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**INVESTIGATION INTO INSTALLATION OF A MONUMENT ON PARK WALK,  
SHAFTSBURY**

**MARCH 2014**

**AS INSTRUCTED BY SHASFTBURY TOWN COUNCIL**

**Date of issue 7<sup>th</sup> March 2014**

## **1.0 Jackie Gregory-Stevens - INTRODUCTION**

- 1.1 I, Jackie Gregory-Stevens, am a freelance Chartered Quantity Surveyor and work with Simpson Lynch, Pound Lane Industrial Estate, Pound Lane, Kingsnorth, Ashford, Kent TN23 3JE. I qualified with the Royal Institution of Chartered Surveyors in 1989, became an Associate of the Chartered Institute of Arbitrators in 2001 and a Fellow of the Royal Institution of Chartered Surveyors in 2010. I am also a Chartered Environmentalist and a RICS Accredited Mediator (Currently on the RICS Presidents Panel).
- 1.2 I commenced my quantity surveying career as a trainee in small construction company in Bath in 1984, where I remained until I qualified in 1989. Since that date I have worked for both large and small construction organisations and been involved with a wide range of construction projects. In 2001 I joined with two other partners in developing a specialist sub-contract company as Commercial Director. On leaving the business in 2008, following a financial settlement, I have worked freelance and with Simpson Lynch in quantity surveying specialising in agreement of final accounts, resolution of disputes, commercial advice, governance, audit work etc.
- 1.3 I have in excess of 30 years experience as a quantity surveyor, estimator and commercial manager, both in main contracting and the sub-contracting sector.
- 1.4 I am experienced in preparation of budget estimates, feasibility studies, pre-tender estimates, cost planning, cost management, cost/value engineering, pre-contract and post-contract quantity surveying duties, detailed tenders submissions and repeat negotiated contracts.
- 1.5 I have undertaken formal training in expert witness responsibilities and report writing, delivered through the Royal Institution of Chartered Surveyors.

1.6 I am a trained auditor, experienced in Government Department and Agency governance and procedures. I have delivered reports for the National Audit Office.

## **2.0 INSTRUCTION**

2.1 I have been instructed by Shaftsbury Town Council (STC) to investigate the processes and governance undertaken in relation to the installation of a monument on Park Walk, Shaftesbury during July 2013.

The investigation should assess what, if any, departures occurred in the areas listed below and what can be learnt in any such departures to avoid repetitions and better serve the public in the functioning of the authority (STC):

- i. Management Process (from initial decision/proposal to erection of the monument)
- ii. Points of departure from agreed format of the structure
- iii. Commissioning and work instructions to Town Council staff
- iv. Contractual agreements entered into with outside organisations on behalf of the Council
- v. Governance & Duty of Care (focus on health and safety, insurance liabilities, possible individual liabilities, addressing legal obligations for assets in the Council's care)
- vi. Corporate accountability issues (in particular insurance cover for unauthorised works - possibly other areas as well - links with item above)
- vii. Individual accountability issues (focus on whether any individual was aware they were involved in unauthorised works and/or illegal activity)

The report should identify any findings and recommendations in relation to the above areas.

2.2 I have not been instructed to investigate the financial aspects of this incident as this has been undertaken by Accounts and Audit Services Ltd, with a first report being issued on the 17<sup>th</sup> December 2013. I understand concerns have been raised as to the

allocation of the £5,000 donation by Persimmon Homes. These should be referred to Accounts and Audit Services Ltd.

### **3.0 BACKGROUND**

- 3.1 In July 2013 a monument was erected at Park Walk, Shaftsbury to be dedicated to the Rifles Regiments (freemen of the town), to commentate those fallen in Iraq and Afghanistan and members of the old Devonshire and Dorset regiment fallen since the end of the second world war.
- 3.2 The monument was erect on land owned by STC on the site of a former planter, close to the existing war memorial
- 3.3 The location of the new monument was within the Scheduled Ancient Monument of Shaftsbury Abbey.
- 3.4 The monument has subsequently been removed following dialogue with English Heritage and is currently in storage.

