

Report into the Investigation of the Green Man Sign and Black's Head incident

1. Conclusions of the Independent Person

- 1.1 As stated in section 3 of the main report, I was appointed to provide an independent perspective on this investigation. I am satisfied that the investigating team carried out the investigation objectively, thoroughly and comprehensively according to the objectives set out in section 3. I attended team meetings and was given access to all documentation necessary to make my assessment. I requested certain additional lines of enquiry and these were followed up, with appropriate documentation provided.
- 1.2 The timeline summarised in section 5 is as accurate as it can be from the interviews with witnesses and copies of emails, media reports etc made available to the investigating team.
- 1.3 It is not part of my remit to comment on the merits or demerits of the Black's Head sign itself. Subject to that proviso, my conclusions are as follows:
 - 1.3.1 In the light of the Black Lives Matter movement and protests, the atmosphere surrounding the events of 8-11 June 2020 was highly charged. Attacks on statues and other artefacts were happening around the country, and the statue of Edward Colston had been toppled and dumped in Bristol harbour on 7 June. Once the two petitions relating to the Black's Head, and the national and local media coverage of them, gained momentum, pressure mounted and decisions had to be taken by the Council quickly and at the highest level.
 - 1.3.2 It was therefore appropriate that the Council's senior management team - the Corporate Leadership Team ("CLT") - discussed the matter on the morning of Monday 8 June. The CLT took the decision to remove the Head in the interests of public safety and to protect an historic Grade II* listed artefact. A press statement to this effect was subsequently issued following consultation with Council leaders and Ashbourne ward councillors. The press statement also promised consultation with councillors and local people on the future of the Head. It seems to me that the decision of the CLT was reasonable and proportionate in the circumstances.
 - 1.3.3 It was proposed to remove the Head at 5am on Tuesday 9 June. However, on the evening of 8 June, a crowd of 100-150 people gathered around the Green Man and Black's Head sign in Ashbourne. It is clear from witness statements that emotions were running high with elements of the crowd wanting to both remove the head and keep it in place. Councillor Stuart Lees - a local resident and district councillor for Ashbourne North ward - was present and decided to contact the Leader of the Council - Councillor Purdy. As a result of telephone discussions between Councillors Lees and Purdy, and

Councillor Purdy and the Chief Executive, Paul Wilson, it was decided to allow two members of the crowd to remove the Head using ladders. It was stated that Councillor Lees and Councillor Donnelly (who was also present) were ex-firefighters and used to making sure ladders were used safely. Councillor Lees promised to ensure that the Head - once removed - would be stored in a secure place.

- 1.3.4 From the records of the evening of 8 June that I have examined, it seems reasonable to assume that Councillor Lees undertook the role of community leader in facilitating liaison between the crowd and the Council's leadership and obtaining a consensus agreement from the crowd for the Head to be removed. In doing so, a volatile situation was defused and an acceptable solution agreed. The role that Councillor Lees performed admirably on the night was an entirely correct one in the context of the roles of councillors set out in Article 2.02 of the Council's Constitution – see paragraph 7.23 of the main report.
 - 1.3.5 I also conclude that the decision of the Chief Executive, in consultation with the Leader of the Council, in the latter's capacity as Chairman of the Emergency Committee, was reasonable and proportionate in the circumstances in order to protect the Head and avoid a potential public order incident.
 - 1.3.6 Following the events of the evening of 8 June, the handover of the Head needed to be arranged and a decision had to be taken as where the Head should be stored pending a decision on its future following consultation. It was reported that there was a strong feeling amongst the people of Ashbourne that it should not be stored at the Town Hall, Matlock, despite Derbyshire Dales District Council being the legal owner. The Chief Executive took the decision to protect the Head by agreeing to it being placed on deposit at the Derbyshire Record Office. The handover to the Derbyshire Record Office took place on the afternoon of Thursday 11 June, in the presence of Councillor Lees, an Ashbourne resident and a Council officer. It seems to me that the decision of the Chief Executive was reasonable and proportionate in the circumstances in order to enable the Head to be stored securely and professionally while remaining in the ownership of the Council.
- 1.4 I now turn to the constitutional process for taking decisions within the Council. Section 8 of the report sets out the legislative and constitutional requirements for decision-making. It is important, in this context, to recognise that there are many decisions which flow naturally from the management and operation of Council functions and which do not require a formal decision of a committee or senior officer. For example, the specification and letting of a contract for the maintenance of the Council's parks would require a decision of a committee or senior officer, whereas a decision on when to cut the grass would be operational.

