

REPORT OF THE OVERVIEW AND SCRUTINY COMMITTEE

SALE OF POLAR TOWN HALL

1. Introduction

- 1.1 This report sets out the observations and recommendations of the Overview and Scrutiny Committee (OSC) following:
 - (a) its review of the investigation into the sale of the former Poplar Town Hall, undertaken pursuant to a referral from full Council on 22 January 2014. This investigation was undertaken by Mazars on behalf of the District Auditor following a referral from the then Head of Paid Service, Section 151 Officer and Interim Monitoring Officer; and
 - (b) publication by PwC on 4 November 2014 of their report into their Best Value Inspection into the Council, including the sale of Poplar Town Hall.
- 1.2 In summary, in January 2011 the disposal of Poplar Town Hall was raised with the former Mayor, in the context of officers taking a report to Cabinet that recommended the sale of four other Council buildings. In a restricted Appendix of estimated site values, Poplar Town Hall was attributed a value of £1.5million.
- 1.3 The former Mayor's decision in Cabinet is minuted as being that, the Corporate Director Development & Renewal be instructed to develop proposals for accelerated sale of the properties [including Poplar Town Hall] and report back before the end of the current financial year.
- 1.4 The original decision to declare the building surplus to requirement and to market it for sale had been taken in Cabinet in 2008, but matters were not progressed at the time (between 2008-2011) as the building was needed to house Ian Mikardo School whilst its BSF work was being undertaken.
- 1.5 Following the 2011 instruction a marketing strategy was developed, approved by officers and marketing of Poplar Town Hall was taken forward with the property valued by BNP Paribas at £750,000 - £950,000, on the basis of commercial, office or residential use.
- 1.6 A process of sealed bids and best and final offers (BAFOs) was put in place with a deadline of close of business on Friday 8 July 2011. On that date the five BAFOs which had been received were opened by Council officers and BNP Paribas at formal bid opening and a preferred bidder was identified. It was noted that a BAFO from Dreamstar (who had been invited to submit one) had yet to be received, despite BNP Paribas having been advised by Dreamstar that they had posted their revised offer on Thursday 7 July.
- 1.7 On Monday 11 July 2011, BNP Paribas received a bid from Dreamstar Advertising Ltd £1,000 below the highest bid. As set out in the timeline of key events in section 2 below, there were further internal exchanges and meetings in the period July to September 2011.
- 1.8 On 8 September 2011 the Service Head for Corporate Property and Capital Delivery emailed the Corporate Director Development & Renewal suggesting that, due to the closeness of the 2 top bids and the financial profile of both companies who had lodged tenders, they should both be placed into a race to complete the quickest. This was approved by the Corporate Director on 15 September 2015.

- 1.9 On 29 September 2011, Dreamstar Ltd was first to enter a contract and provide a 10% deposit. The other bidder was informed they had been unsuccessful. Contracts were to be completed by 28 October 2011.
- 1.10 During October 2011 an extension for completion was sought by Dreamstar and a Notice to Complete was ultimately served. On 11 November 2011 the sale was completed to Dreamstar Ltd.
- 1.11 Subsequently in August 2012 applications were made for planning permission and listed buildings consents for hotel use at Poplar Town Hall. These planning applications were granted under delegated authority by officers in July 2013.
- 1.12 Since 2014, again as set out in the timeline of key events, there have been a number of opportunities to review the events relating to the sale to Dreamstar and reports have been prepared by Mazars and PwC, and further independent valuations have been obtained.
- 1.13 This report of the OSC seeks to identify matters relevant to its remit which arise from the Mazars and PwC investigations and the OSC review. The Mayor/Governance Review Working Group is invited to consider and take forward as appropriate the OSC recommendations in accordance with Rules 11.1 and 19.3 of the OSC Procedure Rules.

2. Timeline of Key events

2006: Planning Brief for Poplar Town Hall published indicating possible alternative uses for the property. Includes (at paragraph 10) possibility of use of property as a small hotel.

