

16 March 2020

The Chairman
Scarborough Borough Council Audit Committee
Council Chamber
Town Hall
St Nicholas Street
Scarborough
YO11 2HG

Your Ref:
Our Ref: GDP/DGR/372027-00001
E.Mail: g.pinwell@ashfords.co.uk
Direct Dial: 01752 526015
Direct Fax: 01752 526215

Dear Sir/Madam

Report relating to DBID Independent Investigation

I have been appointed by the Yorkshire Coast Levy Payers Association in connection with the above matter. I have had opportunity to consider the Report to the Committee and the Report of the Investigator. I have the following points, which I should be glad if you would consider and respond to as part of the consideration of the report by the Council.

In this letter, I will refer to the Business Improvement Districts (England) Regulations 2004 as "the Regulations".

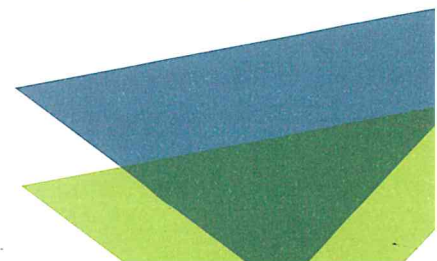
The first area of concern relates to the identification of the DBID Area. The matter is referred to at page 19 of the Report.

Regulation 4 deals with persons seeking or making BID proposals to notify the relevant billing authority of proposals and to comply with matters included in paragraphs 1, 2 and 3 of Schedule 1 to the Regulations. Paragraph 1(i)(c) requires a map showing within which the BID arrangements are to have an effect. Regulation 5.2 provides that the billing authority does not have to proceed until it has a proposal that complies with the requirements of Regulation 4(i) and 4(ii). From the Report, it is clear that no Definitive Plan was submitted to the Council to enable it to decide to proceed with the BID.

Therefore, the Council acted unlawfully by proceeding with the process and the ballot as the initial BID proposals were defective. This is a fundamental flaw in the process and this should lead the Council to but one conclusion – that the ballot process should be re-run. The whole of the ballot has been commenced from an unlawful start. I therefore request that the Committee consider re-holding the ballot so that a lawful process can be undertaken.

I am aware of the response of the Secretary of State pursuant to Regulation 9. However, in the interests of democracy, and of openness and transparency, I would ask the Council to consider liaising with the Secretary of State to report the irregularities in this report and agree a way forward which respects the democratic interests of those persons involved.

I refer you to page 32 of the Report and, in particular, paragraphs 5.4 to 5.11. Your investigator states that he has not identified any specific material irregularity in the carrying out of the DBID Ballot. There is a clear material irregularity in that a plan showing the area of the DBID was not provided and available with the original 26434147.1



proposal. In addition, he has significant concerns as to parts of the process. These relate to a lack of experience of the Electoral Services Team and the reliance on advice from Mosaic, which has not accurate.

If you put these two matters together, I would suggest to you that this does constitute a material irregularity.

Whilst the Report seeks to legitimise the overwhelming sense of irregularity and perhaps good practice, by adherence to the strict regulations. My clients are materially affected by the approach of the Council to this whole process and, as a consequence, do not consider that democracy was complied with, nor was there an appropriate process to enable those that were affected by the ballot were able to exercise their democratic voice.

As a consequence, I would ask the Council to consider its wider democratic duty to the businesses in the DBID and regardless of the regulations, seek to re-ballot the area in a proper and efficient way, addressing the deficiencies that the Investigator has identified in the report.

The Report has the feel that the Council has considered the issues but it has no appetite to address the democratic deficit that has occurred by the procedures that were followed. In terms of the Council's own approach, I am sure its elected members would want the Council to be seen to have operated to the highest standards and in accordance with the regulations, rather than seeking a solution which states there were irregularities and deficiencies in the process but we are not interested to address the real concerns of those directly affected by the BID proposals.

List of Voters

I have read Report and it makes disturbing reading. The list of voters was done far too late.

The Council used the list as provided by Mosaic and this has led your own investigator to have two particular concerns.

Firstly, the list was not consistent to include the names of the bill payers where they appeared in the original data. When the data was cleansed it was replaced with the words "owner/occupier". As your own investigator acknowledges at paragraph 5.17, the names (if known) should have been used.

Secondly, there is a concern at paragraph 5.18 that the list was filtered in an inconsistent way.

At paragraph 5.20, the investigator clearly states that "although not a technical breach of the Regulations, the ballot was carried out in a way incompatible with the ballot being administered in a consistent and fair manner." The elected members of this Committee are elected by a ballot and I am sure they would want to ensure that any ballot electing them was carried out in a fair and consistent manner.

What is being put before you today, is clearly a statement that the ballot which led to the result was not administered in a consistent and fair manner. These are not my words but the words of your own investigator and I fail to see how action of this nature can be condoned or approved of. Any reasonable Council faced with such a situation would take but one action. Regardless of the regulations, it would liaise with the DBID partnership, advise it of the significant deficiencies in the process and agree a democratic and accountable way forward to resolve matters.

It would be appropriate for the Council to perhaps consider an alteration of the BID arrangements to address the very concerns that are set out by your investigator.

Undelivered Envelopes

Again, there is clear evidence that good practice was not followed.

Communication

Paragraph 5.36 – here is a clear statement that there was not a map of the DBID area readily available throughout. Therefore, this takes me back to my original point that the Council was not able to lawfully commence the process as the documents it received from Mosaic were defective.

Summary

I would respectfully draw your attention to paragraph 6. It paints a sad indictment of the whole process. If one is generous, it was sloppy and failed to follow good practice. It failed to encourage participation ballot papers should have been sent to the bill payers correspondence, not the hereditament address. It is clear that this inconsistent approach was inappropriate.

In summary, it is considered that the report exposes severe deficiencies in the process. The Council has a wider democratic remit than to merely follow adherence to the Regulations. In light of the severe deficiencies set out in the report, it is incumbent on the Council to hold meetings with the DBID organisation and interested parties to seek to find an acceptable way forward. It may be that there needs to be a general commitment to consider an alteration of the BID arrangements, which should be conducted in an appropriate way in order to give credence to the Council as the accountable body for such a function. This proposal has not been explored as part of the report from the investigator.

Yours sincerely



**Gareth Pinwell
for Ashfords LLP**