

## Cockermouth Town Council 2022/23

# Consideration of an Objection made under Section 27 of the Local Audit and Accountability Act 2014 (the Act)

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1. As Auditor of Cockermouth Town Council, we received a formal objection dated 20 June 2023 from a registered elector in respect of the 2022/23 Annual Governance and Accountability Return completed (AGAR).
2. After an initial review to confirm basic principles, the objection presents as being eligible, having been made by a registered elector, within the appropriate timeframe for objections, relating to an open year of account, on a matter within the external auditor's jurisdiction, in writing and copied to the audited body.
3. Having received an eligible objection, it is our role as local auditor to decide:
  - a. whether to consider the objection, and
  - b. if we do so, whether to take action within paragraph (a) or (b) of subsection (1) of Section 27 of the Act in response.
4. The local auditor may decide not to consider the objection if, in particular, the auditor thinks that:
  - a. The objection is frivolous or vexatious;
  - b. The cost of the auditor considering the objection would be disproportionate to the sums to which the objection relates; or
  - c. The objection repeats an objection already considered
    - i. Under this section by a local auditor of the authority's accounts; or
    - ii. Under section 16 of the Audit Commission Act 1998 by an auditor appointed under that Act in relation to those accounts.
5. If, as local auditor, we decide not to take action within paragraph (a) or (b) of subsection (1) of Section, we may recommend that the relevant authority should instead take action in response to the objection.
6. Where objections are accepted for consideration the potential actions for the local auditor would be to:
  - a. Make a Public Interest Report
  - b. Apply to a court for a declaration that an item of account is unlawful.
7. The local auditor may also decide that there is no action required to be taken.

### **The Objection**

8. The objection relates to the council's use of the 'Memorial Gardens' with the objector being concerned this is not in accordance with the act under which they hold the open space.
9. The objector contends that the land is held on a statutory trust under section 10(a) of the Open Spaces Act 1906 (OSA) rather than under Section 164 of Public Health Act 1875 (PHA), and as such it is not permitted to close off and/or exclude the public from any area of the park, no matter the reason.
10. In addition, the objector contends that the gardens are not being maintained to the standard required under the trust and has included photographic evidence of damaged areas of grassland.
11. The objector has requested that we as local auditor seek legal advice and that a Public Interest Report be issued in respect of his objection.

### **Consideration of Objection**

12. The use of the land and the specific differences between holding the land under the OSA rather than the PHA is a technical legal point and therefore requires comment from (a) legal professional(s).
13. For this reason, I requested that the council obtain, or provide previously obtained, legal advice that they are appropriately using the 'Memorial Gardens'.
14. The council have provided copies of correspondence held on file and requested their solicitor provide confirmation of these points.
15. It has been confirmed by the council, and is also mentioned in the information provided by the objector, that the areas the public are excluded from are:
  - a. a relatively small area of the entire open space;
  - b. for a relatively short period of time, approximately 2 hours; and
  - c. for safety reasons, as the area identified in this specific case was the drop zone for fireworks.
16. The solicitor has also provided comment that, in his opinion, the exclusion of the public from a relatively small area of the open space, for a short period of time, for safety reasons is not sufficient to evidence that the public are being prevented from 'enjoying' the open space.
17. In addition the council has provided correspondence and court documents identifying that the objector has previously raised points in court about the council's use of this land.

18. I have also been provided with documentation that the objector has previously attempted to obtain a judicial review of the council's use of the Memorial Gardens, which was refused.
19. In respect of maintenance of the open space, the council provided the objector with a response on 03 May 2023 explaining the steps taken in the previous 12 months to restore the 'Memorial Gardens' grass.
20. The clerk has asserted that the council uses the gardens for events 2 or 3 times a year and, except as specified in paragraph 15 in relation to the firework display, no areas are 'cordoned -off'.
21. The clerk has asserted that the council hold the General Power of Competence.

#### **Review Observations**

22. From the information provided to me, I am satisfied that the council has taken reasonable steps to obtain relevant legal advice in respect to its use of the gardens.
23. The refusal of a court to grant a judicial review in relation to the council's use of land for public events previously, appears to provide support for the council's contention that the land is being used appropriately.
24. On the basis of the preceding paragraphs, I, as auditor, do not feel it necessary or appropriate to obtain further legal advice, as to do so would increase the cost to the public purse which falls to be met by local taxpayers.
25. The photographic evidence of the damage to the grass appears to have been taken during the winter months and would seem to support that the public are able to enjoy the gardens throughout the year, although their use does have an impact.
26. The response of the council setting out the steps undertaken in the previous 12 months in respect of restoring damaged areas of grass within the gardens appears to be a reasonable attempt to maintain the gardens.

#### **Conclusions and recommendations**

27. I am satisfied that the council is using the gardens reasonably and following the spirit of the various Acts to enable the public to use and enjoy them.
28. To achieve legal certainty over what precisely constitutes appropriate recreational use of the Memorial Gardens, the matter would need to be tested in a court.

29. I am not satisfied that benefit from recommending or otherwise requiring the council to undertake such an exercise would justify the cost of such an action.
30. The council should continue in its efforts to keep the gardens in a good state of repair, with the understanding that heavy use during certain periods, such as in the winter months, may require additional repairs to be undertaken.
31. We suggest this response document be brought to a Full Council meeting for discussion so that its receipt can be documented within the minutes.

**Material information used in forming this decision:**

- Objection documentation.
- Email responses from the clerk to our enquiries, including solicitor's advice.
- Email confirmation from the council's legal advisor.
- Media coverage and related correspondence in relation to the Judicial Review.

Issued on 21 October 2024



**Moore**