### **4.0 INFORMATION AVAILABLE**

- 4.1 I have been handed two arch leave folders and two paper folders of various information including email correspondence, Council meeting minutes, quotations, timesheets, various STC documents, press articles, freedom of information requests and responses and English Heritage correspondence
- 4.2 Certain documents required to complete this report were not included in the information supplied and these have subsequently been requested. Where these were not available this has been noted within the report. Comments on the subsequent implications of the missing documentation have also been noted in the report.

4.3 Interviews: The following people have met with me in regard to the preparation of this report: (*redacted*)

Information has been provided by (*redacted*)

To date I have been unable to meet with (*redacted*)

4.4 STC Core Constitution (Nov 2013 v1). The key items identified from this document include:

- i. Pg 26, 2.4.4. The Recreation, Open Spaces and Environment Committee remit states “The Committee will hold the delegated authority to identify and recommend capital projects for the areas within its remit and to monitor the execution of said capital projects”
- ii. Pg 56, 20 Estimates/precepts: “b. Any committee desiring to incur expenditure shall give the Proper Officer a written estimate of the expenditure recommended for the coming year no later September”
- iii. Pg 63, 30 Financial matters, b & c, “proposed contract for the supply of goods, materials, services and the execution of works with an estimated value in excess of £5,001 shall be procured on the basis of a formal tender as summarised in standing order 30(c) below” “ c. Any formal tender process shall comprise the following steps:
  - i. a public notice of intention to place a contract to be placed in a local newspaper;
  - ii. a specification of the goods, materials, services and the execution of works shall be drawn up;
  - iii. tenders are to be sent, in a sealed marked envelope, to the Proper Officer by a stated date and time;
  - iv. tenders submitted are to be opened, after the stated closing date and time, by the Proper Officer and at least one Member of the Council;
  - v. tenders are then to be assessed and reported to the appropriate meeting of Council or Committee.
- iv. Pg 66, 3 Budgetary control, 3.7 and 3.8:

3.7 No expenditure shall be incurred in relation to any capital project and no contract entered into or tender accepted involving capital expenditure unless the Council is satisfied that the necessary funds are available, or the requisite borrowing approval has been obtained.

3.8 All capital works shall be administered in accordance with the Council's standing orders and financial regulations relating to contracts

v. Pg 60, 23 – “Unauthorised activities...no individual Councillor shall... (a) (ii) ...issue orders, instructions or directions.”

vi. Pg 71, “10 ORDERS FOR WORK, GOODS AND SERVICES

10.1 Detailed procedures for purchasing and the award of contracts appear at Article 3.11 of this constitution.

10.2 It is vital to bear in mind that the Council must consider best value at all times and be able to prove value for money if challenged.

10.3 Orders for work, goods and services will be dealt with in the following ways – orders of a value up to £3,000 telephone tenders and notes placed on file, orders of a value £3,001 to £5,000 written quotations to be tabled and resolved at meetings, orders of a value above £5,001 formal tender.

10.4 The Town Council is under no obligation to accept the lowest quotation but the reasons for not doing so must be documented when approving the acceptance of the quotation.

## 12. PAYMENTS UNDER CONTRACTS FOR BUILDING OR OTHER CONSTRUCTION WORKS

12.1 Payments on account of the contract sum shall be made within the time specified in the contract by the RFO upon authorised certificates of the architect or other consultants engaged to supervise the contract (subject to any percentage withholding as may be agreed in the particular contract).

12.2 Where contracts provide for payment by instalments the RFO shall maintain a record of all such payments. In any case where it is estimated that the total cost of work carried out under a contract, excluding agreed variations, will exceed the contract sum of 5% or more a report shall be submitted to the Council.

12.3 Any variation to a contract or addition to or omission from a contract must be approved by the appropriate Committee of the Council and Clerk to the contractor in writing, the Committee being informed where the final cost is likely to exceed the financial provision.”

## **5.0 OTHER INFORMATION**

- 5.1 Information generally available to the public, such as through internet search engines etc. have also been utilised, and where applicable have been noted.
- 5.2 Where items are recorded in minutes from the monthly Council meetings it is assumed for the purposes of this report (as evidence has not been provided to the contrary) that minutes are subsequently ratified in the following monthly meeting.

