

# Report in the Public Interest

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**North Dorset District Council**

**Audit of Accounts 2012/13**

**Car Parking Income**

## Summary

1. North Dorset District Council (the Council) operates twenty two off-street car parks, eleven of which it raises charges for. Gross income of approximately £550k per annum is raised on these car parks and in 2012/13 they produced a net income of £110k.
2. On 5<sup>th</sup> September 2011 the Council's Cabinet considered a report on the result of a review of its off-street car parking service. The report followed a consultation process with town and parish councils conducted over the previous six to nine months. The minutes of that meeting state that:

*'The income from the car parks was used to pay the business rates for each car park and helped to support discretionary services such as Tobys and Treads'*

3. In approving the changes in car parking fees the committee minutes state that the reason for its decision was:

*'To assist with maintaining the council's budget for the provision of key services.'*

4. In August 2013 a local government elector exercised their rights under the Audit Commission Act 1998 to object to the 2012/13 accounts of the Council. The elector contested that in setting car park charges at a level to support other key services, the Council had acted unlawfully because the Road Traffic Regulation Act 1984 (RTRA) Section 32, only permits councils to provide parking "for the purpose of relieving or preventing congestion of traffic".
5. In investigating this objection we concluded that the RTRA does not give councils the power to raise money from off-street parking charges for use on general services and therefore it is not lawful for councils to seek to raise a surplus from off-street parking charges to fund other services. In our view the Council's decision to increase fees in 2012/13 to support other services was unlawful.
6. This report is issued in the public interest under section 8 of the Audit Commission Act 1998 (the 1998 Act). This section of the 1998 Act requires us to consider whether, in the public interest, we should make a report on any significant matter coming to our attention to bring it to the notice of the audited body and the public. We are making this report in the public interest because:
  - i. the Council has acted unlawfully in using a charging power in the RTRA to raise revenue when setting its charges for 2012/13
  - ii. although the sums involved are not large in terms of the Council's overall income and expenditure, they are significant in the context of their annual savings plans
  - iii. the principle that statutory powers cannot be used for the purpose of raising revenue, unless the legislation clearly authorises them to do so, is one that applies to all councils and is worthy of publicising especially during times of austerity
  - iv. this was a remedy requested by the objector
  - v. the topic has been subject to discussion in the local press.

7. This Council in common with many others faces significant challenges in balancing its income and expenditure over the next few years. Central Government grant has been reduced significantly and it is clear that further reductions in grant will be made. The Council has done extremely well in identifying savings and efficiencies to date and had balanced its budget for 2015/16 but it estimates that it will need to identify further savings of £250k in 2016/17. It needs to ensure that in identifying further savings or sources of income that it does so in a lawful way, and in particular that it ensures that it considers and complies with any relevant restrictions when deciding to exercise powers to charge.

## Background

8. On 5<sup>th</sup> September 2011 the Council's Cabinet considered a report on the result of a review of its off-street car parking service. Each of the Council's car parks was reviewed individually and the stated purpose of the review was that:

*"This would give the District Council an understanding of the needs for each of the communities. Various options were put to these meetings as to ways parking and charging could be implemented to allow the District Council to increase revenue to sustain other priority services while providing a service to suit each towns' needs if possible."*

9. The Cabinet minutes for that meeting state:

*" that the previous council policy of retaining a 'free at point of use' car park in each market town had to change due to the increasingly difficult financial position the council was being put under. The income from the car parks was used to pay the business rates for each car park and helped to support discretionary services such as Tobys and Treads. [Note: these are grant aided groups that support young people]*

*..... that the aim of the review was to find ways of reducing costs to the council but at the same time protecting the income stream which, ..... was supporting discretionary services."*

The Council resolved the following:

- i) The changes and increases in the tariffs, as set out in the report be implemented from October 2011.*
- ii) The implementation of charges in non-chargeable car parks be implemented from 1 April 2012, as set out in the report.*
- iii) That the decision on the car park at Barton Hill, Shaftesbury be deferred to allow further negotiation to take place with the Town Council.*

*Reason for Decision*

*To assist with maintaining the council's budget for the provision of key services."*

10. In subsequent discussions the Council Leader has explained that:
  - i. The Council did not increase charges across the board but took a balanced view. Subsequently some car park charges have been reduced.

- ii. While not contesting the accuracy of the minutes, the wider consideration was to ensure that those services, such as car parking, where the Council does have discretion over the level of charges, must be self-financing. This is because other, discretionary services that do not generate income, and considered by the Council to be a priority, would be at greater risk, if fee generating services were not at least breaking even.
11. An analysis of the Council's accounts and budget books relating to its off-street parking service shows the following:

<b>Item</b>	<b>2012/13 £000 (the financial year this report concerns)</b>	<b>2013/14 £000</b>	<b>2014/15 Estimate £000</b>
Income	(562)	(564)	(555)
Direct Expenditure	165	150	162
Internal Recharges, other service costs & pension adjustment	211	321	320
Capital Programme Costs	76	0	90
<b>Net (Surplus)/Deficit</b>	<b>(110)</b>	<b>(93)</b>	<b>17</b>

12. Key points to note are:
- i. The Internal Recharges and Other Service Costs are costs incurred on car parking related services by other departments, for example street cleaning and grounds maintenance.
  - ii. The Capital Programme Costs in 2012/13 reflect an impairment adjustment and the charge in 2014/15 is for planned capital works for resurfacing works and replacement of car park machines. The latter have not actually been completed and we comment on this further in paragraphs 23 and 24.