2008: Poplar Town Hall declared surplus to the Council's long term requirements by Cabinet.

2008–2011: Poplar Town Hall used for decant of Ian Mikardo School during Building Schools for the Future work.

12 January 2011: Former Mayor (in Cabinet) resolved to instruct Corporate Director for Development & Renewal to develop proposals for the accelerated sale of Poplar Town Hall and to report back before the end of the financial year. The report on which this resolution is based contains an officer estimated value of Poplar Town Hall of £1.5million.

February 2011: BNP Paribas appointed to market the property after a competitive tendering exercise.

March 2011: Marketing strategy devised and approved by officers. Property valued by BNP Paribas at £750,000 - £950,000, on the basis of commercial, office or residential use.

April 2011: Property marketed. BNP Paribas report that 70 property particulars and 19 information packs were issued.

17 June 2011: 10 sealed bids received, including from Dreamstar Advertising Ltd.

1 July 2011: Top six bidders requested to submit best and final offers (BAFOs) by close of business on 8 July 2011.

8 July 2011: Closing date for BAFOs. Five BAFOs received. No BAFO received from Dreamstar Advertising Ltd.

11 July 2011: Five BAFOs opened by Council officers and BNP Paribas at formal bid opening.

11 July 2011: The then Head of Valuation and Estates emails Corporate Director, Development & Renewal stating 'We have just finished opening the bids with the agent. .. the preferred bidder for Poplar Town Hall will be [Redacted] PTH Bidder J, followed by [Redacted] PTH Bidder D. We are still awaiting a Best and Final Offer from Dreamstar who advised the agents that they posted their revised offer on Thursday. An electronic copy has been requested'.

11 July 2011: BNP Paribas receives bid from Dreamstar Advertising Ltd dated 8 July and date stamped by Asset Management 11 July. Bid is £1,000 below highest bid by [Redacted] PTH Bidder J.

11 July 2011: Bid from Dreamstar Advertising Ltd also received (late) for Limehouse Library, making Dreamstar Advertising Ltd the highest bidder on this other property by c. £200,000.

12 July 2011: BNP Paribas advises to proceed with [Redacted] PTH Bidder J, highest bidder on Poplar Town Hall, with tight timescales for him to prove he has necessary finance; to tell Dreamstar Advertising Ltd they have been unsuccessful on Poplar Town Hall in order to focus their attention on Limehouse Library; and to accept Dreamstar Advertising Ltd's offer on Limehouse Library, subject to the provision of further information. This recommendation was not implemented.

19 July 2011: Dreamstar Advertising Ltd withdrew their bid on Limehouse Library.

2 August 2011: BNP Paribas chased for progress on Poplar Town Hall and Limehouse Library, warning that 'it raises a considerable risk that the current bidders could fall away.'

3 August 2011: The then Head of Valuation and Estates replied to BNP Paribas stating 'I am fully aware of the ramifications although I hope to be in a position to give the go ahead in respect of Limehouse Library once I have had an audience with the Mayor to brief him on the position. In regard to Poplar High Street, I am afraid this needs to stay on hold for the moment regardless as I am not in a position to instruct you to proceed until it is cleared at this end'.

23 August 2011 Service Head for Corporate Property and Capital Delivery wrote to an officer to request an update on the disposals of Poplar Town Hall and Limehouse Library in advance of a meeting between the Corporate Director for Development & Renewal and the Mayor on 25 August 2011. That meeting is also referred to at the Capital and Asset Management Board meeting on 25 August 2011 and the minutes state that "there will be progress on this after [the Corporate Director for Development & Renewal] has met with the Mayor today". As noted in the Mazars' report, the Corporate Director and former Mayor informed the previous Interim Monitoring Officer they had no recollection of this discussion having occurred. The Corporate Director for Development & Renewal has also stated that he was away from the office on leave on 25 August 2011.

