

REPORT IN THE PUBLIC INTEREST

Somerton Town Council - Audit of the
Accounts for the financial year ended 31
March 2009

9 February 2012

Moore Stephens

Somerton Town Council 2008/09

Report in the Public Interest

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Summary Report

1. Purpose

- 1.1. Moore Stephens is the external auditor appointed by the Audit Commission to audit the accounts of Somerton Town Council (the Council) for the financial year ended 31 March 2009. I am the responsible partner. I am required under section 8 of the Audit Commission Act 1998 (the 1998 Act) to consider whether, in the public interest, I should through a report bring any significant matter coming to my attention to the notice of the Council and to the public. This report is made in discharge of that duty.
- 1.2. It is key to understanding the findings, conclusions and recommendations in this report for readers to appreciate that the actions of any local council are those of a continuing corporate entity which has a legal existence of its own separate from that of its members. In law, there is no distinction to be drawn between the Council now and the Council in the year ended 31 March 2009 even though some members of the Council have changed. The Council is legally responsible for ensuring its financial management is adequate and effective.
- 1.3. This report deals with matters arising from three of the Council's property transactions ('the transactions') that occurred during the financial year ended 31 March 2009:
 - a) the sale of a piece of land at Etsome Terrace in Somerton;
 - b) the purchase of a building at 8 Cary Court, Somerton;
 - c) the conversion of 8 Cary Court to a community hall.
- 1.4. In November 2009 I received from an elector exercising his legal rights under section 16 of the 1998 Act, a written objection to the accounts of Somerton Town Council for the year ended 31 March 2009. The objection was that the transactions described in paragraph 1.3 above were unlawful on the grounds that the Council failed to follow proper procedure and made the transactions:
 - a) without receiving independent valuations;
 - b) without seeking independent professional advice;
 - c) without following its own financial regulations to ensure competitive tendering; and
 - d) by inappropriately delegating authority and executive responsibility.
- 1.5. The objector asked me to exercise my powers under section 17 of the 1998 Act to apply to the Court for a declaration that there were unlawful items in the Council's accounts for 2008/09 and under section 8 of the 1998 Act to issue a Report in the Public Interest.

1.6. I would normally have expected to conclude my consideration of any objection within nine months. My enquiries have taken much longer for the following reasons:

- a) the necessary suspension of my audit work for two months between May 2010 and June 2010 for the police to consider information I brought to their attention;
- b) the necessary suspension of my audit work for a further six months between September 2010 and March 2011 while the police considered further information that had been brought to their attention by others and conducted an investigation which is now concluded. No charges were brought;
- c) the number and complexities of the issues raised which resulted in considerable correspondence between the Council, the objector, myself and other interested parties and their representatives.

2. Overall conclusions

- 2.1. Councils can only do that which they are empowered to do by law. I have considered whether certain expenditure by the Council is unlawful.
- 2.2. Councils are elected to exercise their discretion on behalf of the community and taxpayers. Councils have powers to make decisions about what, in the Council's opinion, is in the best interests of the community. In doing this Councils act as a single corporate body. The views and opinions of individual council members about what is the best course of action for the community must be properly aired and considered by the Council through proper procedures. It is the Council as a body, not the individual members that must make the decisions unless the Council collectively decides to delegate responsibility for making decisions to a committee or to individual members.
- 2.3. Parish councils transact business primarily through decisions made at Council meetings. For decisions to be lawful they must be made at a properly convened meeting after consideration of relevant information unless responsibility for particular decisions has been delegated. Decisions made at meetings should be recorded in the minutes. Decisions made outside meetings by committees or individuals are properly made decisions only if those committees or individuals have been given authority to do so through proper means and, where appropriate, are subsequently disclosed to and ratified at a full council meeting. Proper means would include powers conferred through the Standing Orders of the Council or authority delegated to an individual by the Council where there are powers to do so, through a properly made decision at a properly convened meeting.
- 2.4. In my opinion there were significant failings during 2008/09 in the Council's governance arrangements and internal controls in relation to the sale of land at Etsome Terrace and the purchase of 8 Cary Court, and in relation to the conversion of 8 Cary Court to a community hall. These failings demonstrate an abuse of the public funds held in the Council's care. In my opinion some decisions were unlawful and may have resulted in unlawful expenditure.

2.5. My reasons for deciding that there has been potential unlawful expenditure are that the Council:

- a) made decisions by failing to take into consideration relevant information to such an extent as to render those decisions potentially unlawful;
- b) failed to ensure that proper declarations of interest were made by any members with a prejudicial interest in relation to the sale of land at Etsome Terrace, the purchase of 8 Cary Court and the expenditure on 8 Cary Court to convert it into a community hall;
- c) allowed an individual councillor to act on its behalf without proper delegated authority or control.

2.6. In addition, I conclude that the Council;

- a) failed to obtain proper independent valuations when it should have done;
- b) acted in breach of its Financial Regulations requiring it to obtain competitive tenders for contracts of work or services,
- c) made decisions at confidential meetings that had not been properly convened in accordance with Standing Orders;
- d) made significant decisions at informal meetings that had no official status;
- e) failed to adequately budget for or to monitor expenditure on the conversion of 8 Cary Court to a community hall; and
- f) failed to maintain an adequate and effective system of internal control.

2.7. The failings listed above mean that the Council:

- a) sold Etsome Terrace without taking the proper steps to ensure that the sale price was the best consideration available;
- b) acquired a community hall without first determining that the community hall met the needs of the community in terms of size, specification or location;
- c) may have paid more than it needed to for the community hall.

2.8. My detailed findings and recommendations are set out at sections 8 and 9 of the detailed report attached.

2.9. The Council engaged a firm of solicitors, to act for them in the sale of Etsome Terrace and the purchase of 8 Cary Court which was also acting for Edgar Builders, the vendors of 8 Cary Court and Edgar Homes Limited the buyers of the land at Etsome Terrace. Edgar Homes Limited and Edgar Builders are businesses with common ownership. Whilst there is a potential conflict of interest in the Council using the same firm of solicitors as the other party to a transaction this is not necessarily a problem if the solicitors have proper procedures in place to manage conflicts of interest. Although it appears to me that it is likely on the basis of the evidence I have seen that the firm did have proper procedures in place, the Council did not properly consider this matter and confirmed to the firm, without seeking any assurances, that it was

happy with the situation on the incorrect basis that there were no complications such as covenants.

3. Work undertaken

3.1. I focussed my enquiries on those matters in the objection to the accounts, which relate to whether the Council had:

- a) obtained proper independent valuations of all of the properties;
- b) obtained proper independent professional advice;
- c) sought competitive tenders where appropriate;
- d) delegated responsibility properly and appropriately; and
- e) followed proper procedures including Standing Orders and Financial Regulations.

3.2. In addition I made further enquiries concerning the following matters:

- a) whether declarations of interests by Councillors were properly made in respect of the sale of the land at Etsome Terrace and the purchase of 8 Cary Court;
- b) whether the Council considered all the relevant information when making key decisions in relation to the sale and purchase of the properties;
- c) whether the Council properly managed and monitored the project to convert 8 Cary Court to the community hall; and
- d) whether the Council acted reasonably in connection with the transactions.

3.3. A detailed account of the work undertaken is included at section 7 of this report.

4. Background and timeline

4.1. In September 2003 the Council purchased a piece of land at Etsome Terrace, Somerton from Somerset County Council for £220,000 with a view to building a community hall on it. Between 2004 and 2007 the Council took no action to build a community hall but negotiated with Somerset Primary Care Trust (the PCT) about moving a doctors' surgery to the Etsome Terrace site. My report is not concerned with the Council's purchase of land at Etsome Terrace or with the negotiations with Somerset PCT. This information however provides the necessary context for subsequent events which are the concern of the objection and my report.