- 1.5 As stated in the report, the Head is an asset of the Council and therefore within the delegations to the Governance and Resources Committee. However, there is no corresponding delegation to an officer so, in theory, all asset management decisions should be taken by that committee. There are other similar anomalies in the constitution and these should be reviewed and corrected at the earliest opportunity to alleviate the possibility of decisions being legally challenged.
- 1.6 My view of the decisions taken between 8-11 June is that they were high-profile policy decisions which should properly have been taken by elected members at committee level. They were not operational decisions. However, in view of the fact that events were moving at an extremely fast pace, it was impractical to convene a committee meeting and therefore decisions had to be taken by the Chief Executive, or Director of Corporate and Customer Services, under their delegated powers in cases of urgency set out in Part 3 of the constitution. These are reproduced on paragraph 8.12 of the report.
- 1.7. The decisions in question were:
- to remove the Head in the interests of public safety and to protect an historic Grade II* listed artefact, taken by CLT on the morning of 8 June.
 - to agree to the removal of the Head by two Ashbourne residents on the evening of 8 June, taken by the Chief Executive in consultation with the Chair of the Emergency Committee.
 - to approve the handover of the Head and its deposit with the Derbyshire Records Office, taken by the Chief Executive on 10 June.
- 1.8 The report goes into some detail about the Council's consideration of the two electronic petitions. As these petitions were not properly submitted to the Council, I do not think that that the Council was at fault. However, the Council's arrangements for petitions are somewhat imprecise and should be reviewed and updated.
- 1.9 As stated in the report, the decisions in paragraph 1.7 were not taken strictly in accordance with the urgency provisions of the constitution. In particular, at no point was the required advice sought from the Monitoring Officer. It was reported that the Monitoring Officer was on phased retirement and not at work on 8 June. The Legal Services Manager (who acted as Deputy Monitoring Officer) was available and could have been consulted about the CLT decision. However, it is likely that the decisions would have been the same.
- 1.10 Another issue is that I can find no evidence of the decisions of the Chief Executive being formally recorded other than in the content of emails which is not sufficient. In addition, good practice would dictate that all meetings of the CLT are formally minuted; the meeting on 8 June 2020 was not.
- 1.11 There was a meeting of the Emergency Committee on 11 June 2020. Approval of the decisions taken in relation to the Head could have been sought at that meeting by placing a late item on the agenda. Instead, the matter was

dealt with by answers to questions. Similarly, there was no report to the next available meeting of the Governance and Resources Committee – the committee responsible for asset management - on 20 August 2020.

- 1.12 However, it must be remembered that events and decisions relating to the Head were dealt with in a very challenging situation. Not only was there the charged atmosphere and rapidly changing circumstances of the Black Lives Matter protests, but also the Council was in the middle of dealing with the Covid-19 pandemic when, quite rightly, its primary focus was the health and wellbeing of the people and businesses of the Derbyshire Dales.
- 1.13 My overall conclusion, therefore, is that the key players in the events of 8-11 June 2020 acted responsively, responsibly and reasonably in the prevailing circumstances.
- 1.14 Given what I have found in this investigation, I would make the following recommendations:
 - A. That the Council's Constitution is reviewed to ensure that appropriate delegations are in place covering decision-making at member and officer levels.
 - B. That the Council's arrangements for petitions are reviewed and improved, and that a clear, plain language policy is drawn up. Once that is done and the policy approved by the Council, a step-by-step guide should be produced for the Council's website and other relevant communication channels.
 - C. That all meetings of the Corporate Leadership Team (CLT) are formally minuted and that actions are allocated to officers so that decisions are taken properly in accordance with the Principles of Decision Making set out in Article 10 of the constitution.
 - D. That urgent decisions of the Chief Executive, or Director of Corporate and Customer Services are formally recorded, with confirmation that the required consultations have taken place, and reported for information to the next available meeting of the Council.
 - E. That the Council consider organising awareness-raising training in decision-making under the Constitution.
- 1.15 Finally, I should like to thank the members of the Legal Services Team who conducted the investigation.

MAIN REPORT

2. Background

- 2.1 Derbyshire Dales District Council ('the Council') is the owner of the gallows sign over St John Street, Ashbourne advertising the Green Man and Black's Head Royal Hotel. The sign was erected in the early 19th Century and is Grade II* listed. It features a caricatured sculpture of a Black Man's Head ('the Head') which was removed at approximately 9.40pm on 8 June 2020.
- 2.2 The events of 8 June should be viewed in the context of the wider protests and reflections across the globe arising from the death during arrest of George Floyd in Minneapolis, USA on 25 May 2020. Within the UK, whilst the majority of the Black Lives Matter protests were peaceful, there were notable clashes between protesters and police on multiple occasions in London. In addition, there were cases of vandalism of historical statues, which was at the heart of the actions and decisions which this review is concerned with.