## **6.0 OVERVIEW**

- 6.1 From the information provided the following time line of events and actions has been created. This will assist in answering the questions requested by STC in their Investigation Terms of Reference document dated December 2013:
- i. 15<sup>th</sup> June 2010 STC Recreation, Environment and Amenities Committee meeting the additions to the war memorial were approved, subject to support from the Civic Society (SCS) and the Royal British Legion and up to £150 was made available for fencing works. The memorial plaques would require an additional £2,100 to be raised.
  - ii. 27<sup>th</sup> July 2010 STC General Management Committee meeting the issue of how funding Mayor's special projects were discussed. The committee suggested that these projects should be dealt with in the same way as capital projects during the budget setting process.
  - iii. 6<sup>th</sup> August 2010 letter from SCS advised STC that they did not support the project in regard alterations to the existing war memorial by adding the grass extensions.
  - iv. 5<sup>th</sup> October 2010 STC Full Council meeting item 52A records that the Mayor had proposals regarding the memorial to put to the REA committee.
  - v. 23<sup>rd</sup> November 2010 Recreation, Environment and Amenities Committee meeting the project to enhance the war memorial was discussed (Item 9) and it was "unanimously agreed that the committee in principle accepts the proposal that a memorial stone for the Riffles is placed on existing site of the planter on Park Walk." These minutes were Approved and Adopted by Full Committee 4<sup>th</sup> January 2011 (item C).

- vi. 24<sup>th</sup> November 2010 SCS record in their meeting minutes that the memorial is now a 4 sided stone monument to replace the existing stone bin/planter
- vii. 20<sup>th</sup> January 2011 Harry Jonas submitted a quotation for the new monument and works to the existing memorial.
- viii. 31<sup>st</sup> January 2011 three firms were identified for quoting for the monument and memorial refurbishment (Ellis & Co, Andrew Parson Stonemasons, Mark Rawlins)
- ix. 25<sup>th</sup> February 2011 quotation requests were issued to three firms requesting costs for the project, with prices to be submitted by the 11<sup>th</sup> March 2011.
- x. 9<sup>th</sup> March 2011 Ellis & Co both wrote and faxed a request to STC for an extension of time to submit the quotation to the 18<sup>th</sup> March 2011.
- xi. 17<sup>th</sup> March 2011 Ellis and Co submitted a quotation for the new monument and works to the existing memorial.
- xii. 29<sup>th</sup> March 2011 GMC meeting minutes record the approval to transfer unspent Mayor's Allowances funds to the Mayor's Charity Account, subject to confirmation from the internal auditor. There is a post meeting minute that confirms these funds cannot be transferred.
- xiii. 12<sup>th</sup> April 2011 STC FCM minutes it was resolved that £1,400 of STC funds would be allocated to the new memorial, subject to agreement from the external auditor (item 112).
- xiv. 11<sup>th</sup> June 2011 email from Cllr (*redacted*) to Harry Jonas requesting an update on the project
- xv. 14<sup>th</sup> June 2011 STC – List of Main Council Projects 2011/2012 – Item 7 is “Addition to War Memorial”
- xvi. 28<sup>th</sup> June 2011 REAC meeting minutes state item 21 (b) that the painting of the railings to the existing memorial should be undertaken by May 2012 or when the extension to the memorial is in place (whichever was the sooner).
- xvii. 30<sup>th</sup> June 2011 – Capital Strategic Projects List – Item 28 is “War memorial extension”
- xviii. 20<sup>th</sup> July 2011 Harry Jonas email to STC confirming works had not started
- xix. 2<sup>nd</sup> August 2011 Harry Jonas submitted a revised quotation for the work
- xx. 20<sup>th</sup> September 2011 GEM meeting minutes – Projects Update item 05.(a) War memorial (to be tabled)
- xxi. 3<sup>rd</sup> January 2012 FCM minutes record that the Carnival Committee would contributing £300 to the war memorial project.