4.2. Following local press coverage of the lengthy negotiations between the Council and the PCT, a development company contacted the Council in March 2007 about acquiring the site. During July and August 2007 the Council invited and received offers for the land at Etsome Terrace from three further local property developers. The Council increased the asking price for the land from £400,000 to £1,000,000. The PCT ended negotiations stating that the proposed asking price of £1,000,000 now made the project unaffordable.

- 4.3. In September 2008 the Council sold part of the land at Etsome Terrace to Edgar Homes Limited, a local building and property development firm, and on the same day purchased an industrial unit at 8 Cary Court, Somerton from Edgar Builders. Between September 2008 and March 2009 the Council converted 8 Cary Court to a community hall and council offices.
- 4.4. In June 2009 an elector wrote to me raising concerns about the sale of the land at Etsome Terrace and the purchase of 8 Cary Court. The Council was informed in July 2009 that I had been contacted by an elector and that the elector intended to make a formal objection. On 14 October 2009 I wrote to the Council requesting further information in relation to my standard audit work, including information regarding the income and expenditure in relation to the community hall.
- 4.5. On 27 October 2009 the majority of the Council members resigned leaving the Council inquorate. The clerk remained in post. The Council was assisted by the South Somerset District Council monitoring officer until elections could be held.
- 4.6. The elector made a formal objection to the accounts for 2008/09 on 4 November 2009.
- 4.7. A council for Somerton was elected in January 2010 comprising 2 former members and 12 new members.

5. Measures taken by the Council

- 5.1. I am satisfied the Council has taken significant steps to improve governance procedures and the transparency of its actions in order to ensure that such failures of internal control identified in sections 2 and 8 of my report do not reoccur.
- 5.2. The Council has undertaken a thorough review of all its documentation, revising it where necessary. A programme of training the clerk and councillors has commenced and the Council has sought to improve the transparency of its actions including setting up a new website.
- 5.3. The measures put in place and my further recommendations are set out at section 9 of the detailed report below.

6. Unlawful items of account

- 6.1. If an item of account appears to me to be contrary to law, I have discretion to apply to the courts for a declaration under Section 17(1) of the 1998 Act to that effect. In this case, having considered the matter carefully, I have decided that I should not exercise my discretion to seek a declaration under Section 17(1) of the 1998 Act.
- 6.2. I have reached the view that there has been potential unlawful expenditure because:

- a) the Council made decisions without giving due consideration to all the relevant information;
- b) there were failures to declare interests;
- c) a councillor acted without proper delegated authority.

6.3. In my view, there is, on balance, no benefit from seeking a declaration to this effect from the court. My reasons for taking this decision are as follows.

- a) the Council has already implemented many of the necessary changes required to ensure it complies with legislative requirements and has indicated a willingness to make further changes I have recommended;
- b) the possibility of recovering any unlawful expenditure is remote due to the nature of the expenditure and the time that has elapsed since the expenditure occurred;
- c) the costs of such action would outweigh any potential benefits.



Andrew Vince
Moore Stephens

9 February 2012

Detailed Report

7. Work undertaken

- 7.1. The time taken between the events that are the subject of this report and the issue of this report in the public interest has been the subject of comments from the parties involved and has been reported in the media. In view of this I consider it appropriate for me to summarise the sequence of events leading to the issue of this report.
- 7.2. I met with the elector in October 2009. I made enquiries of the Council and visited the Council offices on 12 November 2009 to review the Council's files on the purchase and sale of Etsome Terrace and the purchase of 8 Cary Court. I obtained information and documents required for me to conduct my enquiries from various sources.
- 7.3. Because of the complexity of the matters under consideration and the extent of related relevant documentation I obtained access between November 2009 and May 2010 to sufficient information held by the Council and its solicitors to draw up an opening draft statement of facts.
- 7.4. In May 2010 I brought the information I had obtained to the attention of the police. I was required to suspend my audit work for two months while the police considered the information. In June 2010 the police informed me that they would not be taking any action at that time and I could recommence my audit work.
- 7.5. The draft statement of facts was sent to the Council in June 2010 and I invited written comments on its factual accuracy. On 22 July 2010 following receipt of written comments from the Council, I met with the current chair, vice chair and clerk to discuss those comments. I have considered those comments in the drafting of this report.
- 7.6. I was required to suspend my audit work again for six months between September 2010 and March 2011 while the police considered further information that had been brought to their attention by others and conducted an investigation into the events. The police have informed me their investigation is now complete and no charges have been brought.
- 7.7. In April 2011 I sent the draft statement of facts to Cllr Keenan and Cllr Canvin, who were in office as Chair and Vice Chair of the Council respectively between 2003 and October 2009 when the events took place, to verify that I had a complete understanding of the sequence of events. I invited written comments on the factual accuracy of the draft statement of facts. Despite agreeing to two extensions to the date by which I requested written comments I received no written response from either of them by the agreed date.

7.8. In November 2011 a draft of this report was sent to the Council and other interested parties inviting written comments. We received written comments from many interested parties including Cllr Keenan and Cllr Canvin. I met with Cllr Keenan and Cllr Canvin in January 2012 to discuss their comments. I have considered those comments in this report.

8. My detailed findings

My detailed findings are set out below.

8.1. Unlawful expenditure

8.1.1. I have decided that there are potential unlawful items of account in relation to the sale of land at Etsome Terrace, the purchase of 8 Cary Court and the conversion of 8 Cary Court to a community hall. The reasons for my decisions are:

- a) that Council made decisions without giving due consideration to all the relevant information;
- b) that there were failures to declare interests;
- c) that a councillor acted without proper delegated authority.

8.2. Decisions made without full consideration of all relevant information

8.2.1. A public body entrusted with discretion, such as a council, must exercise that discretion reasonably. Failure to do so may render its decisions unlawful. A court will not seek to intervene to overturn the decision of a council simply because the court disagrees with it. To have the right to intervene, the court would have to form the conclusion that:

- a) the council, in making a decision, took into account factors that ought not to have been taken into account;
- b) the council failed to take into account factors it ought to have taken into account, or
- c) the decision was so unreasonable that no reasonable authority would ever consider making it.

8.2.2. In my view the Council made decisions either without all the relevant information being made available to it, or without having sufficient regard to all the relevant information that was available to it. I understand that some councillors were in possession of relevant information that was not shared with other members at meetings of the Council and that key information may have been shared at unofficial meetings of only some members. The failure to follow proper procedures means that the Council made decisions without being clear about whether all relevant information had been shared with all councillors. The practice of holding informal, unofficial and unminuted meetings of some councillors resulted in the Council being unable to subsequently demonstrate that it considered all relevant information as a body when making decisions.

8.2.3. The Council found itself entering into significant, complex and expensive property transactions in the summer of 2008. In these circumstances it is reasonable to expect the Council to exercise due diligence and take care to identify all matters which

it was bound to consider. If members and officers of the Council lacked expertise and were not sure which matters were relevant, it is reasonable to expect members to require the Council to seek independent expert advice.

8.2.4. In my view the failures of the Council to seek independent expert advice in relation to the property transactions it was entering into and to consider the personal and prejudicial interests of the individual councillor leading the project, constitute a failure by the Council to consider all the relevant information when making these decisions.

8.2.5. Specifically the following decisions were made without proper consideration of all the relevant information:

Sale of Etsome Terrace

Bids for construction of a community hall

Background and timeline

8.2.6. On 28 August 2007 the Council decided that it would proceed with the sale of part of the land at Etsome Terrace to a developer. I am not sure how the Council reached this decision. The minutes show that Cllr Canvin informed the Council at a confidential meeting on 14 August 2007 that in his view it was necessary for the Council to seek alternative purchasers to the PCT due to the long delays with the negotiations. The minutes do not record any other members of the Council questioning why the land should be sold or why it was necessary to seek alternative purchasers.

