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Auditor General for Wales

Report in the Public Interest – Expenditure on Planning Consultants – **Mumbles Community Council**

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Mae'r ddogfen hon hefyd ar gael yn Gymraeg. This document is also available in Welsh.

The person who delivered the work was Deryck Evans under the supervision of Anthony Barrett.

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Acting under delegated arrangements and on behalf of the Auditor General for Wales, I have issued this report under section 22 of the Public Audit (Wales) Act 2004, to draw the public's attention to deficiencies in procurement arrangements and governance at Mumbles Community Council.

This report sets out these deficiencies and concludes that Mumbles Community Council has failed to establish proper arrangements to secure economy, efficiency and effectiveness in its use of resources and has incurred expenditure totalling over £21,000 that I consider to be unlawful.

The Council must consider the report and the recommendations made, in accordance with section 25 of the Public Audit (Wales) Act 2004.

The Auditor General intends to issue a qualified audit report on the Council's 2017-18 Annual Return.

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Summary report

Introduction

- 1 This report summarises my conclusions arising from my audit of Mumbles Community Council's (the Council) accounts for the 2017-18 financial year. In the course of the audit, I identified significant deficiencies in procurement arrangements and governance in relation to the Council's expenditure on planning consultants.
- 2 This report is issued in the public interest under Section 22 of the Public Audit (Wales) Act 2004 (the Act). I have issued this report to draw the public's attention to these failures in governance arrangements and inadequacies in financial management and internal control at the Council. I believe it is important that the public has a full and proper awareness of the events concerning the Council.
- 3 I also consider it appropriate to give the Council an opportunity to demonstrate the steps it has already taken to improve arrangements and to ensure that the risk of such failures recurring is reduced to a minimum. There are lessons to be learnt not just by the Council, but by all community councils in Wales.

Mumbles Community Council

- 4 The Council serves the four wards of Mayals, Newton, Oystermouth and West Cross within the county of Swansea. It has a range of powers conferred on it by law and typically raises over £125,000 income via its precept each year. The County Council collects the precept through additional council tax charged to the Council's residents. The Council derives its funding from the public purse and its members are elected by local residents. The Council is, therefore, accountable to the local electorate.
- 5 As set out in the Accounts and Audit (Wales) Regulations 2014 (the Regulations), responsibility for the stewardship of Council funds, including ensuring that it has effective and efficient financial management, rests with the Council (that is, the members). This includes such things as establishing an appropriate system of internal control and ensuring that the Council conducts its business in accordance with that system of internal control.

My audit work

- 6 My audit work on town and community councils normally focusses on an annual return completed by each council and submitted to auditors working on my behalf. The annual return contains the annual accounting statements that the council is required by law to prepare and an annual governance statement which sets out how the council has managed its financial affairs.
- 7 Audit work is designed to ensure that I am able to conclude on whether or not:
 - the accounts have been properly prepared; and

- the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.
- 8 Additional audit work is undertaken when matters come to my attention during the audit.
- 9 In July 2018, I received information that the Council had significantly overspent its budget in relation to planning consultancy services and in so doing, had failed to comply with its own Standing Orders and Financial Regulations.
- 10 To get a full understanding of how the Council incurs expenditure on planning consultancy services, I have undertaken a review of the Council's accounts for the financial years 2010-11 to 2018-19. My focus has been on the commissioning of services from CDN (Planning) Ltd (CDN Planning).
- 11 My audit findings show long-standing inadequacies in governance, financial management and internal control at the Council, specifically in relation to procurement, and are summarised below.

Key findings

- 12 Since 2010-11, the Council has paid over £21,400 to CDN Planning in relation to planning consultancy fees. However, the Council is unable to provide any evidence supporting the appointment of CDN Planning or the terms and conditions upon which CDN Planning are engaged. In the absence of such evidence, the Council is unable to demonstrate that it has in place appropriate arrangements to secure economy, efficiency and effectiveness in its use of resources.
- 13 The Council has established standing orders and financial regulations to govern how it conducts its activities. However, the Council has failed to comply with these standing orders. Furthermore, individual members have failed to comply with the Council's standing orders and incurred additional costs of over £5,000 for the Council.
- 14 Notwithstanding that the Council has adopted standing orders and financial regulations based on a model document, my assessment of these documents is that they include unreasonable provisions and should be reviewed to address the deficiencies identified in this report.
- 15 As a consequence of the failings I identified, I conclude that:
- the Council has incurred expenditure that is, in my view, contrary to law; and
 - the Council does not, in my view, have in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources.
- 16 These findings are considered in more detail in the remainder of this document.