3. Objective of the Investigation

- 3.1 At the meeting of the Council held on the 2nd July 2020 the investigation objectives were reported. These were to:-
 - 3.1.1 Establish a factual timeline of events which resulted in the removal of the Blacks Head, Ashbourne and its safe return to the custody of the District Council;
 - 3.1.2 Clarify the capacity of individuals involved and the source/authority of any permission granted.
- 3.2 The investigation team included members of the internal legal team and was independently reviewed by Steve Dunning, one of the Council's appointed Independent Persons. Mr. Dunning is also a former Assistant Director, Democratic Services at Derby City Council with many years' experience in local authority constitutional issues.
- 3.3 The timeframe for completion was for the Council meeting on 27th August 2020. However the Investigating Officers and the Independent Person required additional time in order to undertake a comprehensive review to be reported to Council on 8 October 2020. This was agreed by the new Monitoring Officer.

4. Investigation Process and Final Report

- 4.1 As part of the investigation process there have been weekly meetings with the investigating officers and the Independent Person, overseen by the Legal Services Manager. Investigating Officers have produced a detailed timeline of events, and as more information was reviewed and obtained, this was added into the sequence of events set out in this report.

- 4.2 The Independent Person has received regular updated versions of the timeline, been given access to any requested documents and has given guidance to Officers as to additional lines of investigation that he would wish to see undertaken.
- 4.3 The report has been drafted with the guidance of the Independent Person who has approved the final draft. The Independent Person's conclusions are set out at the beginning of the report.
- 4.4 As this event occurred prior to the Annual Meeting of the Council on 22nd July 2020, where the revised Constitution was approved, all references to the Constitution are to the version in place prior to this meeting and any reference to posts were those as contained in the Constitution; namely Head of Service rather than the new titles of Director, as those were the titles referred to in the Constitution at that time.

5. Important dates drawn from the time line

- 5.1 The detailed timeline produced by the Investigating Officers extends to 57 pages and details times and dates of all emails and approximate times of meeting and conversations. The Investigating Officers have however summarised below the salient actions and decisions.
- | | |
|------------------------|---|
| a) 5 June 2020 | <ul style="list-style-type: none"> • The Derby Telegraph reports on a petition demanding that the Council removes the Head. |
| b) 6 June 2020 | <ul style="list-style-type: none"> • The Derby Telegraph reports a rival petition in favour of keeping the Head in place. |
| c) 7 June 2020 | <ul style="list-style-type: none"> • Council officers are made aware of the petitions following press enquiries. |
| d) 8 June 2020 - 1137 | <ul style="list-style-type: none"> • It was recorded following a conversation with the Council's Communications and Marketing Manager, that Ashbourne Town Council are concerned about possible criminal damage to the sign in the light of the removal yesterday of the Colston statue in Bristol |
| e) 8 June 2020 – 12:00 | <ul style="list-style-type: none"> • Corporate Leadership Team (CLT) meet and agree that the Head should be removed in the interests of public safety and to protect a historic listed Grade II* artefact. |

- f) 8 June 2020 - 1250
- CLT had decided to remove the head on a temporary basis in order to prevent any risk to public safety and/or potential damage to the head. This was to be followed up with a report to the Emergency Committee and then what happened next would be dependent on the EC decision – taking into account its listed status and the consultation that would be needed if the Council were to seek to remove it permanently.
- g) 8 June 2020 - 1434
- Reply from the Leader of the Council that “we need to have it removed in order to prevent any untoward incidents”
- h) 8 June 2020 – 15:00
- Following consultation between the CLT, the Council Leader and Deputy Leader and Ashbourne ward members the Council releases a press statement to the effect that:
 - The sign was the property of the Council,
 - The Head will be removed with immediate effect,
 - The future of the sign will be determined following public consultation. As a Grade II* listed structure, alterations to the sign require the consent of Heritage England or the Secretary of State.
- i) 8 June 2020 - 1513
- Derwent Tree Services were instructed to remove the sign
- j) 8 June 2020 – 15:00 to 17:00
- Arrangements were made by Council officers to remove the Head at 05:00 on the 9 June 2020.
- k) 8 June 2020 – 19:55
- A sign reading ‘save me’ is hung from the head by a member of the public. A crowd begins to gather around the sign.
- l) 8 June 2020 – 20.50 - 21:15 approx
- Cllr Lees informs Cllr Purdy that he is at the scene and has spoken with the crowd who insist on the Head being removed immediately. Cllr Purdy discusses with Paul Wilson, Chief Executive who agreed with the view of the Leader that the Head should be taken down to defuse the situation and avoid the risk of damage to the sign. This is passed to Cllr Lees.

- m) 8 June 2020 – 21:43
 - The Head is removed from the sign and placed in a van driven by Cllr Lees.
- n) 8 June 2020 – 22:24
 - Cllr Lees leaves the scene with the Head.
- o) 9 June 2020 - 1018
 - The Council releases a press statement regarding the events of the evening of 8 June 2020, and that it did not object to the removal of the Head.
- p) 11 June 2020 – 15:55
 - Cllr Lees hands over the Head at the Derbyshire County Council Record Office.