8.2.7. In addition to an unsolicited offer received by the Council in March 2007 three further offers for the purchase of Etsome Terrace were received by the Council. Two were dated 14 August 2007 (the day of the meeting), one was dated 13 August 2007. One was addressed to Cllr Canvin at his home address the other two were addressed to the Council at the Council offices. The three letters were opened by the clerk in the daytime prior to the meeting on 14 August 2007. The letters were opened in the presence of Cllrs Keenan and Canvin in the office at the back of Cllr Keenan's shop near the council offices. The clerk has since confirmed that all four offers for the purchase of Etsome Terrace were made available to councillors for a period of time following the Council meeting that evening, and that some councillors inspected them. There is no record of any councillor enquiring why the offers had been invited or by what authority.

8.2.8. The three further bids that had been invited for the purchase of the land were each accompanied by a bid for the construction of a community hall. Council records do not show who invited the bids for the construction of a community hall but the bids indicate it was Cllr Canvin. I have seen no evidence that these bids for the construction of a community hall were considered by the Council at the meeting on 14 August 2007. I have received evidence that not all councillors were made aware of the

existence of the community hall bids at any time, and that the bids had been separated from their accompanying offers of purchase of Etsome Terrace and archived.

Findings

8.2.9. The reasons for the Council's failure to challenge the authority on which Cllr Canvin acted, and the failure of the Council to question why the offers were invited are unclear. Whatever the reason, I have decided that this critical decision was made by the Council without application of the appropriate level of scrutiny or challenge.

8.2.10. The failure by the Council to challenge or scrutinise may account for the fact that the bids for the building of a community hall that had accompanied the bids for the purchase of the land were not made available to the Council. The names of the developers are not mentioned in the minutes, nor is there any record of consideration of which of the three offers should be accepted. There is no recorded discussion about which offer is the best to accept or even of how such a decision should be made and what factors are pertinent. The offers for the purchase of the land at Etsome Terrace all contained conditions none of which appear to have been discussed at the meeting. The decision to sell to Edgar Homes Limited appears in the council's records to have been based on price alone without having specific regard to the statutory duty to achieve best consideration.

8.2.11. The Council appears to have rushed into a decision to sell the land to Edgar Homes Limited for development without having, or asking for the full facts and without properly considering the information that was available. I understand from former councillors that they believe that they acted in the best interests of the community. However the reasons for ending negotiations with the PCT and seeking alternative purchasers were not scrutinised and the Council cannot demonstrate that it properly considered or evaluated the offers that had been received.

8.2.12. The recorded information does not demonstrate that the Council satisfied itself that the sale of the land was the best option for the Council or the community, or that once the decision had been made to sell the land the Council would receive the best consideration it could reasonably have obtained. This is contrary to the general duty imposed on local authorities with land disposal powers under section 127 of the Local Government Act 1972. Although Councils do have the benefit of an exemption from the requirements of section 127, there is no evidence that the Council considered the section 127 duty or the conditions that needed to be fulfilled for the purposes of the exemption.

Reduction of sale price Background and timeline

8.2.13. In 2001, (before the Council purchased the land at Etsome Terrace), Somerset County Council had commissioned an environmental report on the land from Peter Brett Associates, a firm of consultants, (the Peter Brett report). The land had formerly been a county council highways depot and there was a risk that it was contaminated.

The Council had sight of this report before the purchase and Cllrs Canvin and Cllr Boxhall, a Somerton Town councillor at the time and a Chartered Civil Engineer, told the rest of the Council that the report did not identify any need for action. However the report recommends further investigations to locate the source of contamination in water under the workshop area and further assessment by the Environment Agency. We are not aware that any further investigations or assessments were made. In December 2007 Edgar Homes Limited, the purchasers of the land at Etsome Terrace commissioned a Geoenvironmental Report from Land Investigations/SLR Terrace (the Geoenvironmental Report).

8.2.14. On 18 March 2008 Edgar Homes Limited wrote to the Council stating that the information provided by the Council that the land was free of oil tanks, pipes etc proved to be inaccurate. The letter also stated that preliminary conditions had been proposed by the Planning Authority and contributions would be expected. The letter stated that Edgar Homes Limited would expect remediation costs and any extra costs imposed by the Planning Authority to be deducted from the purchase price of the land to be paid to the Council.

8.2.15. Planning permission for the development of the land was granted on 7 April 2008, no contributions were required from the developers. On 18 April 2008 Edgar Homes Limited's solicitors wrote to the Council giving formal notice that the land had been found to be contaminated and requesting that the purchase price of the land be reduced by the remediation costs. Neither the letter from Edgar Homes Limited dated 18 March 2008 nor the formal notice dated 18 April 2008 were brought to the attention of the Council at any of the Council meetings before 20 August 2008. The clerk wrote to Edgar Homes Limited's solicitors in relation to the matter of remediation costs on 24 April 2008. He stated that the Council was aware of the position being taken by Edgar Homes Limited and explained that investigatory work on the site was due to take place in May. The clerk is unable to explain where he obtained the information he included in this response. It appears from the minutes of Council meetings that the Council was not aware of the position being taken by Edgar Homes Limited until 20 August 2008.

8.2.16. On 20 August 2008 a report to Council written by the clerk was circulated to councillors in advance of the Town Council meeting on 26 August 2008. The report recommended that the Council accept a revised offer from Edgar Homes Limited, some £85,000 less than the original offer. On the basis of this report the Council agreed to the reduced sale price. The report stated that the offer price of £950,000 from Edgar Homes Limited was on the understanding that the site was not contaminated and no unduly onerous planning conditions would be imposed on any approval. It went on to say that there were issues of contamination and relocation of cabling by British Telecom which had been dealt with by the purchaser and that cost of the work would have to be met by the Council.

8.2.17. Neither the original offer from Edgar Homes Limited nor the Sale Agreement support the statement that the offer price was on the understanding that the site was not

contaminated. The Council did not have copies of the invoices supporting the remediation costs when I commenced my enquiries. Since the start of my audit the Council has obtained information from Edgar Builders Limited to support the remedial costs. I understand that the breakdown of remediation costs was prepared by Edgar Homes Limited and that all supporting invoices were supplied to the Council with the breakdown and included one invoice from AH Canvin dated 12 August 2008 for £8,605. If Councillors asked for sight of the invoices or queried the composition of the remedial costs, it is not recorded in the minutes.

8.2.18. The minutes of the meeting of 26 August 2008 record that the Council queried what contaminants had been found on the site, but no questions appear to have been asked about the Peter Brett report. Edgar Homes Limited had been provided with a copy of the Peter Brett report in November 2007 and it is referred to in the Geoenvironmental report. The Peter Brett report states that there is contamination on the site.

8.2.19. On the basis of the report prepared for the meeting on 26 August 2008 the Council voted to accept the reduced sale price.

Findings

8.2.20. The Council does not appear to have asked to see the sale agreement or the Geoenvironmental Report commissioned by Edgar Homes Limited before it decided to accept the lower price. In my opinion the Council decided to accept the reduced offer price for the land at Etsome Terrace without giving proper consideration to all the relevant facts.

Engagement of solicitors Background and timeline

8.2.21. The Council's solicitors acted for both the Council as vendors of the land at Etsome Terrace and for Edgar Homes Limited as purchasers. The firm formally asked the Council to confirm that it was happy with this situation before it accepted the engagement from the Council. In the meeting of 23 October 2007 the Council formally accepted the arrangement on the basis that there were no complications such as covenants. However there were covenants in place, many of the Councillors and the clerk should have been aware of this from the purchase of the land in 2003.

Findings

8.2.22. The Council appears to have accepted the arrangement without properly considering all the information that was available and whether its best interest would be served by engaging the firm which was also acting for the buyer.

Purchase of 8 Cary Court***Decision to purchase
Background and timeline***

8.2.23. The possibility of the Council purchasing 8 Cary Court is first mentioned at a confidential Council meeting on 27 May 2008. This is about six weeks after Edgar Homes Limited first raised the issue of remediation costs in relation to the land at Etsome Terrace with the Council.

