



WALES AUDIT OFFICE
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Auditor General for Wales

Quay Cafe – Connah’s Quay Town Council

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

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

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Acting under delegated arrangements and on behalf of the Auditor General for Wales, I have issued this report under section 22 of the Public Audit (Wales) Act 2004, to draw the public's attention to failures in governance arrangements and inadequacies in financial management and internal control at Connah's Quay Town Council.

This report sets out a number of failures in decision making and internal control at Connah's Quay Town Council that have resulted in the Council incurring a deficit of over £234,000 and makes recommendations to address those failures. The Council must consider the report and the recommendations made, in accordance with section 25 of the Public Audit (Wales) Act 2004.

Detailed findings

Connah's Quay Town Council has incurred a cumulative deficit of over £234,000 in the operation of the Quay Café since 2011 and, in my view, the Council acted unlawfully when it decided to open the Café in 2010

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Detailed findings

Connah's Quay Town Council has incurred a cumulative deficit of over £234,000 in the operation of the Quay Café since 2011 and, in my view, the Council acted unlawfully when it decided to open the Café in 2010

Introduction

- 1 This report summarises my conclusions arising from my audit of Connah's Quay Town Council's (the Council) accounts for the 2017-18 financial year. In the course of the audit, matters related to the operation of the Quay Café were brought to my attention. In considering these matters, I identified significant failures in decision making and inadequacies in financial management and internal control.
- 2 This report is issued in the public interest under Section 22 of the Public Audit (Wales) Act 2004 (the Act). I have issued this report to draw the public's attention to the significant deficit incurred by the Council and the Council's failures in decision making and inadequacies in financial management and internal control. Given the scale of the deficit incurred, I believe it is important that the public has a full and proper awareness of the events concerning the Council.
- 3 I also consider it appropriate to give the Council an opportunity to demonstrate the important steps already taken to improve arrangements and to ensure that the risk of such governance failures recurring is reduced to a minimum. There are lessons to be learnt not just by the Council, but by all community councils in Wales.

Connah's Quay Town Council

- 4 Connah's Quay is the largest town in Flintshire. The Council has 20 elected members representing the four wards of Central, Golftyn, South and Wepre. It spends around £450,000 annually on local services. It funds this primarily by means of a precept of some £300,000 from Flintshire County Council. The Council raises additional income from sales and hire charges at its various facilities. The County Council collects the precept through additional council tax charged to the Council's residents. The Council derives its funding from the public purse and its members are elected by local residents. The Council is, therefore, accountable to the local electorate.
- 5 The Council operates a number of public facilities including the:
 - Civic Hall
 - Town council offices
 - Tuscan way Community Centre

- Quay Café

My audit work

- 6 My audit work on town and community councils focusses on an annual return completed by the councils and submitted to auditors working on my behalf. The annual return contains the annual accounting statements that the council is required by law to prepare and an annual governance statement which sets out how the council has managed its financial affairs.
- 7 In January 2018, a local elector raised concerns about the operation of the Quay Café, specifically regarding its establishment and its financial position. Therefore, I extended the scope of my audit work to examine the financial position of the Quay Café.

The Quay Café opened in 2010 under a 20-year lease agreement following consideration of a business plan prepared by the former clerk

