

Committee: <b>OVERVIEW &amp; SCRUTINY COMMITTEE</b>	Date: <b>22 July 2014</b>	Classification: <b>Unrestricted</b>	Report No.
Report Of: <b>Interim Monitoring Officer</b>		<b>Investigation into the Circumstances of the Sale of Old Poplar Town Hall and the subsequent grant of Change of Use permissions.</b>	
Originating Officer: Meic Sullivan-Gould 02073644801			

### **Reasons for urgency**

The report was published 4 clear days in advance of the meeting, rather than 5 clear days as required by section 100B of the Local Government Act 1972. The Chair may consider that there are special circumstances such that the report should be considered at the meeting rather than being deferred to a later meeting. These may be connected with the content of the report and the timeframe originally contemplated by full Council.

#### **1. SUMMARY AND BACKGROUND**

- 1.1 This report informs Members of the Overview and Scrutiny Committee of the outcome of the investigation mandated by the Council at its meeting on 22 January 2014

#### **2. RECOMMENDATION**

- 2.1 That Members of the Overview and Scrutiny Committee note the content of this report.

#### **3. Old Poplar Town Hall.**

- 3.1 On 22 January 2014, the Council approved a Conservative Emergency Motion that instructed the Statutory Officers (Head of Paid Services, interim Monitoring Officer and Chief Financial Officer) to undertake an Investigation into the disposal of Old Poplar Town Hall and the subsequent grants of planning permission that have allowed the option for its redevelopment as an Hotel. The approved motion is set out in Appendix ONE.

- 3.2 Following discussions with the District Auditor, the required investigation has been undertaken by Mazars (formally Deloitte).
- 3.3 The Investigation Report is attached as Appendix TWO. This has been redacted to exclude personal data in respect of the bidders. The terms of reference are attached as Appendix 1 to the report.
- 3.4 The report has been submitted to PriceWaterhouse Coopers as part of the ongoing best value inspection.
- 3.5 A summary of the activity undertaken by Mazars and the Statutory Officers in pursuing this investigation is appended as Appendix THREE.

4 **Commentary of the Head of Paid Service, Chief Financial Officer and Interim Monitoring Officer:**

- 4.1 The Independent Investigation confirms the following sequence of events:
  - a. Old Poplar Town Hall ceases use as municipal building.
  - b. 2006 Planning Brief for Old Poplar Town Hall published indicating possible alternative uses for the property. Includes (para 10) possibility of use of property as a small hotel.
  - c. 2008 Old Poplar Town Hall declared surplus to Council's long term requirements by Cabinet.
  - d. 2008 – 2010 Old Poplar Town Hall used for decant of school during Building Schools for the Future work.
  - e. 2011 January: Sale of Old Poplar Town Hall authorised by Mayor in Cabinet.
  - f. 2011 February: External Agents (BNP Paribas) appointed after competitive tendering exercise.
  - g. 2011 March: Marketing Strategy devised and approved by Officers. Property valued at between £750K and £950K
  - h. 2011 April: Property marketed. BNP Paribas reported to the Council that seventy property particulars were issued, nineteen information packs and eleven viewings were undertaken.
  - i. 2011 June: Sealed Bids received and report on outcomes prepared.
  - j. 2011 July: Top 6 bidders required to put in "Best and Final Offers"
  - k. 2011 August: Top 2 bidders (At £876,000 and £875,000 respectively) invited to participate in a "Contract Race".
  - l. 2011 September: Underbidder is first to enter a contract and make a 10% deposit with the Council. Long lease granted in November 2011.

- m. 2012 August: Applications made for Planning Permission and Listed Buildings Consents for Hotel Use at Old Poplar Town Hall.
- n. 2013 July: Above planning applications granted under officer delegated power. 2014 February: Application received seeking Freeholder's consent for change of use. Not yet approved.

4.2 Apart from as listed below, each of the above activities of the Council were carried out as a result of proper exercises of the Council's powers whether by elected individuals or officers exercising delegated powers. The processes undertaken were in accordance with the Council's Constitution, Financial Procedure Rules and Schemes of Delegation. The auditors have not been able to access the relevant records so it appears that there may have been the following breaches of Financial Procedure Rules:

- i) Failure to record reasons for admitting a late bid by Dreamstar Limited at the opening of the bids
- ii) Failure to formally record reasoning for commissioning a "contract race" between top and second best bidders.

4.3 The key officers involved in the first above possible breach no longer work for the Council. The project manager for the second breach is also no longer an employee of the Council, although it is clear that there were reasons for taking this approach, which relate to the fact that the 2 top bids were separated by £1,000.00, with the top one being attached to the undertaking of a condition survey of the building.

4.4 In respect of the second issue above, Mazars have found an indication that in deciding whether to proceed with a contract race or accept the highest bidder, the Corporate Director for Development and Regeneration Renewal consulted with the Mayor of the Borough. They have been interviewed but neither of those individuals has any recollection of such discussion taking place and have no records that would assist.