8.2.24. I understand that the availability of the building came to the attention of the Council after Cllr Canvin visited Mr Edgar's offices at 8 Cary Court in May 2008 in order to use their printing and copying facilities. During the course of that visit Cllr Canvin learned that Edgar Builders were intending to sell 8 Cary Court.

8.2.25. An inspection of the building by Councillors was arranged. I understand that all but one councillor inspected the building. No minutes record that an inspection of the building had been authorised by the Council or why it took place. The Chairman's report in the minutes of the Council meeting on 10 June 2008 records that the inspection had taken place. However the minutes do not record any discussion by the Council as to whether the building was possibly suitable for use as a community hall.

8.2.26. The following facts are relevant to the Council's consideration of whether or not to purchase the building and do not appear to have been brought to the attention of the Council on 27 May 2008 or any other public or confidential Council meeting:

- a) the building was owned by Edgar Builders, a business owned by the developers seeking to purchase the land at Etsome Terrace;
- b) the land on which the building was built had been purchased by Edgar Builders in April 2004 from Cllr Canvin;
- c) the existence of a covenant held by Cllr Canvin limiting the use of the land to light industrial use and storage only;
- d) the roads to the building are not public highway but are owned by Cllr Canvin.

8.2.27. The minutes of the confidential session of 27 May 2008 refer to "*the brief meeting of Councillors held last Thursday evening*". This refers to Thursday 22nd May 2008. When I requested the minutes of this meeting the clerk stated - "*I am unaware of any notes being taken at the "meeting of Cllrs" held on 22 May 2008 as I never attended any such meetings. My non-attendance at any such "meeting" was to emphasise the different nature of the "meeting" it being completely informal and carrying no official status.*"

8.2.28. I asked the Council to provide copies of minutes evidencing that the facts listed above were considered by the Council. The Council was unable to provide this evidence. In response to my request the clerk told me that his understanding was that

these matters would have been referred to at the “*meeting of Cllrs held on 22 May 2008*”.

8.2.29. It is unclear which councillors were present at the “meeting of Cllrs” held on 22 May 2008. In any event the Council is unable to produce an agenda or any record of the meeting. The meeting had no official status and therefore any discussion at this meeting could not constitute proper consideration by the Council of the relevant facts listed at para 8.2.26 above.

8.2.30. There was a confidential meeting on 27 May 2008 following the Council meeting. The confidential meeting was not convened at the Council meeting and had no agenda. At this meeting the Council decided to proceed to the next stages of discussions in the possible purchase of 8 Cary Court. It appears to me that at that time there was relevant information available to some officers and members of the Council that should have been considered by the Council as a whole before making that decision, particularly the issues surrounding the restrictions over the use of the building and the right of access to the building.

8.2.31. The clerk has stated that all council members were aware that the roads belonged to Cllr Canvin as it was an issue that had arisen in respect of planning applications. No evidence has been provided to indicate that the Council as a whole was made aware at this meeting or at any subsequent meeting before the building was purchased of the existence of the covenant held by Cllr Canvin restricting the use of the building. One former councillor who was in office in 2008 has confirmed to me in writing that he was not aware of the covenant held by Cllr Canvin until 2010.

8.2.32. I have seen no evidence that the Council or any councillor asked if there were any covenants or other matters that they should consider before making the decision to purchase the property.

8.2.33. The minutes of the meeting state that the use of 8 Cary Court as a community hall would pose less risk to the Council than a new build as it could be returned to an industrial unit in the event of failure as a community hall and resold. The minutes do not record any discussion by the Council as to whether 8 Cary Court would meet the community’s needs as a community hall in terms of its location and size. The Council had commissioned a business plan in 2003 that outlined the community’s needs for a multi use community centre and considered the option of developing a centre at the Etsome Terrace site. The 2005 Town Plan identified a need for a larger community hall than those then available in the town. In July 2006 a Feasibility Study Group (FSG) produced a report on Somerton’s requirement for a new community hall. These plans and reports set out specific criteria that a community hall should meet. I have seen no evidence that any assessment was undertaken by the Council before it decided to purchase the building to ensure that it met the community’s needs as identified by the FSG report or to compare the option of converting 8 Cary Court into a community hall with the other options available to the Council.

8.2.34. On 15 August 2008 eight Councillors wrote to the Chairman proposing that before any final decision is made regarding the use of 8 Cary Court as a community hall and before any contract is signed, a Public Meeting is held so that all views can be considered.

8.2.35. In response to that request there was another “meeting of Councillors”. It appears that this was one of the informal meetings that carried no official status. There are no minutes of the meeting. It is not known how many Councillors attended. A “Report to the meeting of Councillors” dated 19 August 2008 sets out the level of public interest in the community hall against the level of interest in the plans for a new medical centre at “The Millands”. It is not clear who wrote the report. I understand that the idea of purchasing 8 Cary Court for use as a community hall had been published in local newspapers in the preceding two months. On the basis of the number of objections to planning applications for the two projects, and public comments to the Council, the report concludes that there was much more interest in the plans for the medical centre than the community hall. The report states that when the Council discussed the purchase on 27 May 2008 there was no rider that the decision to purchase 8 Cary Court should be “Subject to Public Opinion or a Public Meeting”. A possible scenario if the purchase of 8 Cary Court was not completed was set out at the end of the report which includes amongst other items the possibility that Edgar Homes Limited might pull out of the purchase of the Etsome Terrace site.

8.2.36. Therefore the councillors who were present at this informal meeting would have been aware at that stage, even if they hadn’t been before, that the building at 8 Cary Court was owned by Edgar Builders a business with common ownership with Edgar Homes Limited, the purchaser of the land at Etsome Terrace. On that basis it seems likely to me that participants in the decision making process should have been aware that the two deals involved a common party. However, I have seen no evidence of the possible implications of this link being considered. There are no minutes of formal Council meetings either confidential or public at which this significant link was brought into the open or properly discussed.

8.2.37. A public meeting was not held regarding the purchase of 8 Cary Court. No councillor raised the matter at the next full Council meeting on 26 August 2008. It appears to me that the decision not to hold a public meeting was made at the informal meeting of 19 August 2008.

8.2.38. The Council formally resolved to purchase 8 Cary Court on 26 August 2008. No evidence has been provided to demonstrate proper consideration by the Council of all matters relevant to the purchase at any formal meeting prior to making the decision. Specifically the Council did not properly consider:

- a) the interests that should have been declared by any member with a prejudicial interest. This would include any person holding a covenant restricting the use of the building and with ownership of the roads leading to the building, so that that person could be excluded from the decision making process;

- b) the significance of the fact that the vendors of 8 Cary Court were also the purchasers of the land at Etsome Terrace and the perceived possibility that the sale of Etsome Terrace could become conditional on the purchase of 8 Cary Court;
- c) whether the option of purchasing 8 Cary Court would best meet the community's clearly identified needs for a community hall as set out by the FSG;
- d) the formal request by eight councillors to hold a public meeting before moving to a decision. The request appears to have only been considered at an informal "meeting of councillors";
- e) the proper processes that must be followed when councils dispose of land.

8.2.39. There was a further opportunity following the formal resolution to purchase 8 Cary Court on 26 August 2008 for the Council to consider the relevant information listed above at the Council meeting on 9 September 2008 and it failed to do so.

8.2.40. The Council's solicitors wrote to the Council on 29 August 2008 stating that they had received the Deed of Release from the covenant restricting the use of 8 Cary Court from Cllr Canvin's solicitors. The letter notes that the deed releases the Council from the covenant only for the Council's period of ownership and physical occupation of the property and asks for confirmation that this is acceptable. As stated above the existence of the covenant had not been brought to the attention of councillors before. In light of Cllr Canvin's intended terms of the release of the covenant, this development in the matter should have been brought to the attention of the Council so that it could consider the possible implications of the terms of the release. The clerk responded the same day stating that on behalf of the Council he confirmed that the release from the covenant for the period of ownership and occupation was acceptable. The letter was copied to Cllr Keenan and Cllr Canvin but to no other councillors. The clerk does not appear to me to have had or sought the authority to give this confirmation.