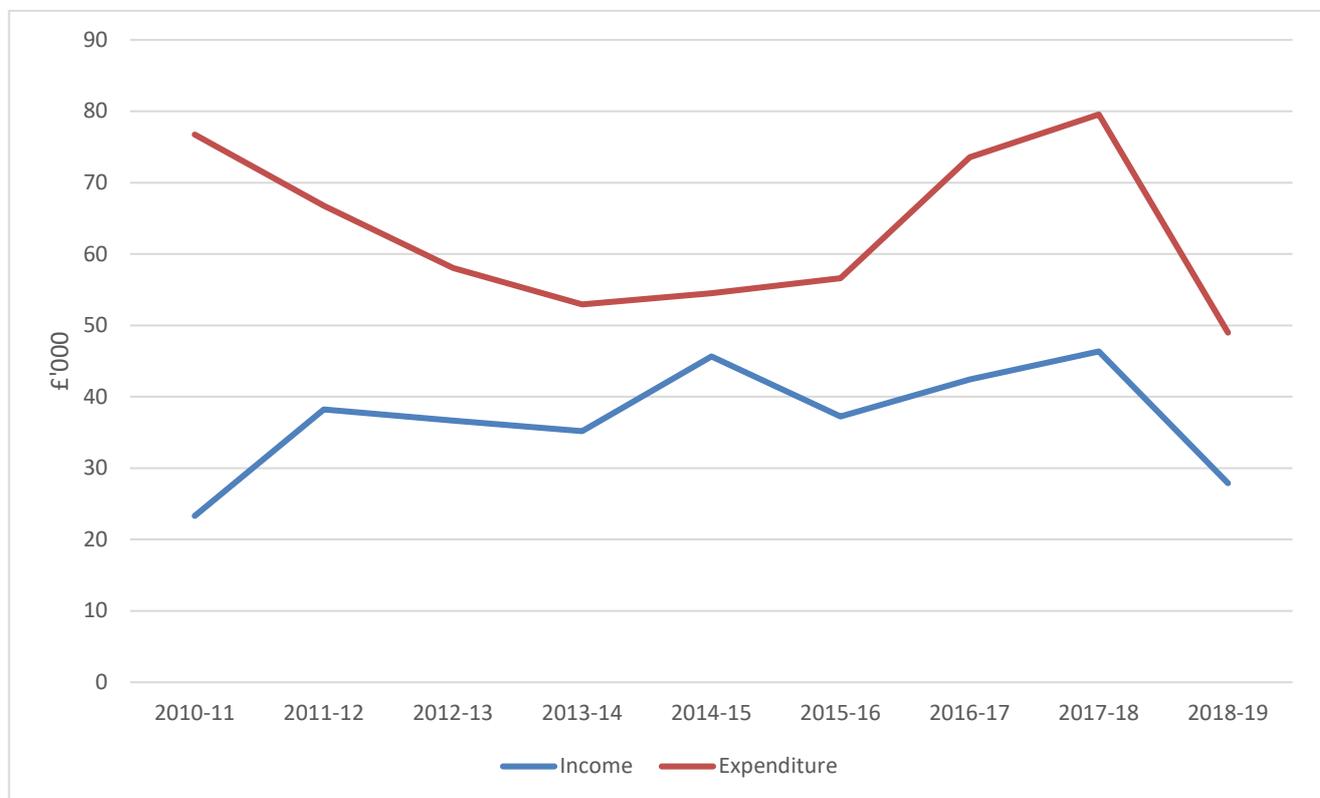
- 8 In 2009, the Council undertook a review of its existing accommodation needs. This review identified a need to relocate to a more convenient facility. In 2010, the Council relocated to its current offices on Fron Street, Connah's Quay. At the same time, the Council opened the Quay Café in premises adjacent to but not adjoined to its new offices. A report to the Council's Finance and General Purposes Committee in July 2018 noted that the relocation of the offices and creation of the facility as a café were undertaken as a joint project. 'The café was equipped with catering equipment to provide catering services for the Council's meeting/training room located in Quay Building. Members of the public also use the facilities to purchase refreshments.'
- 9 In a business plan submitted to the Council in 2009, the then clerk reported that an independent review by the Café Society indicated that footfall for the Quay Café would be approximately 296 visits per day. The target usage for the Café was set at 250 customers per day after three years. The business plan also noted that the Café would offer a broad range of products but at prices that reflected 'the provision of the café as a community facility/service and therefore the selling process have to reflect that these are not commercially based'.
- 10 The business plan included some supporting analysis but further information including any analysis by the Café Society, has not been provided to me. My review of the Council's papers indicates that prior to making its decision, the Council did not receive any further information other than that contained in the business plan.
- 11 The Council holds a 20-year lease on the Café premises, expiring in 2030.