6. Individuals contacted during the Investigation were the following:-

- Ashley Watts - Head of Community & Environmental Services Derbyshire Dales District Council
- Ann Smith* - Ashbourne Town Council Councillor St Oswalds
- Carole Dean - Town Clerk of Ashbourne Town Council
- Denise Brown* - Ashbourne Town - Council Councillor ward Hilltop
- Derbyshire Constabulary
- Jim Fearn - Communications and Marketing Manager Derbyshire Dales District Council
- Gary Purdy – Derbyshire Dales District Council Councillor Masson Ward Leader of the Council and Chair of the Emergency Committee
- Karen Henriksen - Head of Resources Derbyshire Dales District Council
- Keith Postlewaite - Neighbourhoods Manager Derbyshire Dales District Council
- Mike Galsworthy - Estates and Facilities Manager Derbyshire Dales District Council
- Paul Wilson - Chief Executive Derbyshire Dales District Council
- Robert Archer - Derbyshire Dales District Council Councillor Ashbourne South
- Robert Coggins - Head of Housing Derbyshire Dales District Council
- Sandra Lamb (Now Retired) - Head of Corporate Services Derbyshire Dales District Council & Monitoring Officer
- Sean Clayton* - Ashbourne Town Council Councillor Ward Parkside
- Steve Capes - Head of Regeneration & Policy Derbyshire Dales District Council
- Stuart Lees – Derbyshire Dales District Council Councillor Ashbourne North
- Susan Bull* – Derbyshire Dales District Council Councillor Ashbourne North and Ashbourne Town Council Councillor St Oswalds

- Thomas Donnelly - Derbyshire Dales District Council Councillor Ashbourne South
- Tim Braund - Head of Regulatory Services Derbyshire Dales District Council

6.1 As part of the investigation the Investigating Officers have reviewed email correspondence, CCTV footage, press reports and took personal testimony from relevant parties. .

6.2 The people with a * next to their name indicates people that have been contacted, but either comments or documents have not been provided or if comments and documents have been provided that they have not been formally approved by that person.

7 **Actions of District and Town Councillors**

7.1 The Investigating Officers have reviewed the actions of elected members to ascertain in what capacity they were acting, namely in a private capacity or one of an elected member.

7.2 In considering the actions, the Investigating Officers compared these against the principles set out at Article 2:02 of the Constitution, which specifies the Key Roles of Councillors

(a) **Key Roles.** *All Councillors will:*

- (i) *collectively be the ultimate policy-makers and carry out a number of strategic and corporate leadership functions*
- (ii) *represent their communities and bring their views into the Council's decision making process, i.e. be the advocate of and for their communities*
- (iii) *deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances*
- (iv) *balance different interests identified within their ward and represent the ward as a whole*
- (v) *be involved in decision making*
- (vi) *be available to represent the Council on other bodies, and*
- (vii) *maintain the highest standards of conduct and ethics.*

7.3 Whilst the District Council's Constitution does not apply to Town Councillors, the Investigating Officers reviewed their actions and behaviour against the same principles.

- 7.4 For Councillors to be considered to be acting in their official capacity, they must be taking an active role in upholding the above principles. Simply being present when the Head was removed would not be considered as acting in their official capacity.
- 7.5 The Investigating Officers contacted all District Councillors (DC) and Town Councillors (TC) that were involved in actions surrounding the Head's removal in order to interview them.
- 7.6 The Officers identified the following Councillors:
1. Gary Purdy – District Councillor, Leader of the Council and Chairman of the Emergency Committee
 2. Thomas Donnelly (DC)
 3. Susan Bull (DC & TC)
 4. Stuart Lees (DC)
 5. Ann Smith (TC)
 6. Denise Brown (TC)
 7. Sean Clayton (TC)
- 7.7 Robert Archer was not identified as taking part in the removal of the Head, but was consulted as part of the investigation in his role as District Councillor for Ashbourne.
- 7.8 On review of the actions Officers can find no evidence that suggests the following were acting in an official capacity.
- 7.9 Cllr Donnelly, even though present and was reported to have assisted in the removal of the head, at no time was he taking an active role in either liaising with the Council or being an advocate for the group that had gathered.
- 7.10 Comments to the press also were highlighting his opinion and not advocating those of his ward constituents. In one reported statement he is said to have said : "It's the people of Ashbourne who should decide."
- 7.11 If he had said it is the view of Ashbourne that they should decide, then he is advocating and being a spokesman for his constituents. The above comment was stating his views and a view that any local resident could hold and as such it is concluded that Cllr Donnelly was acting in a private capacity.
- 7.12 It was also reported that Cllr Donnelly assisted in the removal of the Head. It was suggested that this was the case due to his fire fighting background and therefore had health and safety experience of using ladders. Again this does not appear to be acting in any official capacity.
- 7.13 Officers also found no evidence that Councillor Susan Bull took any actions that could be found to have been meeting any of the key roles and as such any actions were in a private capacity.
- 7.14 Also the actions of the Town Councillors did not meet any of the key roles.