8.2.41. It may have been the view of Cllr Canvin, Cllr Keenan and the clerk that the terms of the release of the covenant were acceptable. However the Council was unaware of the covenant and was therefore unable to consider the significance or the effect of the covenant and the terms of its release.

8.2.42. The Council's solicitors wrote to the Council again on 5 September 2008 setting out several key points in relation to the purchase of 8 Cary Court. The letter mentioned amongst other things:

- a) that the wording of the release of Deed of Covenant from Cllr Canvin releases the covenant only so long as the Council owns the freehold of the property. The letter highlights that this restricts to a degree the future sale value of the property should the Council wish to sell it. The solicitor accepts that it is unlikely that the Council will wish to sell;
- b) that there are no rights to access the joint area to repair and maintain it. The solicitor states "I suspect that this is unlikely to cause a problem. It might just conceivably be a problem on any resale but it could easily be covered by an indemnity policy";

- c) that there is no architects certificate in respect of the original build and this could conceivably cause a problem on resale if the property were sold quickly but not after, say, five years;
- d) that the solicitor has difficulty recognising which part of the roadway is being referred to in the 1988 conveyance of the property to Cllr Canvin. The solicitor asks if Cllr Canvin might confirm that all is in order.

8.2.43. The clerk was away on annual leave between 6 and 16 September 2008. The council has not been able to provide evidence to show how the issues above were resolved.

8.2.44. No evidence has been provided to show that the letters of 29 August 2008 and 5 September 2008 or any of their contents were brought to the attention of the Council at any Council meeting or confidential session. There was a Council meeting held on 9 September 2008, but the minutes do not record any consideration of the letters from the Council's solicitors or their subject matter. The existence of, and terms of release of the covenant held by Cllr Canvin over the use of 8 Cary Court were at no time considered by the Council. The clerk was away on leave on 9 September 2008, I do not know who took the minutes of the meeting in his absence.

Findings

8.2.45. In my view, the Council's decision to sell Etsome Terrace and purchase 8 Cary Court on 9 September 2008 was not properly informed because; the Council did not undertake a proper process of scrutiny of the full relevant facts that it could reasonably have expected to have had in its possession before the transactions were completed on 12 September 2008; nor did it seek independent advice or guidance. Guidance is readily available from the Royal Institute of Surveyors and other on line resources.

8.2.46. This failure to follow proper processes exposed the Council to the risks that it may have sold Etsome Terrace for less than the best consideration, paid more for 8 Cary Court than was necessary, and owns an asset with a future value that could be affected by the terms of the covenant held by Cllr Canvin.

8.3. Declarations of interest

8.3.1. The Local Authorities (Model Code of Conduct) Order 2007 SI 2007/1159 (the Code of Conduct) was adopted by the Council on 24 April 2007. The Code of Conduct defines personal interests and prejudicial interests. Personal interests are interests where councillors might reasonably be regarded as benefitting from a decision to a greater extent than the majority. A personal interest becomes prejudicial if it affects the financial position of the relevant member and a member of the public (with knowledge of the relevant facts) would reasonably regard the interest as so significant that it is likely to prejudice the councillor's judgement of the public interest.

8.3.2. The Code of Conduct requires that personal and prejudicial interests in any item of business to be discussed at a meeting must be disclosed to the meeting and recorded. Where a councillor has a prejudicial interest in any item of business they can make representations, answer questions and give evidence relating to that business provided the public are also allowed to attend the meeting. However any councillor with a prejudicial interest must not vote on that item of business and must withdraw from the meeting when decisions are made in relation to that item of business.

8.3.3. Interests must be declared even if the holder of the interest does not intend to benefit from it. If payments are to be made to a councillor, especially if they are significant payments, that councillor must declare an interest even if the payment does not include an element of profit.

8.3.4. The Councils Standing Orders 57 and 58 require that interests must be declared as soon as they become apparent, and that if interests are prejudicial, councillors must withdraw from the room or chamber during consideration of the item to which the interest relates.

8.3.5. Proper declarations of interest were not made by Cllr Canvin in 2008/09 in relation to the sale of the land at Etsome Terrace, the purchase of 8 Cary Court and the expenditure on 8 Cary Court to convert it into the community hall. I am of the view that these failures to declare interests render expenditure related to the items of account affected potentially unlawful.

8.3.6. Specifically Cllr Canvin had the following relevant interests;

- a) that his construction firm, AH Canvin, had been contracted by Edgar Homes Limited to remove waste from Etsome Terrace in August 2008 shortly before it was sold, the cost of this work was eventually borne by the Council as part of the remediation costs deducted from the selling price;
- b) that he had owned the land at 8 Cary Court before it was sold to Edgar Builders and he held a covenant restricting the use of 8 Cary Court to light industrial use and storage;
- c) that he owned the roads leading to 8 Cary Court;
- d) that his firm was paid £44,089 by the Council, in relation to the conversion of 8 Cary Court to a community hall.

8.3.7. In my view the interests listed above were prejudicial interests. I understand that the clerk and several other councillors were aware of some of these interests, in particular that Cllr Canvin owned the roads leading to 8 Cary Court and that significant payments were made to his construction firm AH Canvin in relation to the conversion of 8 Cary Court to a community hall.

8.3.8. In relation to the conversion of 8 Cary Court to a community hall a small payment was also made to Somerton Furnishings Limited a business owned by Cllr Keenan. No interest was declared in respect of this payment.

8.3.9. None of the interests listed above were declared or recorded in any minutes of Council meetings at which relevant business was discussed. The minutes of meetings record that no declarations of interest were made even though evidence suggests that the clerk and councillors were aware of the relevant interests.

8.3.10. Cllr Canvin was allowed by the Council to remain at the meetings when business in which he had a prejudicial interest was discussed and he voted on all matters relating to the purchase of 8 Cary Court and on the authorisation of the amounts paid to his firm in respect of the conversion of 8 Cary Court to a community hall.

8.3.11. In my view Cllr Canvin should not have been involved in any of the decisions made in relation to the purchase and conversion of 8 Cary Court. He should have been prompted to declare his interests when he did not do so of his own accord, and asked to withdraw from the meeting when decisions were made in which he had a prejudicial interest. The minutes of the South Somerset District Council Area North Committee planning meeting of 26 March 2008 record that at that meeting Cllr Canvin declared a prejudicial interest in the application for the erection of 13 houses on the land at Etsome Terrace. After addressing the committee he left the room. The clerk was also present at this meeting. Therefore Cllrs Canvin and the clerk were aware of the requirements to declare interests.

8.3.12. However, instead of ensuring proper declarations and procedures were followed the Council appears to have allowed Cllr Canvin to be the key individual in the facilitation of the purchase and conversion of the property, and to have allowed his construction firm to be used as a vehicle for significant payments for work and materials in relation to the conversion of 8 Cary Court to a community hall.

8.4. Delegation of authority

8.4.1. Council's Standing Order 66 (b) states that "*no member of the Council or of any committee or sub committee shall in the name of or on behalf of the Council issue orders, instructions or directions, unless authorised to do so by the Council or the relevant committee or sub-committee*".

8.4.2. Officials and office holders must be granted specific authority by the Council before they may act lawfully on its behalf. When the Council decides it wishes an individual to act on its behalf I would expect to see that decision recorded in the minutes, setting out the nature of the business for which authority is to be delegated and any limits on delegated authority. The Council's Standing Orders contain no general delegations of authority to any member.

8.4.3. Councillors acted on behalf of the Council on several occasions as detailed below. I have seen no minutes that record the Council delegating authority for any of those actions. This is in breach of Standing Order 66 (b) set out above.

