtain advice from independent valuers or surveyors on the value of 34 Park Road before proceeding with the purchase;
- failed to show and quantify how a new municipal building could be the best and most affordable option for Dawlish;
- failed to give due consideration to the market value of 34 Park Road for resale;
- failed to obtain a survey of the structural condition of 34 Park Road and of any other works necessary to enable use as Council Offices before committing to a course leading to the purchase;
- failed to take account of the needs of existing users, tenants and others who relied on the Manor House; and
- issued Letters of Notice to Quit to tenants at the Manor House improperly, affecting future income.

18 The objectors also questioned the legality of the decision-making process because most of the key decisions were made by a subcommittee of the Finance & General Purposes committee. One objector also objected to the costs incurred in producing and delivering the leaflet 'Parish Poll' and the 'Town Crier, March 2010' and Adverts published in the Dawlish Gazette and the Dawlish News, because this was contrary to the Code of Recommended Practice on Local Authority Publicity.

Audit approach

19 I asked the Council to provide me with its response to the objections with copies of relevant documentation. I followed up various issues with the Council who responded with more information and explanations.

20 I wish to recognise the helpful support and cooperation provided to me by the Council's officers during my examination.

The Council's strategy for a new town hall and offices

21 The Council bought 34 Park Road as temporary premises which would allow it to dispose of its existing office and town hall (the Manor House). This would release funding to contribute to the cost of building new purpose-built accommodation.

22 The objectors alleged that this purchase was made hastily without proper financial planning or consideration of whether the Council's objectives could be realised.

23 The Council had given consideration to its overall strategy for the town hall and office. This was set out in the Town Clerk's confidential report of 6 September 2007. This report referred to the high costs of running the Manor House, and the potential for improved access and car parking arrangements at a new office. The report did not put forward a detailed financial evaluation of the strategy but contained an overall risk analysis and it stated that 'land [for alternative offices] would be available at little or no cost from the principal authorityⁱ'.

24 The Finance and General Purposes (F&GP) Committee recommended in September 2007 that the Council's surveyors should examine the feasibility of selling the Manor House and look into the proposed site for the new offices at Barton Car Park. Teignbridge District Council owned this site. The Council asked its surveyors to conduct a building survey and to provide a commercial valuation of the Manor House.

25 The Council included its plans to replace the Manor House with new purpose-built accommodation in the Council's Parish Strategy document which was approved by the Council in December 2007. It issued a copy to Teignbridge District Council at the time, but did not consult widely with electors on its proposals, although the document was available to the public.

26 During 2008 the Council engaged in discussion and correspondence with the district council and the police authority about a joint use municipal building for Dawlish on the Barton car park site.

27 A meeting of the Dawlish regeneration project management group consisting of representatives of Dawlish and the district and county council, considered the new municipal building in March 2008. The note of this meeting records little progress about how the scheme might continue and little information about its financial viability. The notes recorded the land would be sold on a commercial basis rather than for a token £1 payment suggesting the financial viability of the project could be threatened.

ⁱ The principal authority is Teignbridge District Council

28 The Council issued a leaflet advising of its plans to move from the Manor House in summer 2008. This provoked a response from interested parties protesting at the lack of consultation to which the Council responded that it was currently conducting public consultation.

29 It is clear the Council did not widely publicise its strategy and intentions in respect of the Manor House. Had it done so in December 2007 it might have become aware of the significant opposition to its proposals before it bought Park Road.

30 I found no evidence the Council had developed its proposals for a new building by October 2009 when it decided to buy Park Road. In particular, the Council did not have:

- a valuation for the Manor House;
- confirmation of the availability or potential purchase price of the Barton Road site;
- estimated build costs for the new building;
- any firm offers of support from potential partner organisations; or
- carried out any detailed financial planning of its proposals.

31 The Council did not keep a proper capital programme for its planned capital expenditure. The Council should have prepared a capital programme to regulate its capital expenditure and show how it was to be financed.

32 The Council did receive an email from a firm of property consultants on 4 November 2009 advising on the marketing of the Manor House. The email suggested a guide price of £500,000 for the disposal of Manor House taking account of alternative use values and the likelihood of receiving a conditional offer on obtaining planning consent. This was received after the Council's offer for 34 Park Road was accepted but before the exchange of contracts.

