
EXCERPT FROM THE MINUTES OF THE AUDIT COMMITTEE HELD ON 27 SEPTEMBER 2011

AUC.61/11 REFERENCE FROM THE CITY COUNCIL – CARLISLE AIRPORT: AUDIT COMMISSION REPORT

Pursuant to Minute C.134/11, consideration was given to a reference from the meeting of the City Council held on 13 September 2011 concerning Carlisle Airport: Audit Commission Report.

The City Council had resolved:

“(1) That the Audit Commission Report, appended to Report GD.55/11, be received.

(2) That the Action Plan attached as Appendix 2 to the report be approved.

(3) That the Audit Commission Reports be referred to the Audit Committee for further consideration and the said Committee be instructed to monitor the implementation of the recommendations in the Action Plan.”

A copy of the Minute Excerpt and the Assistant Director (Governance)’ report GD.55/11 had been circulated.

The Chairman clarified that the Audit Commission report would be considered by the Audit Committee in both public and private and reminded the Committee that the purpose of the item was to agree an Action Plan for the future that the Audit Committee could monitor.

The District Auditor reminded the Committee that a local government elector had made an objection to the Council’s 2009/10 accounts under Section 16 of the Audit Commission Act 1998. The objector asked the District Auditor to make an application to the court under section 17 of the Act to confirm that an item of account was unlawful and to order rectification of the accounts; and issue a report in the public interest under section 8 of the Act to bring the matter to the attention of the public.

She outlined the background to the objection and reiterated that, in her view, there was no unlawful item of account. Her report had identified a number of recommendations to ensure that lessons were learned for the management of future major applications. Each of the recommendations had been based around themes which had emerged during the course of the Audit and she explained that she was satisfied with the Action Plan and the proposed timescale. The concerns raised in the Audit were reflected in the Annual Governance letter and showed a consistent view across the Council.

The Committee agreed to consider each of the recommendations made in the Audit Commission report and included within the Action Plan:

Recommendation 1 – ‘Strengthen arrangements for safeguarding and demonstrating the integrity and transparency of the regulatory planning process and ensuring it is not unduly influenced by economic development aspirations.’

The District Auditor highlighted paragraphs 20 to 24 of her report which explained that the Council must ensure that planning applications were determined on planning merits only, she added that this was a change in attitude rather than documentation.

Members felt that this was an important recommendation and stressed the need to have a procedure in place to aid the recommendation and noted that the timescale for the implementation of the recommendation was ‘immediately’.

The Legal Services Manager explained that ‘immediately’ in Audit terms was three months and so the Committee should be provided with details of how officers would implement this recommendation within three months.

The Chairman commented that the new Assistant Director (Economic Development) had now been appointed and was aware that recommendation 1 was a priority.

Recommendation 2 – ‘Ensure that planning applications do not proceed to committee stage until supported by the information that planning officers require to properly report the matter to members’.

The District Auditor understood that statutory timescales could prove to be challenging but it was important for the Council to make the “right decision late as opposed to the wrong decision within the timescale”.

Members discussed the meaning of ‘subject to’ which had been included in the District Auditors comments. They agreed that major applications should not go ahead without all the relevant and necessary information but smaller applications may go ahead subject to the nature and size of the information outstanding.

A Member acknowledged the issue with statutory timescales but felt it was important to have safeguards in place that kept members of the public informed of any delays and the reasons for those delays.

The Legal Services Manager informed the Committee that it would not usually be appropriate to provide information to the public concerning any delays in dealing with planning applications. She also commented that this recommendation gave support to Council officers in their decision to defer applications if necessary.

Recommendation 3 – ‘Ensure that where legal advice identifies issues requiring resolution, such issues are demonstrably resolved. This may involve seeking further legal advice to confirm the adequacy of actions taken.’

The District Auditor drew Members attention to paragraph 35 of her report; she stated that if legal advice was taken the Council must be clear how it would deal with the advice and if it was appropriate to gain different advice then the Council should do so.

A Member asked what the financial limits on seeking legal advice were. The Legal Services Manager responded that the Council’s Scheme of Delegation set out the amounts that officers could spend on external advice but clarified that external legal advice would only be sought if in the opinion of the Assistant Director (Governance) or Legal Services Manager such external advice was necessary.

Members asked for details to be brought to the January Committee as to how the appropriate officers intended to make a decision on when to obtain first and second external legal options.

Recommendation 4 – ‘Ensure that reports to Committee are clear on the nature of legal advice obtained and actions taken as a result.’

Members accepted the recommendation and asked for evidence to be brought back to them on how to create an audit trail of any legal advice given on planning applications.

Recommendation 5 – ‘Review the existing “Members Planning Code of Good Practice” to ensure it adequately covers the requirements on officers. This will ensure that Planning Officer Reports include a clear recommendation or, exceptionally, clarify why no recommendation had been possible.’

The Legal Services Manager pointed out that the Members Planning Code only placed responsibilities on Members rather than officers. She suggested that an Officers Planning Code of Practice, or an amendments to the Officers’ Code of Conduct, may be a solution to the recommendations and the District Auditor agreed.