## **The Law**

13. The powers for local authorities to provide and charge for car parking are set out in the Road Traffic Regulation Act 1984 (RTRA). Different provisions are set out in relation to on-street and off-street parking. Section 32 RTRA provides the authority for councils to provide off-street parking:

*"32. Power of local authorities to provide parking places.*

*(1) Where for the purpose of relieving or preventing congestion of traffic it appears to a local authority to be necessary to provide within their area suitable parking places for vehicles, the local authority, ...*

*(a) may provide off-street parking places ...."*

14. Section 35 provides the authority for councils to charge for use of off-street car parking:

*"35 Provisions as to use of parking places provided under s 32 or 33.*

(1) As respects any parking place—

(a) provided by a local authority under section 32 of this Act, or

(b) provided under any letting or arrangements made by a local authority under section 33(4) of this Act,

the local authority, subject to Parts I to III of Schedule 9 to this Act, may by order make provision as to—

i) the use of the parking place, and in particular the vehicles or class of vehicles which may be entitled to use it,

ii) the conditions on which it may be used,

iii) the charges to be paid in connection with its use (where it is an off-street one)..."

15. In the court case of *Attfield R v London Borough of Barnet*, Mr Attfield challenged the London Borough of Barnet because the Council had increased charges for residents' parking permits under Section 45 with the intention of generating a surplus beyond what was needed to operate the parking scheme, and to fund other transport expenditure. S45 relates specifically to on-street parking and is therefore of limited direct relevance in the case of this Council.
16. The Attfield case confirmed that the RTRA is not a fiscal or taxing statute and therefore it was not lawful in that case for the London Borough of Barnet to intend to raise a surplus from its on-street parking scheme to fund other transport services. This follows the established principle that councils may not use statutory powers for the purpose of raising revenue unless the language of the legislation clearly authorises them to do so.
17. It is also clear from the case law that budgeting for a surplus is not necessarily always unlawful in that there are other purposes than just covering costs which may, in public law terms, be part of the decision making process. For example, it would be legitimate to take into account wider parking policy such as setting on-street parking charges higher than cost in order to encourage use of off-street parking (here the purpose would be adjusting the balance of on street as against off street parking and not raising revenue). In practical terms it is very likely to be impossible to budget for the exact level of costs, with some over or undershoot being accepted as reasonable. It may also be prudent to budget for a surplus to allow for unforeseen expenses, shortfalls in other years, and payment of capital charges/debts.

### **The Council's Position**

18. At the Council's Cabinet meeting in September 2011 it received the results of its consultation exercise on car parking. The purpose to the consultation was to give the Council an:

"..understanding of the needs for each of the communities. Various options were put to these meetings as to ways parking and charging could be implemented to allow the District Council to increase revenue to sustain other priority services while providing a service to suit each towns' needs if possible. It would also give local communities the opportunity of discussing and assisting in the decision making process."

19. This suggests that a key factor in increasing charges was to 'sustain other priority services'. Similarly the minutes of that meeting state:

"The income from the car parks was used to pay the business rates for each car park and helped to support discretionary services such as Tobys and Treads.

..... the aim of the review was to find ways of reducing costs to the council but at the same time protecting the income stream which, as she had already stated, was supporting discretionary services."

20. In approving the changes in car parking fees the committee minutes state that the reason for its decision was:

'To assist with maintaining the council's budget for the provision of key services.'

21. While it might be contested that car parking is a 'key service' the minutes quoted above show a clear intention to support services other than car parking with parking charges income.

### Level of Surplus

22. The surplus on car parking shown in the Council's accounts and budget books for 2012/13 (the year under audit and to which this report relates) and 2013/14 is £110k and £93k respectively. This equates to a return of approximately 20%. Following discussions with the Council, it has provided figures in relation to its car parking costs for 2014/15, to demonstrate that it was no longer planning to make a surplus on off-street car parks. These figures included the following capital works:

Resurfacing works	£55,000
Car park machines	£15,000
Resurfacing access road and bridge	£20,000

23. We understand that members were not originally provided with this information in relation to capital costs when setting the charges. In setting future off-street car park charges the Council should take into account all of its costs of providing the service, both capital and revenue and the level of surplus it has achieved in previous years. It should consider preparing a 'trading account' to accompany its budget book that includes both revenue and capital costs and which would provide a useful source of information for members in taking future decisions on charging levels.
24. The Council has informed us that the above capital works will not actually be started in 2014/15 and consequently there will be an estimated net surplus of approximately £70k. Officers have explained that these capital works have had to be delayed while resources were employed in dealing with the problems caused by the flooding of last winter. It is in our view legitimate for a surplus to arise as a result of such unforeseen circumstances: the key issue is to avoid planning to make a surplus purely to raise general revenue.

## Findings and Conclusion

25. On the basis of our findings our conclusions are that:
  - i. The Council has used its statutory powers to set off-street parking charges with the intention of raising revenue to support other key services in 2012/13. It did not have regard to the fact that such charges may not be set with the intention of raising revenue.
  - ii. In setting car park charges members have not been routinely made aware of the full costs (including the impact of capital expenditure) or other information which it may be relevant to take into consideration such as the level of any surplus achieved in previous years.
26. The Council has acknowledged that in setting its car park charges for 2012/13 it intended to raise revenue but will not do so in future.

## Recommendations

27. We recommend that:
  - i. The Council ensures that in setting all fees and charges it does so in the context of the specific requirements of the relevant legislation.
  - ii. In setting future budgets for off-street car parking the Council should ensure that it does not set charges with the intention of raising revenue unless justified by statute.
  - iii. In setting future charges members are provided with information on both the revenue and capital costs of providing the service and the level of surplus achieved in previous years.
  - iv. The Council considers keeping a separate account of its income and expenditure from off-street parking in order to aid decision making on future levels of charges.