33 There was no record of whether the F&GP subcommittee considered whether the necessary arrangements were in place for the delivery of the strategy or whether the proposals were financially viable before deciding to buy Park Road.

34 I conclude that at the time of its decision to buy Park Road the Council had little or no evidence on which it could determine the financial viability of its strategy for a new town hall and office accommodation. The Council therefore decided to buy Park Road without considering all the relevant information it should have considered before entering into a large financial commitment. Its decision to buy, as a key step in its overall strategy to move to new purpose built accommodation, was hasty.

Purchase of 34 Park Road

35 In this part of the report I examine the detailed arrangements for buying 34 Park Road.

36 The purchase of Park Road was first raised at a Part 2 (exempt information) meeting of the F&GP subcommittee on 20 October 2009. The minutes recorded that.

The Town Clerk informed Members present that Cllr XXX had suggested that in order to facilitate the proposed move by the Town Council to a purpose-built Town Hall and to save costs incurred in the continued running of The Manor House, it might be a viable alternative for the Town Council to be temporarily re-housed in the vacant Salvation Army building in Park Road, pending any relocation to purpose-built.

Following investigations, the Town Clerk had learnt the building was for sale with vacant possession following its failure to reach its estimate at auction. This meeting of the Sub-Committee had been convened at short-notice so that Sub-Committee Members could consider information gathered by the Town Clerk on the suggestion that the Town Council purchase the building.

After a further discussion with Members, it was RESOLVED that the Town Clerk be delegated to act on behalf of the Town Council in this matter and that he should be able to offer £160,000, subject to contract for the freehold of the building if this was necessary during negotiations.

37 The Clerk carried out negotiations as instructed by the F&GP subcommittee on 20 October 2009. Another meeting of the subcommittee was held on the 22 October 2009 where it was agreed that a maximum offer of £165,000 should be made. The subcommittee were advised of the borrowing costs of an £80,000 loan.

38 It was reported at the meeting of the 22 October 2009 that the offer had been accepted providing the Town Council could exchange within 14 days. This was agreed unanimously. A further report by the Town Clerk on 27 October 2009 explained various difficulties in the negotiating process, but confirmed the price of £165,000 had been agreed.

39 The financing of Park Road was also discussed at the 27 October 2009 meeting including the virement of finances to fund the purchase. Although it was not specifically stated in the minutes it appeared that the Council intended to fund the purchase by a combination of loan funding of £80,000 and £85,000 from other Council funds.

40 The F&GP committee adopted the subcommittee minutes of 20, 22 and 27 October on 19 November 2009. The terms of reference of the F&GP Committee in 2009 were "to consider all aspects of the management of property and land which is owned by this authority; leased to the authority or over which this Council has control.....".

41 It is not clear from these terms of reference whether the Committee was authorised to purchase or acquire new assets, or whether the approval of the full Council was necessary. The Council introduced new financial regulations in 2010, but regulation 14 covering properties and estates does not specifically cover the purchase or acquisition of property.

42 The full Council approved the decision to buy 34 Park Road for £165,000 at its meeting of 4 November 2009 before contracts had been exchanged. The full Council also approved the borrowing of £80,000.

43 I therefore conclude that although the subcommittee had initiated negotiations the full Council had approved the decision to buy Park Road before a legally binding obligation had been entered into.

44 The Council exchanged contracts on 34 Park Road on 6 January 2010 and completed the purchase on 12 February 2010.

45 The Council had given consideration to the value of 34 Park Road previously in 2005 when it was considering buying it as part of a Surestart project. This application was not completed but in the process the Council had gained considerable knowledge of the property and had obtained a surveyor's valuation report of the property dated 14 October 2005. This did not include a structural or asbestos survey.

46 The Council did not obtain a survey in 2009 of the structural condition of 34 Park Road and of any other works necessary to enable use as Council Offices before committing to buy. Moreover the Council did not obtain an up-to-date valuation in 2009. Instead it relied on a previous valuation (the 2005 valuation) and knowledge of bids at a September 2009 auction for the property and the Council's own knowledge of the property market in Dawlish.

47 On 24 November 2009 the Council's solicitors advised the Council the property did not have permission for use as offices and the current use for offices was unauthorised. The Council would need to make an application for change of use, to use it as office accommodation and there was no guarantee that this would be successful.