4.5 The Council resolved that it believed as follows:

- a. That it is entirely inappropriate to grant this change of use using delegated power, considering the public interest in the sale of the building and the effect such a change of use would have on local residents.
- b. That there remain unanswered questions as to the relationship between the current owner/occupier, and the administration.
- c. That no answer has been given as to whether in the initial marketing documents bidders were informed that the council would entertain a change of use of this type.

4.6 Following the Audit, the Council can be advised that Mazars have found as follows:

- a. At the time of the marketing the Council along with its professional advisor, BNP Paribas, considered a range of potential uses, including an hotel to maximise the capital receipt for the site, whilst considering the risk profile. At the time B1 was considered the preferred use.
- b. Delegated powers were used to resolve the planning applications for change of use in accordance with the usual and Council approved scheme of delegation after publication. Resident communications had not prompted sufficient numbers of objections to justify a referral of the matter to the Planning Committee.
- c. The Lease requires that the Freeholder does not unreasonably with-hold consent for works to be undertaken, however, has absolute right to refuse Change of Use, therefore the planning consent only achieves a value if the change of use is consented. In doing this the Council has protected its commercial position. The Council is in discussion with the Leaseholder regarding their application for Change of Use.
- d. Apart from as detailed in their report, Mazars have found no evidence that the Mayor of the Borough or his administration had any involvement with the processes that resulted in the grant of a long lease of the property to Dreamstar Limited.
- e. The possibility of the premises becoming an hotel being acceptable in planning terms was published by the Council in 2006.

4.7 In addition, the Council can be advised that Mazars' recommendations are acceptable to the Council's Statutory Officers and the following actions have been taken:

- a. There is an outstanding instruction to the Head of Internal Audit and Risk Management to use best endeavours to recover the missing records.
- b. The legal files are being further reviewed by the Interim Monitoring Officer.
- c. Further interviews have been held with staff. It is noted that key officers have left the Council. If records are recovered it may be necessary to seek to interview them.
- d. The recommended process of review has commenced and is on target for report to the Mayor in Cabinet in September 2014.
- e. This recommendation is being addressed as part of the review above.

- f. The delegated powers are being reviewed by the Service Head, Planning and Building Control.

## **5. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 5.1 The report sets out the statutory officers' consideration of the investigation into the disposal of the former Poplar Town Hall, in accordance with the Council resolution of 22<sup>nd</sup> January. Appendix 2 to the report sets out the audit findings and recommendations. The management response to those recommendations is also attached. The audit has been undertaken by special investigators employed by Mazars, following discussions with the District Auditor.
- 5.2 The Council, when disposing of property, is required to obtain the "best consideration reasonably obtainable" (Section 123 Local Government Act 1972). The report sets out the process whereby the property was marketed in accordance with the Cabinet decision of March 2008.
- 5.3 It is essential that the issues raised by the audit, particularly with regards to the adequacy of documentation are now addressed as part of the review of disposal and associated financial protocols and procedures, to provide better assurance of corporate governance arrangements.

## **6. MONITORING OFFICER COMMENTS**

- 6.1 The Investigation Report has been reviewed in the light of the Interim Monitoring Officer's personal statutory duty to bring the Council's attention to any illegality or maladministration and also in the light of the obligations of elected individuals to meet the standards of behaviour required by the Council's Code of Conduct.
- 6.2 No evidence of illegality or maladministration causing injustice is revealed by the Investigation Report. No elected individuals have been involved in the processes investigated except when they have attended Council meetings which have received reports and been publicly minuted in accordance with the Local Authority Access to Information regimes. The planning applications were quite properly considered and resolved by officers of the Council. For the avoidance of doubt, it should be remembered that the determination of planning applications is not an executive function that falls within the Elected Mayor's remit; Mazars have found no evidence of any involvement of the Mayor in the matters which are outside his powers to influence or determine.

## **7. RISK MANAGEMENT IMPLICATIONS**

- 7.1 There has been a reputational risk to the Council from allegations of wrong-doing by elected members and officers of the Council in relation to the disposal of Old Poplar Town Hall and its subsequent change of

use. The independent report by Mazars shows that those allegations were unfounded.

**8. ONE TOWER HAMLETS CONSIDERATIONS**

8.1 There are no specific anti poverty or equal opportunity implications arising out of this report.

**9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

9.1 This report has no immediate implications for the Council's policy of sustainable action for a greener environment.

**10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 There are no specific crime and disorder reduction implications arising out of this report.

**11. EFFICIENCY STATEMENT**

11.1 This report is not concerned with proposed expenditure, the use of resources or reviewing/changing service delivery and an efficiency statement is not therefore required.

**LOCAL GOVERNMENT ACT 1972 (AS AMENDED) SECTION 100D**

**LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT**

Brief description of "background paper"	Tick if copy	If not supplied, name supplied for register and telephone number of holder
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None.