Recommendations and next steps

Recommendations

17 My recommendations to the Council are:

Recommendations	
R1	The Council should review its standing orders and financial regulations and ensure that these documents are drafted in a way which is clear and free from ambiguity and are internally consistent.
R2	The Council should review its arrangements for appointing consultants to ensure it complies with its own standing orders and financial regulations.
R3	The Council should ensure that it has an appropriate contract terms of reference setting out the nature of the relationship between the Council and each of its contractors.
R4	The Council should ensure that when ad-hoc requests for planning and other forms of advice are made, it is clear how the costs of advice will be met from revenue budgets or other resources.

Next steps

- 18 Section 25 of the 2004 Act now requires the Council to consider the report or recommendations at a full Council meeting within one month of the date of issue of the report. At the meeting, the Council will need to decide:
- whether the report requires it to take any action;
 - whether the recommendations in the report are to be accepted; and
 - what action (if any) to take in response to the report and recommendations.
- 19 The Council will then need to prepare a written response and agree the wording of that response with me before publishing its response.



Anthony Barrett
Assistant Auditor General
October 2019

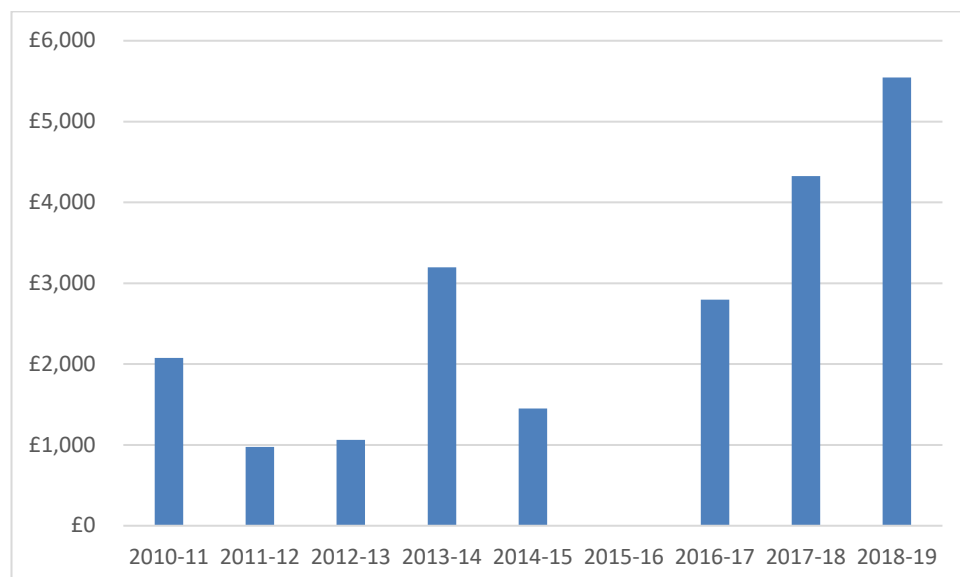
Detailed report

Since 2010-11 council has spent over £21,400 on planning consultancy fees with CDN Planning

20 The Council has engaged the services of CDN Planning to provide consultancy services in relation to various planning matters. The Council has spent a total of £21,426 between 2010-11 and 2018-19.

Exhibit 1: planning consultancy service charges

Since 2010-11, the Council has spent over £21,400 on planning consultancy services from CDN Planning



Source: Mumbles Community Council data

21 CDN Planning has provided the Council with advice on matters such as:

- The Swansea Local Development Plan
- Conservation area
- Tidal lagoon
- A pier and foreshore planning application
- Summerland Lane development