- 7.15 Cllr Denise Brown was present at the removal of the Head and CCTV shows that she spoke to a group of 5 people and also Cllr Lees but there is no evidence to say she was advocating that she was there in her official capacity.
- 7.16 Cllr Ann Smith, was present at the removal of the Head and has not spoken to the Investigating Officers even though being invited to do so. Without her comments the Investigating Officers can only make limited assumptions of her involvement. She is seen present at the removal of the Head wearing a high visibility jacket but from the evidence of other present and that of the CCTV, there is no evidence to show she was there in an official capacity.
- 7.17 Also the statement made by Cllr Smith saying “As far as I’m concerned it’s part of our heritage. Why make it a racial issue. There’s many things and many people that offend me” indicates that this was a private opinion as it starts “As far as I’m concerned.”
- 7.18 Cllr Sean Clayton was present on the evening the Head was removed and did not provide any information to the Investigating Officer other than to state that he was present in his private capacity.
- 7.19 The final two Councillors involved were the Leader, Cllr Gary Purdy and Cllr Stuart Lees.
- 7.20 In respect of these Councillors the investigation indicated that they were acting in their capacity of Councillors.
- 7.21 From the review of the timeline, Cllr Gary Purdy as Leader of the Council and Chairman of the Emergency Committee undertook the role of discussing the continuing events as they unfurled with the Chief Executive. He liaised with fellow Councillors and passed on those views to relevant officers.
- 7.22 Cllr Purdy was the member that Corporate Officers consulted with prior to making any decision in order to obtain his views in his role as Leader of the Council and the Chairman of the Emergency Committee.
- 7.23 It is also the opinion of the Investigating Officer that Cllr Lees was acting in his capacity as an elected member as he met the following 3 criteria of the key roles of a Councillor, namely:-
- (ii) represent their communities and bring their views into the Council’s decision making process, ie. be the advocate of and for their communities
 - (iii) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances
 - (iv) balance different interests identified within their ward and represent the ward as a whole
- 7.24 On the evening that the sign was removed, Cllr Lees was present. He called the Leader to inform him of what was happening in order to inform the Council of the escalating issue.

- 7.25 The Councillor spoke to the crowd and fed those views back to the Leader. He was representing his community and bringing their views into the Council decision making process as well as seeking to resolve particular concerns and grievances.
- 7.26 Following the removal of the Head he liaised with the Chief Executive to represent the views of his residents to seek a mutually agreeable solution to the returning and storage of the Head thus representing the views of his ward constituents.
- 7.27 Thus the Investigating Officer and the Independent Person reached the conclusion that Cllr Lees was acting in his official capacity as an elected member.

8. Decision Making of Officers

- 8.1 Part of the remit of the investigation includes the source/authority of any permission granted. Investigating Officers, under the instruction of the Independent Person, have reviewed all decisions/permissions taken to see if they comply with the Constitution.
- 8.2 As the Council operates a Committee Structure, under local government law, all powers vest in the Council and those powers can be delegated to Committees or direct to Officers. The Committees can delegate those powers granted to them by the Council to Sub-Committees and again to Officers.
- 8.3 The Council's Principles of Decision Making are set out in Part 2 Article 10 of the Constitution. Paragraph 10.02 states:-

"All decisions made by the Council and its Committees will be made in accordance with the following principles:

- (a) The rule of law;*
- (b) Proportionality (i.e. the action must be proportionate to the desired outcome);*
- (c) Due consultation and the taking of professional advice from officers;*
- (d) Respect for human rights;*
- (e) A presumption in favour of openness; and*
- (f) Clarity of aims and desired outcomes."*

- 8.4 Although paragraph 10.02 refers to decision making by the Council and its Committees, decisions relating to the Head were taken under the Chief Executive's delegated powers in cases of urgency. Such decisions would normally have been taken by a committee or the full Council so the Principles of Decision Making should apply.
- 8.5 The Delegations to Committees and Officers are predominately contained in Part 3 of the Constitution. If the Constitution does not specifically delegate a decision to take action to an Officer, then the power remains with the Council

or relevant Committee. If an Officer takes a decision that has not been delegated to them or they do not follow the correct decision making process, then the decision is not within the remit of the Officer.