- xxii. 9<sup>th</sup> May 2012 Harry Jonas email confirms works will start the following week
- xxiii. 12<sup>th</sup> July 2012 email from STC to Harry Jonas requesting a meeting to progress the project
- xxiv. 20<sup>th</sup> November 2012 minutes from the Community Services Committee meeting the civic event to dedicate the new memorial was discussed.
- xxv. Undated 2013 – Council Action Plan 2013/2014 STC document, First Period March – October 2013. Page 6, Item 2 is “Improvements to the town memorial”
- xxvi. 16<sup>th</sup> April 2013 correspondence, by email, was sent to North Dorset District Council to ascertain if any “Listed planning consent” was required for the removal of the planter prior to the erection of the new monument stone. This email was sent to (*redacted*) of North Dorset District Council. The reply, also dated 16<sup>th</sup> April 2013, from (*redacted*) (copied to (*redacted*)) states that no consent is required for the removal of the planter and no mention is made with regard the new monument stone.
- xxvii. 17<sup>th</sup> & 18<sup>th</sup> April 2013 The planter was removed by the Grounds Team. No record of by whom these works were instructed has been provided.
- xxviii. 23<sup>rd</sup> April 2013 EFC meeting minutes record (2013/143.B) that funds are to be vired to the “war memorial project” to assist in reducing the short fall in project funds.
- xxix. June 2013 works continued on site following the removal of the planter by the STC grounds team with additional works to the base being provided free of charge by N.D. Hardimans. The stones were delivered and erected by Harry Jonas.
- xxx. 6<sup>th</sup> June 2013. Email to (*redacted*) at NDDC requesting confirmation with regard involvement on the conservation officer. (*redacted*) replied on the 6<sup>th</sup> June 2013 to (*redacted*) STC suggesting that English Heritage be contacted, but does not anticipate any problems.
- xxxi. 23<sup>rd</sup> July 2013 (*redacted*) email to STC questioning if contact had been made with EH.
- xxxii. 13<sup>th</sup> August (*redacted*) of North Dorset District Council forwarded an email to STC raising the potential issue of the works being subject to English Heritage SAM consent. On the 22<sup>nd</sup> August 2013 (*redacted*) of North Dorset District Council advises in an email to STC that concerns have been raised in regard the bollards being erected around the monument and that any “...separate consent should be clarified with English Heritage as a matter of urgency”.
- xxxiii. 21<sup>st</sup> and 22<sup>nd</sup> August 2013 bollards were erected around the monument by the STC ground works team (Timesheet). There are statements from the team and offices staff

dated 3<sup>rd</sup> and 4<sup>th</sup> December 2013 that state the instruction to carry out these works was received direct from Cllr (*redacted*)

- xxxiv. 22<sup>nd</sup> August (*redacted*) NDDC raises the issue of the bollards being erected
- xxxv. 18<sup>th</sup> September 2013 working group met to agree terms of reference in regard the relocation of the monument.
- xxxvi. 10<sup>th</sup> October 2013 letter to Mr (*redacted*) from the Department for Local Communities and Local Government states that in regard SAM consent “In most cases local planning authorises will be the first point of contact...it is not necessary or appropriate for EH to engage with every planning issue...”.
- xxxvii. November 2013. The monument and bollards removed to secure storage location

## **7.0 COMMENTARY ON SPECIFIC ITEMS**

### **7.1 Management Process (from initial decision/proposal to erection of the monument)**

- i. On the 15<sup>th</sup> June 2010 STC REAC (Item 6.1(i) above) agreed to a scheme to erect a memorial to the Rifles Regiment in Shaftsbury - subject to subject to support from the Civic Society (SCS) and the Royal British Legion. There is no evidence that this support was issued and in fact the SCS issued a letter on the 6<sup>th</sup> August 2010 stating that they did not support the project. On the 12<sup>th</sup> April 2011 at the STC FCM it was resolved that £1,400 of STC funds would be allocated to the new memorial, subject to agreement from the external auditor. No evidence of said approval has been provided. Legal advice should be sought on the implications of these two points and to the legality entity of the project. It should be noted (as identified in section 4.4 above) the STC Core Constitution states that, in regard the Recreation, Open Spaces and Environment Committee “The Committee will hold the delegated authority to identify and recommend capital projects for the areas within its remit and to monitor the execution of said capital projects”. There is also a requirement for “Any committee desiring to incur expenditure shall give the Proper Officer a written estimate of the expenditure recommended for the coming year no later September.” No evidence if this written estimate has been received, but both the Council Action Plan 2013/2014 and the Capital Strategic Projects dated

30<sup>th</sup> June 2011 make reference the memorial – improvements to the memorial and war memorial extension respectively.