48 This was reported to the F&GP subcommittee on 30 November 2009. The subcommittee was non-quotate consisting of the chair, one other committee member and another member. The subcommittee resolved to continue with the purchase of Park Road. The minutes did not record how the subcommittee reached this decision.

49 It was noted that:

the notes of this Subcommittee meeting will form part of the Agenda for the next meeting of the Town Council's Finance and General Purposes Committee on the 21 January 2010 where, if the notes of this meeting are adopted by Committee, the decision made would be considered lawful".

50 In fact, although the F&GP committee of 21 January approved the subcommittee minutes of the 20, 22 and 27 October (for the second time) there was no record of the committee approving the minutes of F&GP subcommittee of 30 November 2009.

51 The decision to continue with the purchase without planning permission for office use was not formally approved by the Council or a Committee with delegated responsibility.

52 The Council intended to use the property for offices and the lack of planning consent for its intended use was important to the Council's plans. It should have formally reconsidered its decision to buy Park Road without planning consent for office use. This was a significant procedural lapse by the Council.

53 The Council contend that it would have been able to show the vendors had used the property for four years as offices. Therefore a certificate of lawfulness, to use the property as offices, rather than a change of use planning application would be granted if the Council applied for it. This view was supported by the Council's solicitors in a letter dated 8 December 2009.

54 I have not sought to test the validity of this assertion. Irrespective of whether it is correct, or not, in my view the Council should have formally considered this information before completing the purchase.

55 The F&GP subcommittee had also been told that Park Road enjoyed a planning consent for redevelopment and permission to erect six flats on the site. This clearly conferred an alternative development value on the property. In the 2005 surveyor's valuation report the existing use value of Park Road was estimated at £80,000 and the development value was estimated to be around £150,000.

56 Solicitors to the Council informed the Town Clerk by letter on 8 December 2009 that, among various other issues, they had not seen planning consents for the development permission to erect six flats on the Park Road site.

57 This issue was not followed up before completion of the purchase. Again this was a material consideration to the value of Park Road which should have been researched and considered by the Council before completion.

58 In fact the planning permission had lapsed and the Council applied in January 2010 to renew this. Permission was granted on 12 August 2010. However, the Council should be aware that this permission is only valid for three years from that date and the Council should take this into consideration in deciding the future of Park Road.

59 The Council agreed to increase its borrowing for the purchase of Park Road from £80,000 to £165,000 on 3 February 2010. The rate of interest approved by the Council was originally reported to be 2 per cent but the actual rate was 4.3 per cent. The Agenda and papers for the F&GP committee meeting of 15 April 2010 showed the 4.3 per cent interest rate. The details of the borrowing were approved although there was no specific mention in the minutes of the increased interest rate.

60 On the 3 February 2010 the Council also voted to draw up a feasibility study for the future and keep the Manor House open over the next financial year. The Council voted on the 24 March 2010 to keep the Manor House until at least May 2011 and to take no action on the feasibility study.

61 The building at Park Road has remained empty and unoccupied since its acquisition by the Council.

62 I therefore conclude the purchase of Park Road was made imprudently and without regard to the proper practice expected for public money. In particular the Council failed to commission either a valuation or structural survey and instead relied on an earlier 2005 valuation and survey four years out of date. The Council contends that it had good knowledge of the local property market and that £165,000 was a fair price for 34 Park Road.

63 In addition the Council failed to consider, at either full Council or committee level, the implications of buying the building for use as offices when the property did not have planning permission for such use. However, I accept the Council did rely on advice from its solicitors on 8 December 2009 that it would be able to apply successfully for a certificate of lawfulness to use 34 Park Road as offices. This was also supported by the Town Clerk's understanding of the planning system.

64 So far the Council has not applied for a certificate of lawfulness. It contends it is able to show that it has continually occupied the property since it bought Park Road in February 2010. Although Park Road stands empty and is not being used as offices it is the Council's view a certificate would be granted if applied for.

65 The Town Council also did not properly consider the effects of the redevelopment permission having lapsed. The Council's external valuers, in a letter to the Town Council dated 13 December 2010, expressed reservations on the financial viability of the Town Council redeveloping Park Road or using it as offices.