- 8.6 The Green Man Sign and the Head were confirmed to be owned by the District Council. As such they are assets of the Council.
- 8.7 Under Part 3 of the Constitution, the function of Asset Management has been delegated to the responsibility of the Governance and Resources Committee.
- 8.8 Under the Constitution there are no general delegations to officers to deal with the day to day decisions of managing the Council's assets especially any delegations to cover an urgent decision to take action to protect Council assets from damage.
- 8.9 Therefore the normal situation would be that any decisions relating to the management of the Green Man Sign and the Head would be a decision of the Governance and Resources Committee.
- 8.10 However due to the Covid19 outbreak on the 12th May 2020 the Council passed the following resolutions:-

3. That for matters currently defined in the Council's Constitution to be dealt with by Council, which are not legally reserved to itself, those matters are discharged to an Emergency Committee comprising 8 members based on political proportionality:

No. on Committee	Conservative	Liberal Democrat	Labour	Green	Independent
8	4	1	1	1	1

- 4 That meetings of the two Policy Committees continue to be temporarily suspended, and that all urgent decision making within the remit of the policy committees is discharged to the Emergency Committee as provided for above.
- 8.11 Therefore in the circumstances at the time of the incident any decision of the Governance and Resources Committee could have been taken by the Emergency Committee.
- 8.12 The Constitution allows for urgent decision making, the process of which is detailed on Page 6 of Part 3 of the Constitution. The relevant provisions are set out below:

*In the following circumstances, any Policy Committee may make any decision delegated to any other Policy Committee, relating to urgent business.
Urgent business is defined as:-*

1. *The decision cannot reasonably be deferred until it would be possible to convene a meeting of the decision making body.*
 2. *In considering the above the following factors should be taken into account:*
 - *the need to respond to adverse naturally occurring events e.g. flood, fire etc;*
 - *the need to respond to peace-time emergency situations under the Emergency Planning arrangements;*
 - *the need to respond to or embark upon, a course of action with an externally set deadline which would result in significant or lesser but substantial economic social or environmental benefits or disadvantage accruing to the District.*
 3. *Where urgent business cannot be deferred until a Policy Committee meets, urgent decisions will be taken by the Chief Executive or Director of Corporate and Customer Services in consultation with:-*
 - *the Chairman of the relevant decision making body;*
 - *in his/her absence, the Vice-Chairman;*
 - *advice should be obtained on vires from the Monitoring Officer;*
 - *affected ward members will be given notification of urgent business decisions to be taken and the method of determination.*
- 8.13 The Investigating Officer concluded that the decisions fell within the third bullet point of paragraph 2 above.
- 8.14 Therefore the Chief Executive, or Director of Corporate and Customer Services, was required to follow the procedure detailed set out in paragraph 3 above.
- 8.15 Given the special arrangement in force, referred to in paragraph 8.10, any urgent decision made in relation to the Green Man Sign or the Head would have to be made in consultation with the Chairman of the Emergency Committee, being Cllr Gary Purdy.
- 8.16 In his absence the Vice Chairman should be consulted, being Cllr Susan Hobson.
- 8.17 Before a final decision, the Monitoring Officer should be consulted and advice obtained to make sure the decision is made within the powers delegated to the officers under the Constitution. The word 'should' is not as strict as 'must' but generally should means that efforts should be made to attempt to consult.
- 8.18 Also ward members need to be notified before the decision is taken on what decision is to be made and how it will be determined. Ward members need to be informed before the decision is made as the wording of the Constitution says "*decisions to be taken*" and not decisions that have been taken.

- 8.19 As the wording in the Constitution is “members will be given notification” any decision taken without such notification will be taken outside of the delegated powers given to Officers by the Council through the Constitution.
- 8.20 Firstly when interviewing Sandra Lamb, she confirmed that at that time she was on phased retirement working three days a week (Tuesday to Thursday). The incident occurred on Monday 8th June 2020. She stated that the first she knew about the incident was after it had happened on her return to work on the following day (Tuesday).
- 8.21 The investigation received no evidence that the Monitoring Officer was consulted on the issue of whether the decisions taken at the time were vires
- 8.22 The evidence collated shows that either, decisions were taken without consultation or that they were taken without seeking advice from the Monitoring Officer or ward members being informed prior to the decision being taken.

9. DECISIONS

- 9.1 This report will consider each decision in turn. However, the initial conclusion from the Investigation Officer, confirmed by the Independent Person, is that that most of the decisions of Chief Officers were not technically in line with the procedure contained in the Constitution.

Online Petitions

- 9.2 The first consideration was with regards to the online petitions.
- 9.2.1 At 11:28 hours on 8th June 2020 an email from the Chief Executive said:-
“.. until such time that the Council is presented with a specific request (perhaps in the form of a petition, which will then require formal debate), I think we acknowledge that we own the sign and it will be for council to decide what it wishes to do in the future.”
- 9.2.2 The Constitution refers to a petitions policy, but there is no policy listed on the website under “Policies, Plans and Strategies”. There is a web page entitled Petitions, but there is no policy contained on the website and no separate policy has been identified internally. However, Part 2 of the Constitution under Article 3 refers to the procedure for acceptance of petitions.
- 9.2.3 At Article 3 at point 2.4 it says:-
“We particularly welcome petitions and the District Council has agreed special procedures to ensure that petitions are reported to an appropriately senior level within the District Council (see Section 3, below)”

- 9.2.4 The Council website has specified what the Council will treat as a petition which is also contained at point 3.1. It says

“We treat as a petition any communication that is signed by or sent to us on behalf of a number of people. A communication needs at least 10 signatories or petitioners before we treat it as a petition. Whilst we like to hear from people who live, work or study in the Derbyshire Dales, this is not a requirement...”