Sale of land at Etsome Terrace***Inviting tenders from potential developers***

8.4.4. The Council received an uninvited approach from a developer in March 2007 about the possible purchase of the site at Etsome Terrace following local publicity about the delays in negotiations with the PCT. In July 2007 Cllr Canvin contacted three further potential developers of the land at Etsome Terrace. He then invited offers from those three potential developers and tenders from them for the construction of a new community hall. There is no mention in the Council's minutes prior to this of the Council making any decisions to investigate the potential development of the land at Etsome Terrace, to invite offers for the sale of the land or to invite tenders for the construction of a community hall. Cllr Canvin's actions appear to have been contrary to the Chairman's report of 27 March 2007 which stated that the Council were aware that the site had been acquired for community use and no action was called for in response to the unsolicited interest from a potential developer.

8.4.5. There is no record in the minutes of the Council giving Cllr Canvin delegated authority to issue these instructions and undertake these activities on its behalf. When the bids from the potential developers were discussed by the Council neither the clerk nor any councillor questioned the authority under which Cllr Canvin had invited the bids.

Informing the Primary Care Trust of the change in sale price

8.4.6. The Council minutes record that the Council had been negotiating with the Somerset NHS Primary Care Trust (the PCT) since 2004 about moving the doctors' surgery in Somerton to Etsome Terrace. By July 2007 these negotiations had progressed as far as the PCT making a planning application for a medical centre on the site. A letter to the Council dated 3 August 2007 from General Practice Investment (GPI) acting on behalf of the PCT in the negotiations, states that Cllr Canvin had informed the PCT that the asking price for Etsome Terrace had increased to £1,000,000 because of interest from residential developers.

8.4.7. There is no record in the minutes up to 14 August 2007 of the Council being aware at the time that Cllr Canvin had invited offers for the sale of the land to potential developers. The minutes of subsequent meetings do not record any change of stance by the Council to use the land at Etsome Terrace for community use or any decision to inform the PCT that the asking price had risen to £1,000,000. The Council did not delegate authority to Cllr Canvin to give the PCT this information. Only after Cllr Canvin had informed the PCT of the change in asking price was the Council informed in a meeting on 14 August 2007 that alternative offers for the land had been received and the letter from GPI dated 3 August 2007 was discussed. At that meeting the Council voted unanimously to terminate the negotiations with the PCT. No reason is recorded in the minutes as to why it had been necessary to seek alternative offers. At a confidential meeting following the Council meeting on 14 August 2007 the Council was informed that other offers in the region of £950,000 had been received. The

Council voted at this confidential meeting to progress the scheme to sell the land to a developer. The minutes do not record who should progress the scheme. The confidential minutes record that the decisions made at the confidential meeting on 14 August 2007 should be ratified at the next Council meeting on 28 August 2007, and they were.

8.4.8. The confidential minutes do not record any member or officer of the Council questioning Cllr Canvin's authority to inform the PCT of a revised asking price.

Signing Heads of Agreement

8.4.9. Cllr Canvin signed the Heads of Agreement for the sale of the land at Etsome Terrace on 22 October 2007. There is no record in the Council minutes of Cllr Canvin being authorised by the Council to sign the Heads of Agreement on its behalf. There is no record in any Council minutes of the existence of or the details of this agreement being discussed by Council prior to it being signed, nor of any request for signing authority to be delegated to any office holder or official.

Purchase of 8 Cary Court

Release of covenant

8.4.10. Cllr Canvin released his covenant over the use of 8 Cary Court as light industrial use and storage, for the period of ownership and physical occupation of the property by the Council on 12 September 2008. Cllr Canvin and Cllr Keenan signed the Deed on behalf of Council. Cllr Canvin also signed the Deed as the beneficiary of the covenant. The Deed was signed in the presence of an employee of Cllr Keenan.

8.4.11. No formal resolution was made at any Council meeting authorising Cllr Canvin or Cllr Keenan to sign on behalf of the Council.

Conversion of 8 Cary Court

Management of project

8.4.12. The minutes of a confidential meeting following a Town Council meeting on 9 September 2008 record that "Councillor Canvin agreed to manage the project". No formal resolution was proposed or voted on by the Council at any open or confidential Town Council meeting. I understand that Cllr Canvin oversaw the day to day running of the project but received instructions from a small group of people, including some councillors, acting as a committee. The minutes do not record anything about the formation of this committee, who should be on it, its terms of reference or who it should report to. The Council allowed the project to be managed without proper delegated authority or setting up any scrutiny arrangements to monitor the project. As stated at para 8.2.43 above the clerk was on annual leave on 9 September 2008, I do not know who took the minutes of the meeting in his absence.

8.5. Proper independent valuations

8.5.1. Section 127(2) of the Local Government Act 1972 (LGA 1972) states that except with the consent of the Secretary of State parish or community councils may not dispose of any land for a consideration less than the best that can reasonably be obtained. The Local Government Act 1972: General Disposal Consent 2003 removes the requirement for local councils to seek specific consent from the Secretary of State for any disposal where the undervalue is £2,000,000 or less and the council considers that the disposal will contribute to the social, economic or environmental wellbeing of the area.

8.5.2. In order to demonstrate that best consideration is being obtained or that no specific consent is required from the Secretary of State, it is the responsibility of each local council to seek its own legal or professional advice as appropriate.

8.5.3. Before disposing of any interest in land for a price which may be less than the best consideration reasonably obtainable, guidance strongly advises local councils to obtain a realistic valuation of the land. There are a variety of means by which a realistic valuation can be obtained, including offering the land on the open market, or obtaining an expert independent valuation.

Sale of Etsome Terrace

8.5.4. Etsome Terrace was not valued independently prior to its sale nor was it offered on the open market. The Council received one unsolicited offer and three further tenders which were invited. As stated above the four offers were not properly considered by the Council in that the all the aspects of the offers for sale were not considered and the existence of the accompanying bids for the construction of a community hall appears to have been kept from the Council.

8.5.5. In my view the Council cannot demonstrate that the land was sold for the best consideration that could reasonably be obtained without having obtained a valuation. There is no evidence that the Council considered the law and proper practices it should have had regard to in relation to the disposal of the land at Etsome Terrace. In doing so it failed to meet the requirements of Section 127(2) of LGA1972.

Purchase of 8 Cary Court

8.5.6. The Council obtained an independent valuation of the land and buildings at 8 Cary Court from the District Valuer before proceeding with the purchase.

8.5.7. A letter to the District Valuer of 29 May 2008 from the Council explained that the Council was looking to purchase the property from Edgar Builders for use as a community hall, Town Council offices and equipment storage. The letter does not mention the covenant Cllr Canvin had over the use of 8 Cary Court nor the issue of the access to 8 Cary Court possibly being restricted due to the roads being owned by Cllr Canvin. The clerk has confirmed that there were no further instructions given to the District Valuer in relation to the 8 Cary Court valuation.

8.5.8. The District Valuer valued the property on 25 June 2008 at £675,000 to £710,000. The property was purchased by the Council for £700,000.

8.5.9. It appears to me that that the District Valuer was not made aware of all the relevant facts in regard to the restrictive covenant over the use of the buildings and of the roads giving access to the buildings being owned by Cllr Canvin. There was a possibility that these facts could have had a material effect on the value of the property.

8.5.10. In April 2011 the Council obtained a further valuation of 8 Cary Court. The District Valuer was asked to reconsider the valuation at 25 June 2008 having been provided with the information that had previously been withheld from him. The District Valuer considered access to the property and the restrictive covenant. In his opinion the market value previously provided remains largely unaffected by the further information and would still lie within the original price range of between £675,000 and £710,000.

8.5.11. However at the time it purchased 8 Cary Court the Council did not know or seek to find out if the restrictive covenant over the use of the building or the ownership of the roads would have any effect on the current or future value of the building it was intending to purchase.

8.5.12. The District Valuer was also asked to value the property at current market value. In his opinion the market value at 4 April 2011 was in the range of £700,000 to £775,000 and would be fairly represented by a sum of £750,000.