The Café has incurred operating losses in excess of £234,000 since it opened in 2010 and these losses have been met by increased precept charges each year

- 12 The former clerk prepared a business plan for the Quay Café in February 2009. The business plan refers to the Council’s accommodation needs but does not clearly identify what those needs are or how the proposals in the business plan would address those needs. It includes reference to a financial plan, setting out various options ‘that have to be explored’, market analysis data and predicting an annual surplus from the Café’s second year of operation onwards, of over £22,000.
- 13 From its opening in 2010 up to 31 March 2018, the Quay Café has incurred a cumulative deficit of over £213,000. A deficit has been incurred in each year the café has been open. In the period from 1 April 2018 to 31 October 2018, the café incurred a further deficit of over £21,000.
- 14 The excess of annual expenditure over income is shown in **Exhibit 1** below.

Exhibit 1: annual income and expenditure for the Quay Café

The Quay Café’s expenditure has exceeded its income every year since opening in 2010.



- 15 In order to balance its finances, these losses have been met by the Council setting a higher precept than it would otherwise have needed to set. This has resulted in increased council tax charges to residents of Connah's Quay.
- 16 The initial annual rent was £11,000 and this is subject to rent reviews at three-year intervals. The current annual rent is approximately £13,000. Data provided by the Council demonstrates that excluding the lease rental payments, the Café still incurred a trading deficit in seven out of the eight years up to and including 2017-18.

On its opening, the Council lacked the statutory authority to operate the Café and its decision was not supported by a clear and coherent business plan and as a result the decision was, in my view, unlawful

While the Council is now able to apply its wellbeing powers to operate the Quay Café, when it made its decision to open and operate a café it did not have statutory authority to do so

- 17 As a statutory body, the Council only has such powers to act as are granted on it by statute. But it has wide-ranging incidental powers. Section 137 of the Local Government Act 1972 (the 1972 Act) allows the Council to spend up to an amount in any one year prescribed by regulations made by the Welsh Ministers for the direct benefit of the area or any part of it or all or some of its inhabitants. The Local Government (Wales) Measure 2011 (the Measure) extended to the Council a power to do anything it considers likely to promote or improve the economic, social or environmental wellbeing of its area.
- 18 These general powers are restricted in that they may not be applied in contravention of any prohibition, restriction or limitation of specific statutory provisions.
- 19 If a council decides to rely on the general power set out by section 137 of the 1972 Act it must keep a separate account of such expenditure and it must be specifically authorised by resolution.
- 20 It is the Council's responsibility to demonstrate that it has acted lawfully.
- 21 The Business Plan refers to the Council operating the Café as 'a community facility/service'. The Council does not appear to have given any consideration as to what powers it had to operate the Café from 2010.
- 22 It was not until April 2018 that, in response to my enquiries, the Council sought legal advice on its statutory powers to operate the Café. This advice suggested several potential powers for the Council to rely on. However, the advice obtained by the Council is itself flawed as it:
- refers to legislation that was repealed prior to 2010;

- does not recognise the wellbeing power available to the Council since 2011; and
- suggests that the operation of the Café was ancillary to the Council's other functions.

23 I consider that:

- in 2010, the Council would have had the statutory power to operate the Café under section 137 of the 1972 Act, had it considered whether or not the expenditure would have been in the interest of the area or its inhabitants;
- the operation of the Café is not ancillary to the Council's other functions as it represents a significant proportion of the Council's overall financial activities and it operates separately to the Council's other activities; and
- since 2011, the Council would have been able to operate the Quay Café by application of its wellbeing powers.

24 In a written submission to me, the Council has stated that when making the decision to open the café, it did so in good faith and did not deliberately set out to act unlawfully.

