

**REPORT FOR THE GROBY PARISH COUNCIL
RELATING TO
GROBY CIC**

Knights

Midland House

West Way

Botley

This report is addressed to and is solely for the benefit of Groby Parish Council (the **Council**) and focuses on the Council's investment in Groby C.I.C. registered with company number 08643775 (the **CIC**).

BACKGROUND

In April 2011 a number of residents in Groby were concerned about land on the north west side of Newtown Linford Lane, registered with title number LT415137 (the **Meadow**), so raised money to buy this as a community asset.

We understand from what we have seen that a number of residents (unfortunately we do not have breakdown or further records relating to the payments other than a bank statement for 18 April to 20 May 2011 which notes some payment in and some unpaid cheques paid out including a cheque paid in for £34,925 and an internet transfer paid in of £19,000 which both seem quite significant amounts in the circumstances) paid £41,475 in aggregate to the Council's account No.2 (this amount matches the amount included as income in the Council's income & expenditure account for 01/04/2011 to 31/03/2012) and the Council contributed £25,000 (each of these residents and the Council being an **Investor**) making a total of £66,475 (the **Investment**) – the Council's contribution being 37.608% of the total Investment.

Contracts for the purchase exchanged on 20 April 2011 and the transfer to the Council of the land completed on 11 May 2011. The price paid for the land was £60,000 leaving £6,475. The assumption is that the Council were at this stage holding the land on trust for the Council and the other Investors.

We have seen a statement of account which includes a total of £918 the legal fees, VAT and expenses for the transfer and a covering letter dated 26 April 2011 from the agent which mentions an invoice for a Buyers Premium of £350 having been paid. This payment of the £350 is reflected in the payment schedule to the Council minutes of a meeting on 16 May 2011. Also in this schedule is reference to a payment of £6,000 which we assume to be the deposit and part of the £60,000 purchase price. The other amount in this schedule referred to as for the "Community Trust Purchase" is £18,650 but it is not clear what this relates to.

We have also seen an invoice dated 17 July 2012 and a cheque request for the Council dated 6 August 2012 for CIC legal fees of £1,140 (inclusive of VAT).

Combined this accounts for a further £2,058 leaving £4,417 from the Investment.

The Council's income & expenditure account for 01/04/2011 to 31/03/2012 mentions related expenditure of £37,007.59 but there is no detail as to what makes up this number.

The intention was that the Council would, on behalf of the Council and the other Investors, transfer the land to an entity set up for the purpose of holding this for the community.

The CIC was incorporated on 8 August 2013.

At a Council meeting on 7 October 2013 it was resolved "that the Chairman of the Parish Council and the Chairman of the Parks & Cemetery Committee are duly authorised by the Parish Council to sign the transfer documentation on behalf of the Parish Council." At a Council meeting on 2 December 2013, it was resolved "That the Chairman and Vice Chairman, on behalf of the Parish Council, sign the transfer deeds to transfer the land from the Parish Council to the Groby CIC on 1st January 2014". The transfer deed was signed but it is not clear what then happened with this document.

The minutes of the Council meeting on 7 April 2014 includes a resolution "to close the GPC2 bank account and transfer the remaining funds to the new Groby CIC bank account".

The record keeping of both the Council and the CIC have been inadequate both on incorporation of the CIC and since. Consequently, it is not clear what the Investment is now reflected as – debt, equity or a mixture.

Knights have reviewed a number of documents provided by the Clerk and Councillor Peter Batty and a timeline and summary relating to this review is annexed to this report.

ANALYSIS

There are significant inconsistencies in the documents and correspondence reviewed. Although these mean that all parties involved could put forward arguments to support a number of different scenarios, it also means that all parties involved could now reach an agreement on this going forward. If agreement cannot be reached then this will make it very difficult for both the Council and the CIC to move this forward without applying for a court order which will be very expensive and time consuming.

From all the documents and correspondence that has been reviewed, the general consensus seems to be that:

- the community's expectation was that the Council's investment included an element of debt and 10% voting equity (to represent the rest of the community who has not invested);
- the Council have also previously minuted that there is a debt, in particular in relation to repayment terms at a meeting on 2 December 2013.*

*The minutes say "To accept the proposal from the Groby CIC to reduce the value of the money used by the Parish Council to support the purchase of the Meadow; that being a repayment not less than 25% of the operating profit of the Groby CIC at the end of each financial year, excluding any funds raised from direct funding applications, such as Community Forum, Lottery, etc.").

It would appear that the CIC has relied on this and reflected a debt in its accounts, albeit that it has included the full £25,000.