8.6. Breach of Financial Regulations

8.6.1. The Council's standing orders dealing with financial matters are referred to as Financial Regulations. Section 135 of LGA 1972 requires councils to have standing orders in place regarding the making of contracts for the supply of goods or materials or for the execution of works. The Council's Financial Regulations were adopted on 26 February 2008.

8.6.2. Financial Regulation 11 relates to contracts. Financial Regulation 11.1 (a) states that every contract shall comply with the Financial Regulations other than in an emergency or for six specific exemptions which are listed.

8.6.3. Financial Regulation 11.1 (b) states that

Where it is intended to enter into a contract exceeding £1,000, unless the provisions of 11.1 (a) apply the clerk shall invite at least three quotes, based on the experiences of the Council and the list maintained by District Council. Where it is intended to enter into a contract exceeding £10,000 unless the provisions of 11.1 (a) apply, the clerk shall invite tenders from at least three different firms approved by the Council for the work involved.

Conversion of 8 Cary Court

8.6.4. The project to convert 8 Cary Court to a community hall had been estimated in August 2008 to cost in the region of £155,000. The clerk has confirmed that this estimate was prepared by Cllr Canvin. The project did not fall under any of the exemptions listed in the Financial Regulations at 11.1(a) and therefore the requirements for obtaining quotes and tenders applied.

8.6.5. At the Council meeting on 14 October 2008 the question of financial regulations was raised in connection with the project to convert 8 Cary Court. One of the councillors responsible for internal control at the time had submitted a note in his absence from the meeting, recommending that the figure of £1,000 above which formal quotes needed to be obtained for work to be undertaken, be relaxed for this one project to more realistically reflect the size and nature of the work involved. It was unanimously resolved to increase the figure to £5,000 for the conversion project. It was stated that the figure would remain at £1,000 for all other works.

8.6.6. The contract for the conversion was not put out to tender. Nor were any of the elements of the project put out to tender despite the estimated costs of £155,000 being well in excess of the thresholds set out in the Financial Regulations.

8.6.7. I obtained copies of all the quotes that were available at the Council offices in relation to the project.

8.6.8. Some quotes for work done were obtained by the Council. However none of these quotes appear to have been considered by the Council as a whole. The minutes of meetings between September 2008 and April 2009 record nothing about any of the quotes being considered by the Council. I understand from the clerk that Cllr Canvin may have obtained further quotes but that if he did these are not in the possession of the Council.

8.6.9. Of the 28 suppliers who were paid during the year to 31 March 2009 eleven were paid in excess of £5,000. Of these eleven only five provided quotes that were retained by the Council. There is no evidence that three quotes were obtained for any of the contracts in excess of £5,000 as agreed at the meeting on 14 October 2008. In some instances the quotes provided by the suppliers appear to be for only part of the work they were finally contracted to do.

8.6.10. The Council's failure to request quotes or tenders for all work in excess of £1,000 prior to 14 October 2008 and in excess of £5,000 following that date is in breach of Financial Regulations.

8.6.11. These failures to follow Financial Regulations represent clear breaches of the Council's own internal controls and mean the Council cannot demonstrate that the amounts it paid for the work were reasonable.

8.7. Proper procedures

Confidential meetings

8.7.1. The Council adopted Standing Orders on 24 April 2007.

8.7.2. Standing Order 67 states that :

The public shall be admitted to all the meetings of the Council and its committees and sub committees which may however temporarily exclude the public by means of the following resolutions:

That in the view of the [special][confidential] nature of the business about to be transacted, it is advisable in the public interest that the press and public be temporarily excluded and they are instructed to withdraw.

8.7.3. Standing Order 68 states that the Council shall state the special reason for the exclusion.

8.7.4. I requested minutes of all confidential meetings in between 2007 and 2009. Confidential meetings were frequently held after Town Council meetings. Matters relating the sale of the land at Etsome Terrace, purchase of 8 Cary Court and the conversion of 8 Cary Court to a community hall were discussed at the following confidential meetings:

- 14 August 2007
- 11 September 2007
- 18 December 2007
- 22 January 2008
- 27 May 2008
- 8 July 2008
- 9 September 2008
- 25 November 2008

8.7.5. On 11 September 2007 the Town Council minutes record that the item relating to the Community Hall Layout / Finance was to be deferred until the end of the meeting for an “in camera” discussion due to the confidential nature of the business. On each of the other occasions the Council failed to convene the confidential meetings in accordance with the Council’s Standing Orders 67 and 68. The minutes of the Town Council meetings prior to the confidential meetings do not record any resolution that the public and press be temporarily excluded for certain items. Decisions were made at each of these confidential meetings.

8.7.6. The effect of the confidential meetings being held without being properly convened at the public meetings is that the meetings have been held without the knowledge of the public. In some instances there does not appear to me to be a clear reason why the public and press should have been excluded from the meetings in any

event. The resulting effect has been that the Council has not transacted business in an open and transparent manner.

8.7.7. This failure by the Council to follow Standing Orders and to act in an open and transparent manner coupled with a failure to hold an open public meeting caused it to embark on projects intended for the benefit of the community without proper regard to the possible degree of support or opposition from the community for the proposed projects.

Unofficial meetings

8.7.8. I understand from the evidence I have seen that unofficial meetings of councillors may have occurred regularly. The clerk has stated that he did not attend any such meetings in order to emphasise that the meeting was completely informal and carried no official status. There is no written record of these meetings.

8.7.9. There is evidence that meetings of this nature were held on 22 May 2008 and 19 August 2008. There are no minutes of these meetings, but minutes of other meetings indicate that decisions at these unofficial meetings were treated as Council decisions: for example, the decision not to hold a public meeting in respect of the community hall as set out at paragraphs 8.2.34 to 8.2.37.

8.8. Monitoring of expenditure on project

8.8.1. The Council did not prepare a detailed budget for the project to convert 8 Cary Court to a community hall. A rough estimate of costs totalling £155,500 was included in the report to the Council dated 20 August 2008 and accepted by the Council at the meeting of 26 August 2008 at which it resolved to purchase 8 Cary Court. The clerk has confirmed that the estimate was prepared by Cllr Canvin. The estimate is a single page consisting of a list of 18 brief categories of work and estimates of how much each piece of work will cost. It does not appear to have been based on any quotes received from potential contractors. The Council's Financial Regulations were breached as the contract was not put out to tender.

8.8.2. In my view it would be reasonable to expect any council embarking on a significant project such as the conversion of 8 Cary Court to consider the needs of the community, to discuss how the building could meet those needs and to draw up detailed specifications to allow the council to ensure that the project is properly managed and that unnecessary expenditure is not incurred. There is no evidence that any detailed specifications for converting 8 Cary Court to a community hall were prepared, requested or discussed in any way at any Council meeting, despite the Council having in its possession reports clearly setting out the needs of the community.

8.8.3. Until November 2008 the clerk prepared a monthly spreadsheet for each month end council meeting that indicated where funds had been spent and what monies had been received over the previous month. Each month the Council's overall income and expenditure was compared to the annual budget. I understand from the clerk that in

December 2008 a question was raised over the style of document provided and whether it was appropriate. I do not know who raised the question. As a consequence the spreadsheets were not produced for four months from December 2008 to March 2009 whilst the format was changed and during that time there was no monitoring of expenditure against budget either on the project or generally.

8.8.4. During those four months from December 2008 to March 2009 details of payments made each month were provided to the Council on a monthly payment schedule and payments relating to the expenditure on 8 Cary Court were identified by a margin note of CH (presumably an abbreviation for 'Community Hall'). Expenditure on the project was authorised in the same way as other expenditure.