- ii. The initial scheme in 2010 was to place a small grassed area around the existing memorial. Due to issues in regard works to existing war memorials by November 2010 the project design had expanded to the 4 sided, stone monument similar to that finally erected. This was also the scheme tendered in February and March 2011. The structure was discussed at the full FCM of the 12<sup>th</sup> April 2011. There is no evidence of what project design was discussed however SCS record in their meeting minutes on the 24<sup>th</sup> November 2010 that the memorial design had progressed to a 4 sided stone monument to replace the existing stone bin/planter. In addition REA Committee meeting 23<sup>rd</sup> November 2010 minutes note that the monument was to be sited on the stone planter/bin.
- iii. A tender process for the works was undertaken and is examined in more detail in section 7.4 below.
- iv. No clear appointment of Harry Jonas has been provided.
- v. See following points.

## 7.2 Points of departure from agreed format of the structure

- i. See item 7.1.ii. Having discussed the evolution of the design with Cllr (*redacted*) it is implied that Members of the Council and Council staff were aware in the changes from the small garden design to a monument stone (FCM 12<sup>th</sup> April 2011). Certainly the SCS were aware of a change. In addition REA Committee meeting 23<sup>rd</sup> November 2010 minutes note that the monument was to be sited on the stone planter/bin. Having discussed this implied knowledge with other Councillors there is a varying range of awareness claimed in the changing design, none of which is documented.
- ii. I have been passed no documentation to indicate that any Members or staff had issues with the revised project prior to the erection of the stone.

## 7.3 Commissioning and work instructions to Town Council staff

- i. The removal of the planter and the new works to the base of the monument in June 2012 was undertaken by STC ground maintenance staff. No documentation has been provided to confirm by whom the instructions to carry out the works was issued.
- ii. The installation of bollards around the new monument in August 2013 was completed by the STC ground maintenance team. Witness statements from *(redacted)* and *(redacted)* indicate that these works were not correctly instructed by the STC office, but that the team were verbally requested to carry out the work by Cllr *(redacted)* As identified in 4.4 above, Councillors do not have the right to instruct works directly.

#### 7.4 Contractual agreements entered into with outside organisations on behalf of the Council

- i. The STC Core Constitution (Nov 2013 v1) requires that all works over a value of £5001 should be subject to a tendering process as detailed in 4.4 above, including sealed bids, tender opening, award etc.
- ii. A tendering process was under taken in February/March 2011 to obtain quotations for the erection of the new memorial as detailed in 6.1 above. Ellis and Co returned a quotation, but there are no copies of quotations from the other two bidders, and no evidence that these were ever received.
- iii. There is no copy of a tender opening meeting report, or evidence that one was undertaken. There is no record of the tenders received, received from and value.
- iv. There is no evidence of a tender selection process.
- v. There is no evidence of result of the process being advised to the bidders.
- vi. The works were subsequently let to Harry Jonas who did not appear to take part in the bidding process. Initial review of the quotation from Ellis & Co would indicate that the Jonas bid (submitted before the tender completion) was cheaper than the bids submitted, however on detailed inspection it is noted that the Ellis quotation includes for works which the Jonas quotation does not. It is therefore not possible to confirm if the Jonas quotation formed best value for money.
- vii. There is not a copy of the order to Harry Jonas available

7.5 Governance & Duty of Care (focus on health and safety, insurance liabilities, possible individual liabilities, addressing legal obligations for assets in the Council's care)

- i. STC has contacted their insurers with regard the issue of the monument being illegally constructed on a SAM. The insurers have confirmed that the Council are not covered in regards these works.
- ii. All works carried out by STC or their appointed sub-contractors should be subject to health and safety risk assessments, method statements and, where appropriate, environmental assessments. No copies of these documents have been provided.
- iii. In regard assets under the Council's care, STC are currently acting as owner of the new monument and are managing the process of locating a new site for the stones.
- iv. All contractors who work for STC should carry public liability insurance. It is unknown if the works would have been insured as they were technically a criminal act. This should be pursued through the various contractors' insurers if this is still an issue.