Notice to quit the Manor House

66 The Council issued letters on 31 October 2009 advising tenants of the Manor House that their tenancy would end on 1 February 2010. The Council did not properly consider its obligations to tenants on the implications of ending these agreements. On 26 January 2010 one of the tenants wrote to the Council telling them of their rights under the 'Landlord and Tenancy Act 1974' saying the notice to quit was ineffective as it did not give correct notice.

67 I have not explored whether the tenants were correct in their arguments. Even so the decision to issue notices to quit was premature given that this was done without proper consideration of the legal status of the tenancies and before the Council had exchanged on Park Road. The notices to quit were cancelled by the Council on 3 February 2010.

Public Opinion and the Parish Poll

68 The Council's plans to buy Park Road and sell the Manor House were made public by the Dawlish Gazette on 4 November 2009. By 9 December 2009 the Dawlish Gazette reported that 58 letters of objection had been received. A public meeting on the future of the Manor house was planned for 20 January 2010.

69 Despite the adverse public opinion the Council went ahead and exchanged contracts to buy Park Road on the 6 January 2010.

70 The Parish meeting was attended by 336 electors, 15 councillors, 25 others, 5 members of the press and 2 members of the constabulary. Television crews were present.

71 A parish poll was demanded on the following question.

“Should the Town Council be required to keep the Manor House as Council offices and for the benefit and use of the parish of Dawlish, and commit to a full programme of repairs and maintenance? Answer Yes or No”.

72 The poll took place on 4 March 2010 and 1,515 electors voted yes and 96 voted no. The outcome of the parish poll was not legally binding but it was clear from the parish meeting and the poll there was overwhelming public opinion against the Council's plans.

73 A local elector complained to the Council of issues about the Council's newsletter on the Parish Poll. The local government elector subsequently objected to the costs incurred in producing and delivering the leaflet 'Parish Poll' and the 'Town Crier, March 2010' as identified in paragraph 12 of this report.

74 Local authorities are required to have regard to any Code of Practice on publicity issued by the Secretary of State. The Code in force at the time provided that local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on facts or explanation or both.

75 The minutes of the meeting of the Town Council of 9 February 2010 clearly record that its publicity should be used to state its case and urge parishioners to vote no in the parish poll. The minutes do not record any consideration of the Code and I have not seen any evidence to suggest the requirements were considered when preparing the publicity material.

76 The publicity material contained some incomplete factual information which did not give a full view of the relevant costs, income and use of the Manor House. For example, the material omitted to mention the Manor House is also open and used as offices of the Council for which costs would continue to be incurred even if the Manor House was disposed of.

77 I conclude the issues were not presented clearly, fairly and as simply as possible in accordance with the Code. As the primary purpose of the publicity was to urge parishioners to vote no, the publicity was in direct contravention of the Code and it is not clear to me that the Council considered the provisions of the Code in deciding on the publicity.

78 The Council paid £287 for a copy of the leaflet 'Parish Poll' to be inserted in two local newspapers, plus printing costs of £525. It also paid for an advert with the same text to appear in the next edition of each newspaper costing £1,495 plus VAT.

79 The publicity material was not effective given the overwhelming vote against and it did not therefore prejudice the outcome of the poll. However, a local authority should ensure that it does not use publicly raised money for improper publicity.

Additional costs

80 The Council agreed originally to part fund the purchase of Park Road by a loan of £80,000 and then increased the loan to £165,000. The Council is within its powers to fund the purchase from a loan and has obtained the borrowing consents.

81 The Council's decision to buy Park Road has led to extra costs for the Council. These costs include the acquisition expenses, loan repayments, capital and interest, and the consequential expenses of ownership including repairs, insurance, utility costs. The budgeted costs, excluding loan repayments, of holding Park Road empty are shown as £17,300 in 2010/11. The loan repayments amount to £10,091.

82 The Council is funding the extra costs of the Park Road building and it is not being used. The Council continue to use the Manor House. As a result the Council has incurred extra costs which have contributed towards a significant increase in the Council's overall budget.

83 The Council prepared budget estimates for 2010/11 which showed that if the Council had closed the Manor House and moved its offices to Park Road its total spending would have been some £44,300 less. I have not tested the validity of this budget estimate.

84 In total the Council increased its precept by £127,000 (42 per cent) from £302,000 in 2009/10 to £429,000 in 2010/11.

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