8.8.5. The clerk prepared a schedule with a tally of the total expenditure on 8 Cary Court as it was incurred. This schedule was not presented to the Council until July 2009 when it was provided to all councillors. There was no comparison of the actual costs to expected costs at any time throughout the project. As explained at paragraph 8.4.12 I understand there was an informal committee that decided how the project should progress. There is no evidence that this group at any time monitored expenditure or reported to the Council on progress or spending. The schedule showed total expenditure to 31 March 2009 of £229,218 and further expenditure in 2009/10 to July 2009 of £82,832, a total of £312,050. This is more than double the original estimated cost of £155,000. The schedule of total costs was not discussed at the Council meeting. The minutes do not record any councillor questioning or raising concerns about the overspend, or even enquiring why it may have been necessary.

8.8.6. There was further expenditure for the conversion after July 2009 of £6,976 making the total cost of conversion £319,026, an overspend in the region of £164,000 without explanation or scrutiny.

8.8.7. The Council failed to adequately plan the project. No detailed budget or specifications were drawn up. The failure to properly consider the specification of the project at the outset may have led to the Council and community owning a community hall that is of a size and specification that did not meet its needs.

8.8.8. There was no consideration of the most cost effective way of achieving the conversion. The Council agreed at a confidential meeting that Cllr Canvin should manage the project and the Council should contract subcontractors and purchase materials. The Council did not put the contract out to tender as required by its Financial Regulations and was therefore unable to compare the options available to it. As a result of these failings the Council cannot know if it obtained value for money for the conversion.

8.8.9. The Council did not monitor actual costs against budgeted costs. At no time either during or after the completion of the project did the Council query the overspend or seek to discover why it had occurred. This failure to scrutinise or monitor costs in a

timely basis means that the Council does not know if it obtained value for money or if it spent more on the project than was necessary.

8.9. The Council's responses to internal audit

8.9.1. Accounts and Audit Services Limited carried out the independent internal audit of Council's accounts for the year ended 31 March 2009 during two visits on 7 and 15 April 2009. Two detailed reports were produced which noted amongst other things:

- a) that at the meeting on 9 September 2009 at which "Cllr Canvin agreed to manage the (new centre) project" there was no declaration of interest in that much of the work was carried out by Cllr Canvin's own staff.
- b) that payments to Cllr Canvin's staff should have been formally approved by the Council in advance;
- c) that £230,000 had been spent on the new office/community hall scheme at 31 March 2009 compared with a budget at 26 August 2008 of £155,000, and the project was not yet completed;
- d) the project should have been put out to competitive tendering, so that a realistic budget could have been set and so that savings obtained by a DIY scheme (by which he means the project being managed by the Council) could eventually be identified;
- e) the clerk should seek evidence that labour supplied by Cllr Canvin's company at £15 per hour is indeed supplied at cost, and timesheet summaries for hours invoiced to support the number of hours worked.

8.9.2. The comments have been marked "Noted and Agreed" by the clerk. However there is no evidence that the reports were put before the Council or that there was any consideration by the Council or any councillors of the issues raised. The Council took no action on the issues that had been raised with respect to the community hall project. This was a breach of the Council's Financial Regulation 4.7 which states that the Responsible Financial Officer (who was the clerk) shall bring to the attention of the ICC's (Internal Control Councillors – that is councillors that have been specifically charged with responsibility for internal control) and, as soon as practicable to all councillors, any correspondence or report from the internal or external auditor.

8.9.3. The project was not completed until July 2009 some months after the internal auditor issued his reports. During that time, the Council made no attempt to implement the recommendation that the clerk should seek timesheets for the labour supplied by Cllr Canvin's company or evidence that the hourly rate was at cost.

8.9.4. The Annual Return for the year ended 31 March 2009 was submitted to me for audit on 8 July 2009. On the annual governance statement the Council gave an

assurance that it had taken appropriate action on all matters raised in reports from internal and external audit. In my opinion this assurance was incorrect.

8.10.Independent professional advice

8.10.1. As set out in paragraph 2.9 above there was a potential conflict of interest in the Council using the same solicitors as the other party to the transactions. The Council did not properly consider this and confirmed to its solicitors that it was happy with the situation on the incorrect basis that there were no complications such as covenants.

9. Recommendations

Measures already taken

9.1. The Council has taken the following steps to improve its governance and procedures:

9.1.1. The Council has altered its structure by reducing the number of committees from nine to three and reduced the frequency of full council meetings from fortnightly to monthly. I understand these measures were implemented with the intention of allowing the clerk to handle the workload better and to enable proper procedures to be followed more easily.

9.1.2. A new Finance and Advisory Group has been established which comprises the chairs and vice chairs of the Council and committees. The purpose is to advise on strategic and financial matters and make recommendations to the Council. The group has no powers to make decisions.

9.1.3. The Council has revised and updated its Standing Orders, Financial Regulations, Risk Assessment and Management document, Committee terms of reference and asset register. The Council has documented the following policies that had not been previously documented; Finance and Advisory Group Terms of Reference, Model Publication Scheme, Freedom of Information policy, Complaints policy, Recruitment policy, Letter Handling Procedure and Media Policy and Publication Guide.

9.1.4. The Council's Standing Orders adopted in 2011 set out the levels of authority delegated to the proper officer/clerk and the authorisations required by full Council resolution in relation to the execution and sealing of legal deeds.

9.1.5. This thorough review and documentation of all the Council's policies helps to ensure that the new council members are familiar with proper practice. This should reduce the risk that proper practices will not be followed in the future.

9.1.6. The Council joined the Somerset branch of the National Association of Local Councils in early 2010. This gives the Council access to expert accounting and legal advice, and enables it to keep up to date with current guidance and proper practices.

9.1.7. All but one of the councillors has attended a new councillor training course. To date the Council has not implemented a specific training programme for the clerk. The clerk continues to attend SLCC conferences as before.

9.1.8. The Council has strengthened its procedures in relation to budgeting and to monitoring actual expenditure against budget.

9.1.9. A Communications Committee has been set up. The committee plans to review the filing system and consider investment in additional hardware and software if appropriate.

9.1.10. The Council has taken steps to improve the transparency of its actions by setting up a new website which includes a forum for members of the public to leave comments, and complete periodic questionnaires. The Council hopes these actions will improve the relationship between itself and electors.

Further recommendations

General Training

9.2. The Council should implement a system of ongoing training for all existing councillors and the clerk in addition to the training provided to new councillors. This should include refresher training on when it is appropriate to hold confidential meetings, and how to delegate authority to committees and individuals and the keeping and authorisation of minutes of meetings. The Council is still a land owner and should ensure that the clerk receives training in the proper practices regarding the sale and acquisition of land.

Declarations of interests

9.3. The Council should seek specific training on what constitutes a personal or prejudicial interest and when these must be declared. If the Council finds itself in an unfamiliar situation it must seek specific guidance from the relevant professional bodies, NALC and SLCC, or seek directions from the Monitoring Officer at SDDC about how it should proceed. If the Council decides it is crucial that those with interests are able to speak at meetings they would normally be unable to address because of interests, the Council should seek exemptions from the local District Council Monitoring Officer.

Internal audit

9.4. The Council should strengthen its procedures for responding to internal audit findings. Financial Regulations require reports from independent internal auditors and external auditors to be considered by the Council or Financial Committee and appropriate action taken. The Council must ensure this is followed.

9.5. The council should carry out a review of the effectiveness of internal audit at regular intervals as is required by proper practices.

Covenants over properties

9.6. The Council should undertake a review of all covenants in place that affect the properties it owns. If appropriate the Council should consider approaching the beneficiaries of the covenants to see if they are amenable to releasing the covenants.

Suitability of community hall

9.7. The Council should formally consider if the community hall at 8 Cary Court suits the needs of the community in terms of location, size and specification as set out in the 2005 Community Plan. The Council should consider the options available to it should the needs of the community significantly differ from the facilities available. If the community hall facilities exceed the needs of the community then the Council should consider alternative uses for the spare capacity to minimise the burden on the taxpayers of Somerton.