7.6 Corporate accountability issues (in particular insurance cover for unauthorised works - possibly other areas as well - links with item above)

- i. Councillors will be covered by STC insurance whilst on Council business
- ii. See point 7.5 in regard insurance issues and extent of cover.

7.7 Individual accountability issues (focus on whether any individual was aware they were involved in unauthorised works and/or illegal activity)

- i. Please see other comments with regard to activities either being unauthorised or illegal
- ii. There has been no evidence presented that clearly demonstrates any party was knowingly acting on an illegal project. Correspondence was received by the STC office from NDDC in regard works on a SAM prior to the erection of the bollards. These emails indicated there could be an issue with working on the site, however the works were not instructed from the office and there is no evidence of these issues being communicated to the grounds team or Cllr (*redacted*)
- iii. Although 7.1 indicates that official approval may not have been issued to proceed with the project, no documentation has been forthcoming to indicate that any

Member of the Council or its staff believed the project to be unauthorised or illegal until after the stone had been erected.

## **8.0 SUMMARY**

8.1 It is clear a number of STC processes were not fully adhered to during the process of designing, funding and erecting of the new monument. The key activities can be summarised as follows:

- i. Inception of the project. There is evidence that the project was discussed at FCM and REAC and that there was general support for the project. However progress of the project was subject to certain caveats and as these were not fulfilled then the legality of the project is under question and legal guidance should be sought on this point. It should also be noted that no evidence has been presented to suggest that any Councillor or staff did not believe the project not to be a legitimate STC project before erection of the stones.
- ii. Changing in design. The design changed during the progress of the project and there is evidence that suggests that both the Council Members and staff were made aware of some of these design changes to a greater or lesser extent. No clear documentation has been provided, however, to demonstrate that all Council Members were or were not aware of on the size of the monument. The revised location is recorded in REA minutes as discussed above.
- iii. Tender process for the works. There would appear to be a breach in STC protocol in the letting of the works to Harry Jonas.
- iv. Instruction to carry out works. The works to install the bollards were instructed directly by a Councillor, which Councillors are not empowered so to do.
- v. Criminal activity on a scheduled ancient monument. The works carried out under this project were deemed to be a criminal act by English Heritage. However there is clear evidence that STC have relied upon advice given to them by North Dorset District Council Planning Department. A letter from the Department for Local Communities and Local Government confirms this was the correct route to obtain this advice.
- vi. Removal of the monument. EH issued clear instruction that the monument was to be removed from its current location as Scheduled Monument Consent could not be obtained retrospectively.

## 9.0 RECOMMENDATION

Following the points identified in section 8 above I would recommend the following actions:

- i. Obtain legal advice on the legal entity of the project if clarification of this issue is still required. Review the scope and limit of the delegated authority of the Recreation, Open Spaces and Environment Committee (and other committees) in regard developing capital projects.
- ii. Introduce a more robust process for recording progress of long term projects undertaken by STC. This should include, as minimum, a project update at each Full Council Meeting including a project management plan with milestones and clear deliverables. It should also include a cashflow forecast and expenditure updates.
- iii. STC core constitution is clear that no Councillor has the right to instruction works direct. All Councillors and staff should be reminded of this point.
- iv. The STC process for securing works is a robust process. All Members and staff should be re trained in processes contained in the STC Core Constitution
- v. North Dorset DC should have provided STC with full and correct information in regard to works on the SAM following the original request on 16<sup>th</sup> April 2013.
- vi. These works have been undertaken and a new committee is working to resolve the new location of the monument.

As identified above STC Core Constitution is a solid process that requires only minor modification to address procedural issues raised above. However, it does not have a clear mechanism to prevent one or more individuals circumnavigating the correct processes to secure specific projects/works. I understand this is currently being reviewed by the HR committee.

.....End of Report.....