The Council's standing orders and financial regulations are inadequate

- 22 The Council's standing orders and financial regulations are based on model standing orders issued by the National Association of Local Councils (NALC).
- 23 Standing order 18 of the Council's standing orders require that the Council's financial regulations 'shall include... procurement policies... including the setting of values for different procedures where a contract has an estimated value of less than £25,000.'
- 24 Regulation 11.1 of the Council's financial regulations sets out the rules for letting of contracts. The Regulation requires when the Council is to enter into a contract of between £3,000 and £25,000 in value for the supply of goods, services or materials or for the execution of works, the Clerk shall obtain three quotations. Where the supply of goods, services or works is less than £3,000, the Clerk shall strive to obtain three estimates. The Council's financial regulations do not allow for any exceptions other than 'in an emergency provided that this regulation need not apply to contracts which relate to items... for specialist services such as are provided by solicitors, accountants, surveyors and planning consultants.'
- 25 In a written response, the Council highlights that 'the Financial Regulations adopted by [Mumbles Community Council] are based on the Model Financial Regulations issued by One Voice Wales... which Councils are free to modify to meet their own requirements. There were no changes to [Financial Regulation] 11.1 by [the Council] when its approved its [Financial Regulations].'
- 26 In my view, the drafting of Regulation 11 gives rise to ambiguity and is open to interpretation. It is unclear whether the Regulations do not apply to contracts for planning consultants at all as they are included in the exceptions [11.1(a.ii)], or rather, whether the Regulations disapply to planning consultants in the case of an emergency only.
- 27 Regulation 4.5 indicates what could be construed as an emergency and states 'In cases of extreme risk to the delivery of Council services, the Clerk may authorise revenue expenditure on behalf of the Council which in the Clerk's judgement it is necessary to carry out. Such expenditure includes repair, replacement or other work... subject to a limit of £500.'
- 28 Regulation 11, as drafted, results in an ambiguous position on applicability of the provision to planning consultants. Good practice would require that the Council's standing orders and financial regulations are clear and consistent so the intention is understood.
- 29 The Council has stated that the Regulations do not apply to the appointment of planning consultants in any circumstances.
- 30 In my view, the provision of professional services such as accountants, surveyors and planning consultants, is not a specialist service and there are many potential

suppliers for such services. Therefore, I do not consider it reasonable to exclude these services from the Council's standard procurement processes.

- 31 I note that for the 2019 edition of the Model Financial Regulations published by NALC, regulation 11.1 has been amended to remove references to planning consultants etc.

The Council does not have a formal contract or terms of reference for consultancy services provided by CDN Planning

- 32 Information provided by the Council suggests that it first engaged CDN Planning to provide advice on a planning matter in or around 1999. The earliest mention of CDN Planning that the Council can identify in its minutes is dated June 2008. Minute reference 189.05 states in relation to a planning application 'Oystermouth Square and the Old Quarry Site, Mumbles', 'RESOLVED that the application be referred to CDN (MCC Planning Consultants) for review.'
- 33 However, the Council has been unable to provide any evidence regarding the appointment of the company. It is unknown if the company was appointed following submission of quotes or estimates for specific projects or if it was appointed under a framework (on call) agreement. The Clerk has been unable to locate any form of contract or agreement with CDN Planning.
- 34 In recent years, when a planning issue arises, the Clerk contacts CDN Planning rather than seeking three quotes for the required advice as required by the Council's rules for procurement. He explained that this is because CDN Planning have built up expertise and therefore it 'makes sense' for the firm to continue providing advice without going out to a competitive process.
- 35 Instead of a competitive process involving other potential service providers, CDN Planning provide a quote for the work which is accepted or rejected by the Council. No formal terms of reference are agreed. It is not clear how frequently the Council rejects a quote from CDN Planning.
- 36 The absence of a clear contractual arrangement results in risks to the Council in dealing with any performance issues that may arise in relation to the planning consultancy services. Where the contractor fails to deliver in accordance with expectations, the Council is likely to have no remedy available.

Expenditure incurred in 2017-18 exceeded the budget set aside by the Council and it did not comply with its own Financial Regulations limiting the expenditure that could be incurred

37 It is a basic principle of public law that a council must comply with its own rules and regulations when conducting its business.

The Council's financial regulations limit the amount of expenditure that can be incurred and makes arrangements for the approval of all expenditure

38 Regulation 4.1 of the Council's Financial Regulations states:

Expenditure on revenue items may be authorised up to the amounts included for that class of expenditure in the approved budget. This authority is to be determined by:

- the Council for all items over £1000; and
- a duly delegated committee of the Council for items up to £1000.

39 Regulation 4.2 limits the total sums that can be spent under each budget heading and states:

No expenditure may be authorised that will exceed the amount provided in the revenue budget for that class of expenditure other than by resolution of the Council, or duly delegated committee. During the budget year and with the approval of Council having considered fully the implications for public services, unspent and available amounts may be moved to other budget headings or to an earmarked reserve as appropriate ('virement').

40 Based on these standing orders, I would expect to see approval of expenditure and virement between budget headings to be clearly recorded in the Council's minutes. However, the Council's minutes do not record such budget virements.