In relation to the transfer of the land, as set out above it is clear from the minutes that the intention was for this to be effective from 1 January 2014 and so there is an argument that beneficial interest in the land has transferred but the legal title may not have yet been. We have seen references to the solicitor adding an incorrect date to the transfer deed at a later date but cannot comment on this. We have also seen a query over whether or not the CIC is being governed in an appropriate manner for the Council to now transfer the legal title and although we cannot comment on the day to day governance, the CIC does need to rectify a number of issues to be considered as being fully compliant.

Assuming the CIC have a beneficial interest in the land and have done so since 1 January 2014, a further assumption is that the CIC would have given consideration for the land in the form of shares and/or debt in favour of the Council and the other Investors.

We assume the other Investors received shares but have not seen any supporting information about the details of this.

Assuming the balance of money in the bank account was transferred, again we do not know how it was accounted for – was it being held on trust for the CIC and so distributed accordingly, was it a donation, was it part of a loan, was it for shares? As nothing else is mentioned we assume it is the first suggestion.

Based on the expectations expressed at the time and mentioned above, part of the Council's investment was made by way of:

- debt (as seems to have been the expectation at the end of 2013) - a written loan agreement should have been drafted and signed by the Council and the CIC and in addition it should have been shown as such in the Council's accounts, but the understanding is that this has not happened and so adjustments would need to be made and an explanation given for this;
- 10% of the voting equity - the CIC records need to be corrected (including the register of members, confirmation statements and articles of association). If the CIC will not do this voluntarily the Council will need to apply to court for a court order to rectify the register of members.

A simple math's exercise would be to say for 10% of the voting equity, an amount equivalent to 10% of the original total Investment should have been converted to these shares so:

- 10% of £66,475 is £6,647.50 for shares (but these shares always entitle the Council to 10% of the votes even if diluted);
- leaving £18,352.50 as debt - this, however, would be different to the CIC's expectations in 2013 which from the CIC minutes from November 2013 were that the £25,000 was a debt and so would require amendments to both the Council and the CIC's accounts.

There is mention in correspondence which has been reviewed of the Council having more shares initially and this being reduced if other residents wish to invest. The only way I could see this working is if the Council were to have been issued with 37.608% of the shares, 10% being voting shares (with rights to maintain the voting rights at 10% regardless of dilution) and the other 27.608% being non-voting redeemable shares. However, this makes the structure more complicated and advice at the time should have been to keep it simpler if possible – it has certainly not been provided for in the CIC's articles of association and so the assumption is that this was the advice at the time.

Another alternative would be for the £25,000 to all be recorded as a debt and the Council to be issued with 1 share with an entitlement to 10% of the votes but again this has not been provided for in the CIC's articles of association and so the assumption is that this was not what was anticipated.

NEXT STEPS

As has been indicated above, there is no perfect solution to this, and our understanding is that doing nothing is not an option, so a solution should be agreed between the Council and the CIC and this could include now documenting:

- A mixture of 10% of the voting equity and outstanding debt;
- 10% of the voting equity but writing off to the extent there is any outstanding debt;

- Convert any or all of the debt (either the balance or the full £25,000) to equity which will reduce the debt but increase the equity.

All of these options should be discussed with the accountants for the Council and the CIC to understand the accounting and tax implications.

The CIC need to be much better with their record keeping and in addition to this will need to amend their articles of association. To do this (and to ratify what has happened to date including some of the inconsistencies, authority to allot shares and any queries over appointment of directors) they need to put resolutions to the shareholders. To do this they need to be confident who the shareholders are, however, the information at Companies House is inconsistent and incomplete to rely on and we understand there is no register of members (which also needs to be reconstituted as best as possible and the spreadsheet provided from January 2023 is a good starting point for this).

One option would be for a stakeholder meeting to be called for this to be discussed and agreed. A reconstituted register of members could be made available for inspection by the residents and those the CIC think are shareholders. Anyone not included as a shareholder can be given the opportunity to prove that they did make a payment as part of the Investment and so should hold shares. Once there is a reliable register of members, a shareholder general meeting can be called to approve new articles of association and the ratification of anything that requires ratification.

Going forwards, the directors need to ensure that the register of members is maintained and correct information filed at Companies House.

As the Council are representing the rest of the community with their investment in the CIC they should hold the CIC to account in relation to its administration and governance, whether this be by providing the resources to deal with this (as was indicated as one of the original intentions) or asking for regular updates and checking compliance. Training should be given to whoever will be responsible for this.

Knights

Signed for and on behalf of

Knights Professional Services Limited

Dated: 4 July 2024