Recommendation 6 – ‘Ensure important professional planning judgements receive sufficient attention and are adequately documented on a timely basis.’

The Legal Services Manager commented that there were strict statutory timescales in place for Committee reports and any additional information to circulated in meetings would be at the discretion of the Chairman.

Recommendation 7 – ‘Review the provision of specialised training for members of the Council’s Development Control Committee and other committees that fulfil specific statutory roles.’

The District Auditor explained that recommendation 7 was a direct result of members’ comments that there was scope to improve training.

Members had varying views on the training available and felt that more targeted training could be provided for Development Control Members but also felt that advice and guidance was always available from the Legal Services Team and the Planning Team. They asked that Members of the Development Control Committee should be surveyed on an annual basis to determine their training needs and asked that other methods of learning, such as e-learning, be considered.

The Legal Services Manager informed the Committee of the current training that was in place. She explained that all Development Control Committee and Regulatory Panel Members had to attend compulsory training before they could sit on the Committee. Annual training was provided and more experienced Members were required to attend this as refresher training. If they were unable to attend then one to one training would be provided. More recently the new Assistant Director (Economic Development) had arranged monthly training sessions on various but specific topics in response to Members requirements. Two Members of the Development Control Committee also had the opportunity to attend the annual Summer Planning School which was a residential course over a weekend. In addition the Organisational Development Team would also contact all Members to identify their training needs.

The Chairman felt that any Member sitting on a regulatory committee must attend the required training and must produce written evidence. She felt that each Member should have a training file to be transparent and prove which training they had completed. She felt Members who had not completed the compulsory training should not be allowed to sit on the Committee until they had undertaken the training. Records should be kept of the monthly training attendances as Members should be required to attend this as well. The training provided and the attendees should be reported to Audit Committee.

A Member asked whether the monthly training sessions could be made available to all members of the Council.

Recommendation 8 – ‘Ensure that where independent legal advice is required it is obtained on a timely basis, including any requirement for a second opinion.’

The District Auditor explained that recommendations 8,9 and 10 moved their focus towards the Judicial Review application. When the Council took the decision to defend the Judicial Review the timescales were driven by the Court and this put pressure on the Authority. Notwithstanding this she felt that when the Council required independent legal advice it should be done in a timely way.

Recommendation 9 – ‘Avoid tabling documents in Committee meetings. If, exceptionally, documents cannot be circulated in advance members must take sufficient time to properly read and consider all new information’.

The District Auditor advised that, in this instance, an external legal opinion had been presented to Members but had not been circulated in advance. On this occasion, the urgency was driven by the Court timetable, and Counsel had attended the Committee

meeting to explain the advice and to answer questions. This was, though, an exceptional situation and the Council should avoid tabling lengthy, complex documents late.

A Member asked whether the defendant had had the opportunity to respond to the second legal opinion. The Legal Services Manager reminded the Committee that this particular recommendation referred to the Judicial Review and such information would be confidential and not a matter for members of the public or the defendant.

It was pointed out that it should not be taken on face value that Members understood the documents which were before them. The Legal Services Manager commented that officers should seek to ensure that Members had read and fully understood the content and implications of important documents which were before them.

Recommendation 10 – ‘Ensure that decisions only take into account relevant considerations and do not, for example, afford undue weight to the interests of third parties.’

The Legal Services Manager commented that that it must be clear to members of the public what Members had and had not considered and it must be absolutely clear that decisions were taken on planning grounds only.

Although general questions could be asked by members, this should not form part of the decision making and, if necessary, officers would advise members whether the information was a relevant planning consideration.

RESOLVED – 1) That the District Auditor be thanked for her advice and input into the meeting;

2) That that the following recommendations from the Audit Commission report (GD.55/11) be agreed:

- That recommendation 1 be accepted and evidence be included in the Action Plan which showed how officers had implemented the recommendation
- That recommendation 2 be accepted and the Action Plan contain the District Auditors comments that it was better for the Council to make the correct decision rather than the incorrect decision in the right timescale, if an application has to be deferred the reasons should be made public where possible.
- That recommendation 3 be accepted and the Action Plan should include evidence of how the legal section intended to action the recommendation and a report should be provided on the matter at the next meeting of the Audit Committee.
- That recommendation 4 be accepted and reports to committee should include a audit trail of legal advice given and any action taken in response to legal advice.
- That recommendation 5 be accepted and an Officers Planning Code of Practice or an amended Officer Code of Conduct be developed for the City Council.
- That recommendation 6 be accepted.

- That recommendation 7 be accepted and written evidence be produced to show that Members on all regulatory committees had undertaken training before they take part in the decision making process of regulatory committees. That it also be noted that Members had the opportunity to ask officers for advice if and when required.

- That recommendation 8 be accepted.

- That recommendation 9 be accepted.

- That recommendation 10 be accepted.

3) That an update on the Action Plan be submitted to the Audit Committee in three months

4) That the full minute of the Audit Committee regarding the Audit Commission report be submitted to the Executive.