- 9.2.5 The Head of Corporate Services is the designated Petitions Officer for the Council. However decisions on ordinary petitions are delegated to the Chief Executive/ Corporate Director/ Heads of Service in consultation with the relevant Committee Chairman and relevant Ward Member(s) and an ordinary petition is one that is signed by at least 10 petitioners and within the remit or sphere of influence of the District Council.
- 9.2.6 In reviewing the actions firstly the definition of a communication is the imparting or exchange of information or the successful conveying or sharing of ideas and feelings.
- 9.2.7 As the Council policy says “any communication” the posting of a petition on a website falls within the definition of a communication. Does that communication need to be sent to the Council? The policy says “*any communication that is signed by or sent*” It does not say and sent.
- 9.2.8 As this petition was online it could be considered as an e-petition. However neither the Constitution nor the Website define what the Council considers to be an e-petition.
- 9.2.9 If this was to be considered to be an e-petition then it says on the website that we accept e-petitions created and submitted through its website. This wording is not mirrored in the Constitution, but the Constitution does say that the petition Organiser should provide their contact details. However this is a ‘should’ not a ‘must’.
- 9.2.10 The problem is that there is an implication that the petition should be presented to the Council to be considered, but there is no clear policy document to refer to, and the wording in the Constitution and on the website is vague so that it can be interpreted that the online petition was a petition as specified on the Council’s website.
- 9.2.11 As such there is an argument that once the Council became aware of an online petition signed by more than 10 people on a subject within its sphere of influence, it should have been accepted as a petition requiring debate.

- 9.2.12 Therefore, were Council officers correct in deciding not to refer the online petitions to a formal debate as neither of them was formally communicated to the Council?
- 9.2.13 The view of the Independent Person and the Investigating Officers is that the decision was correct and that a petition should be presented or submitted to the Council to be considered, This view is backed up by the fact that the petitions page on the Council website has a heading 'To whom should you send a petition?'

Decision by the Corporate Leadership Team (CLT)

- 9.3 The next decision was taken by the Corporate Leadership Team ("CLT") at 12 noon on 8th June 2020 via a virtual discussion which agreed unanimously that the sign should be removed in the interests of public health and safety and to protect a historic listed Grade II* artefact.
- 9.3.1 The Independent Person requested the Investigating Officers to review the information available at the time to see if there was any evidence that suggested the head was in immediate danger of being damaged. On review of media reports and the petitions, the Investigating Officers found no evidence of any direct threat at that time, from anyone to remove the head or threats of vandalism. The only mention was an email saying that Ashbourne Town Council was concerned about possible damage. However Officers were aware of the events in Bristol the day before when the statue of Edward Colston was toppled and dumped in the harbour.
- 9.3.2 Investigating Officers requested the minutes of the meeting to confirm the reasoning behind the decision. However they were unable to see in written form the reasons of how this decision was reached as no formal minutes were taken of this meeting.
- 9.3.3 It should be noted that, as stated in paragraph 8.2 above, decisions can legally only made by the full Council, or a Committee or an officer acting under delegated powers. There is no provision for decisions to be made by a group of officers. Therefore, the decision of the CLT would fall under the provisions of an Urgent Decision by the Chief Executive or Director of Corporate and Customer Services. Cllr Purdy was aware of the issue but there is no evidence that Ward Members were informed before the meeting of the decision to be made or how the decision would be made. Also as the Monitoring Officer was not present, there was no consultation with the Monitoring Officer.
- 9.3.4 Following the CLT meeting, the Communications Manager, acting on instructions from the Chief Executive, sent an email to Leaders and Ashbourne ward members seeking their views on a proposed press statement.

- 9.3.5 The Investigating Officers and the Independent Person conclude that the decision was not made in compliance with the provisions for urgent decisions in the Constitution.

Derwent Tree Services

- 9.4 Derwent Tree Services (DTS) were instructed to remove the head. DTS has a contract with the Council for general maintenance which was entered into following a procurement exercise and thus the services were properly procured. DTS were instructed to attend at 5am the following day to remove the head and return it to the Council for storage. Thus DTS were granted permission to remove the Head on behalf of the Council under the general maintenance contract.