25 Notwithstanding this and although it is now able to rely on its wellbeing powers under the Measure, in my view the Council was not able to rely on any statutory power to open the Café in 2010 and therefore its original decision was, in my view, unlawful.

The Business Plan was poorly prepared and did not contain sufficient information to allow the Council to make an informed decision and therefore the Council acted unreasonably in relying on the Business Plan

26 In exercising any statutory powers, the Council must ensure that it acts reasonably. This means that it should take into account all matters that are relevant to its decision and should not take into account matters that are not relevant. When deciding on a project that has a significant financial impact, whether positive or negative, the Council should ensure it has a sound basis for making its decision. This basis will normally be set out in an option appraisal and business plan.

27 A well-prepared business plan would include:

- A clear statement of the purpose of the project and the statutory function being exercised
- An appraisal of any options for delivery
- A thorough financial analysis clearly setting out the expected financial consequences
- A risk and sensitivity analysis setting out potential risks and the financial consequences

28 The former clerk's business plan is incoherent and contains numerous weaknesses:

- it is not clear from the plan what the purpose of the document actually is. The plan refers to the Council's accommodation needs and the costs of relocation but there is little connection between this and the decision to open the Quay Café.
- financial information is provided that is not apparently relevant to the Café.
- options are listed for repayment of a £505,000 loan from the Public Works Loan Board and the business plan states that these are 'options that have to be explored due to the current economic climate'. However, there is no further assessment of the options.
- only limited evidence is provided to support the financial analysis included in the business plan. There is no evidence that assertions made regarding pricing structures and footfall that contributed to the financial analysis were subject to any validation.
- there is no consideration of risk nor any sensitivity analysis.

29 As the business plan contained fundamental flaws, the Council should not have relied on the plan when making a decision to open the Café.

There remains a need for the Council to consider the purpose of the Café and the statutory function it is discharging by operating the Café, and any decisions need to be supported by a full financial analysis

- 30 Following audit enquiries in the spring/summer of 2018, the Council's Finance and General Purposes Committee held a special meeting in June 2018. At this meeting, the committee considered a report from the current Clerk setting out options for the future of the Café. At this meeting, the committee recommended that the terms of reference for the Café be restated to focus on the community aspect of its operation and to allow organisations and groups to hire the café and enable the Council to provide catering facilities. This decision was however made with limited information in relation to the financial implications of running the Café.
- 31 The Clerk has been working on a full financial analysis of the Café and the Council will need to carefully consider this to ensure it understands the financial consequences of its decisions.
- 32 I understand that the Clerk is also reviewing the Council's standing orders to ensure they include a requirement for legal advice to be sought before the Council provides any new or innovative services.

Recommendations

33 It is important that the Council now takes positive action to address the deficiencies I have identified during the audit. Therefore, I have considered the actions taken by the Council in response to my initial conclusions and have made three recommendations for improvement as set out below:

Recommendations	
Financial and option appraisal	
R1	Prior to making any final decisions on the operation of the Quay Café, the Council should undertake a full option appraisal incorporating a full financial appraisal of each option.
Exercise of statutory powers	
R2	The Council should ensure that it has received appropriate advice, including legal advice, prior to making decisions on the provision of new or novel services.
Exercise of statutory powers	
R3	The Council should review the services it provides and ensure that it understands the statutory basis on which it provides those services.

Next steps

- 34 The Council is required by section 25 of the Public Audit (Wales) Act 2004 to consider this report at a full meeting of the Council within one month of the date it is issued. At the meeting, the Council will need to decide:
- whether the report requires it to take any action;
 - whether the recommendations in the report are to be accepted; and
 - what action (if any) to take in response to the report and recommendations.
- 35 The Council will then need to prepare a written response to the report and agree the wording of that response with me before publishing its response in accordance with section 25 of the Act.



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19 June 2019

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