In three of the last six years, the Council has overspent its budget for planning consultancy but has not made appropriate arrangements for a budget virement to address the shortfalls

41 Each year, the Council sets its budget in accordance with the Local Government Finance Act 1992. I have examined the budgets for each of the financial years 2013-14 to 2018-19. In each budget there appears to be a provision for expenditure related to a 'Community Plan'. In some years, the purpose of the budget is clear. [Exhibit 2](#) below sets out the budget provisions made where these are explicit.

Exhibit 2: budgetary provision for advice by CDN Planning Ltd

The Council sets aside money each year for professional fees related to planning consultancy.

Financial year	Budget heading	Budget	Actual spend
2013-14	Not specified in budget	Not specified	£3,197
2014-15	Review of Community Plan by CDN	£450	£1,450
2015-16	Professional advice on LDP (Local Development Plan)	£8,000	£0
2016-17	Professional advice on LDP	£5,000	£2,796
2017-18	Rep LDP enquiry	£3,000	£4,325
2018-19	Community (inc Parking) Plan	£5,000	£5,544 ¹

Source: Mumbles Community Council budget reports

- 42 While it is clear from the Council's minutes that it has approved the individual payments made to CDN Planning, I have not been provided with evidence to demonstrate that the Council has considered whether or not the fees charged by CDN Planning exceed the budget set and therefore if a budget virement was necessary.
- 43 Although in some years, fees charged by CDN Planning are less than budgeted for, the Council's standing orders and financial regulations do not allow unspent budgets to be carried forward.
- 44 Therefore, where the Council has overspent against its budget but not approved a virement from another budget heading, the Council has failed to comply with its own rules.

¹ This includes £5,000 paid to settle fee charges of £6,177 related to services provided by CDN Planning in September 2017 (for further detail see below)

At least one Council member acted unlawfully in directing CDN Planning to undertake consultancy work without a Council resolution authorising them to do so

Under the law, councils cannot delegate functions to individual members

- 45 Section 101 of the Local Government Act 1972 sets out that the Council may, subject to certain restrictions specified by other legislation, arrange for the discharge of any of their functions by delegating responsibility for those functions.
- 46 The Council may delegate responsibility for its functions to:
- a committee or a sub-committee of the Council;
 - an officer of the Council; or
 - any other local authority.
- 47 Therefore, under the law, it is not possible to delegate responsibility for the discharge of functions or for decision making to individual councillors.

The Council's own Standing Orders and Financial Regulations prohibit individual members from issuing orders, instructions or directions and from making any contracts on behalf of the Council

- 48 The statutory provisions of the Local Government Act 1972 are reinforced by the Council's own standing orders and financial regulations.
- 49 Standing Order 24 states that unless authorised to do so by Council resolution, 'no councillor shall... issue orders, instructions or directions.'
- 50 Financial Regulation 10.4 states: 'A member may not issue an official order or make any contract on behalf of the Council.'

In September 2017, acting without the authority or knowledge of the Council and the Clerk, at least one council member commissioned consultancy services from CDN Planning resulting in £6,177 fees being charged to the Council

- 51 In September 2017, CDN Planning Ltd were instructed to undertake consultancy work in relation to two planning issues. This occurred while the Clerk was on leave and the normal process for instructing CDN Planning was not followed.
- 52 In an email addressed to the Clerk dated 30 May 2018, CDN Planning stated that 'all the work carried out by CDN Planning in connection with the Summerland Lane

and Higher Lane was done in response to instructions from both the Chairman and Councillor Will Thomas and was fully necessary in order to represent the views of Mumbles Community Council both in terms of the LDP hearing and the planning application.'

- 53 In a written submission from the Council, Cllr Thomas states 'I confirm that I have never 'authorised' any work to be conducted by CDN, as I was aware, I was not able to do so. [CDN Planning] has named me in error, and if challenged I am 100% confident that there will be no email or telephone conversation where I have given any go-ahead to spend council funds.'
- 54 Notwithstanding this ambiguity over how the instructions were given, as a consequence of the work undertaken by CDN Planning Ltd, the company raised invoices totalling £6,177. The Council subsequently disputed these invoices but has agreed to settle with a payment of £5,000 to CDN Planning Ltd. This payment was made in 2018-19.
- 55 In the absence of a resolution of the Council authorising the individual member(s) to issue instructions to CDN Planning Ltd, in my opinion, the councillor(s) acted unlawfully and in so doing incurred expenditure that I consider to be unlawful.

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