The Evening of 8 June 2020

- 9.5 The next decision was taken at around 21.15 hours on the evening of the 8th June 2020.
- 9.5.1 Some of the times stated by those interviewed were from recollection and others from phone records. Therefore some of the times are an approximation.
- 9.5.2 Cllr Purdy contacted the Chief Executive and explained that Cllr Lees was faced with a volatile and difficult situation. Cllr Purdy and the Chief Executive discussed the strong likelihood that the 'Head' would be removed, irrespective of any decision already taken by the council, with the resultant risk that it might not be possible to recover it for safe keeping.
- 9.5.3 In light of the fact that Cllr. Lees appeared to have the situation under control on the ground and was able to reason and liaise with the crowd, it was jointly agreed between the Chief Executive and Cllr Purdy that in the interests of public safety and the future safeguarding of the 'Head' the council would 'consent' to its removal. Again, this was an urgent decision of the Chief Executive.
- 9.5.4 The investigation shows that the urgent decision was taken in consultation with the Chairman of the Emergency Committee, but no advice was obtained from the Monitoring Officer and no consultation took place with ward members other than Cllr Lees.
- 9.5.5 In very urgent situations such as this, it is understandable that Chief Officers may need to make decisions that are urgent and that consultation is impracticable. However the Constitution does not allow for this and there is no provision that allows actions that allow immediate action to be subject to a procedure of ratification after the event.

- 9.5.6 Further there is no indication of why the decision to allow the removal could not have been delayed by a few minutes while that consultation was at least attempted, as it was acknowledged by both the Chief Executive and the Leader that Cllr Lees appeared to have control of the situation.
- 9.5.7 Even though the decision did not follow the delegated procedure the appropriate action would have been to attempt to follow the correct procedures soon as possible after the decision was made. There was an Emergency Committee on 11 June 2020 and with permission of the Chairman an urgent report could have been added to the agenda to seek Council approval for the urgent actions taken.
- 9.5.8 Also after the decision was made there was no communication with all Ward members from Officers until the Council's media statement was copied to all Councillors at 10.36 hours the following day. Further there was no evidence of a communication between the Chief Executive and the Monitoring Officer prior to the daily CLT meeting at 12pm and no minutes were taken of that meeting.
- 9.5.9 In addition, following the decision to allow the Head to be removed, no-one then contacted DTS in order to cancel them attending at 5am on 9 June to remove the head, thus incurring unnecessary cost to the Council.

Handover of the Head and Deposit with Derbyshire Record Office

- 9.7 The next decision was the decision taken by the Chief Executive in a conversation with Cllr Lees at 10.05 hours and notified to Cllr Purdy at 10.21 on 10 June - to agree to the Head being handed over by Cllr Lees and deposited with DCC Record Office.
 - 9.7.1 In the report of the conversation between the Chief Executive and Cllr Lees, an offer was made, as an alternative to store the Head in the County Council archives and Cllr Lees was given an hour to canvass the views of local residents.
 - 9.7.2 This decision was not delegated to the Chief Executive and thus the Urgent decision making process should have been used.
 - 9.7.3 At 10.21 the Chief Executive informed the Leader of the outcome of telephone discussion with Cllr. Lees. This was informing the Leader of a decision that had already been made and an offer made to Cllr Lees. It was not a consultation.
 - 9.7.4 Further there is no evidence of the Monitoring Officer being consulted on whether the decision was vires and no involvement of the ward members other than Cllr Lees.

9.7.5 If in the hour given to Cllr Lees to consult local residents, the Chief Executive would have consulted with Cllr Purdy and obtained the advice from the Monitoring Officer and informed ward members that if Cllr Lees responded positively to the suggestion of putting the Head in the County archives he would be making the decision to arrange for this to happen. Then the decision would have been correctly made.

9.8 The final issue is the arrangement with County Council to store the Head.

9.8.1 At 15.55 hours on 11th June the Head was deposited at the Derbyshire Record Office. Present for the Council was the Head of Regulatory Services and the Records Office had agreements drawn up regarding the handover and storage of the head.

9.8.2 The agreement was signed on behalf of the Council by the Head of Regulatory Services and the Head was left with the Records Office.

9.8.3 Article 11 of Part 2 of the Constitution states "Every contract made by the Council will comply with the Contracts Procedure Rules set out in Part 4 of this Constitution".

9.8.4 This is incorrect as the correct provisions are the Contract Standing Orders (CSO) and these are at Part 8 of the Constitution.

9.8.5 Clause 5.1 of Part 8 says "The CSO Rules apply to any arrangement, of any value, made by, or on behalf of, the Council for the carrying out of works, supplies, goods, materials or services. "

9.8.6 A signed agreement with obligations on the various parties is a contract. Therefore the storage of an item belonging to the District Council would be a service to the Council and the CSO apply.

9.8.7 Also the only authorised signatory on behalf of the Council to enter into contract, not under seal, is the Head of Corporate Services, who was not present when the agreement was signed.

9.8.8 In the circumstances surrounding the deposit of the Head it is understandable that the agreement specifying the terms and conditions attached to the deposit of the Head was signed while all parties were present. However the CSO states that signatures to agreements have to be affixed by the Head of Corporate Services and all agreements must be reviewed by Legal Services beforehand.

9.8.9 Therefore in order for the agreement to be signed in accordance with the Council's CSO Legal Services should have reviewed the terms and conditions beforehand and Sandra Lamb should have been the officer present to sign the agreement.