24 August 2011: Service Head for Corporate Property and Capital Delivery emails Corporate Director Development & Renewal stating 'My personal preference is to proceed with [Head of Valuation and Estates] advice and go back to [Redacted] PTH Bidder J, and ask that contracts with a 'deposit' (if we do that) is achieved within 3 weeks with a final close the following week.'

8 September 2011: Service Head for Corporate Property and Capital Delivery emails Corporate Director for Development & Renewal, changing her previous preference to proceed with highest bidder, saying 'I would suggest, although it's at odds with the valuation report, that due to the closeness of the 2 top bids and the financial profile of both companies who have lodged tenders, that we now put them into a race to complete the quickest'.

14 September 2011: Dreamstar Limited incorporated at Companies House.

15 September 2011: Corporate Director for Development & Renewal approves contract race recommended by Service Head for Corporate Property and Capital Delivery on 8 September.

15 September 2011: Council solicitor informed. He records in a file note 'My heart sinks' and notes risk of litigation and dispute. The note also records that the then Asset Manager, Strategy '.....is only doing as he's told, this has come from the Mayor'. The note also records that the view expressed by the then Head of Estates and Valuation is that the decision to proceed with a contract race 'has come from the very top'.

29 September 2011: Dreamstar Ltd is first to enter a contract and provide a 10% deposit. Contracts to be completed by 28 October. [Redacted] PTH Bidder J told he has been unsuccessful in his bid.

19 October 2011: Dreamstar Ltd's solicitor requests a four week extension date for completion to 25 November 2011, due to mortgage offer not having yet been made.

31 October 2011: The request for an extension was not granted and the Council serves Notice to Complete on Dreamstar Ltd.

11 November 2011: Sale completed to Dreamstar Ltd.

August 2012: Applications made for planning permission and listed buildings consents for hotel use at Poplar Town Hall.

July 2013: Planning applications granted under delegated authority by officers.

22 January 2014: Full Council resolves to instruct the three statutory officers, in conjunction with the District Auditor, to undertake an immediate investigation into the marketing and sale of Poplar Town Hall. The resolution included requirements to appoint an independent property valuer and to produce an investigation report to be considered by the Overview & Scrutiny Committee (OSC) on 4 March 2014 and full Council on 26 March 2014.

February 2014: Application received seeking Freeholder's consent for change of use to Poplar Town Hall. [Not yet approved].

10 February 2014: Following consultation with the District Auditor (KPMG) Mazars Public Sector Internal Audit Limited (Mazars) appointed to investigate.

4 March 2014 and 1 April 2014 The then Interim Monitoring Officer informed meetings of the OSC that the Mazars' investigation was ongoing.

4 April 2014: Secretary of State for Communities & Local Government appoints PwC to carry out a best value inspection of the Authority.

7 July 2014: Mazars report circulated to OSC Members on a confidential basis.

22 July 2014: The then Interim Monitoring Officer reported the outcome of the Mazars investigation to the OSC. The OSC resolved to receive a draft report of the Committee's response to Council.

28 July 2014: Re-valuation of Poplar Town Hall received from BNP Paribas found that sale on the basis of hotel use would not have achieved greater value for the Council.

2 September 2014: OSC requested a further re-valuation of the sale of Poplar Town Hall to be carried out by a company with no previous involvement in the sale. OSC also requested independent legal advice.

17 September 2014: Independent re-valuation received from Gerald Eve found that sale on the basis of hotel use would not have achieved greater value for the Council.

October 2014: External solicitors Fieldfisher appointed to provide independent legal advice to OSC.

16 October 2014: Informal meeting of some OSC members to consider an initial draft report to full Council.

4 November 2014: PwC best value inspection report received. The report makes comments and findings in relation to property disposals, including Poplar Town Hall.

12 December 2014: Redacted draft OSC report distributed on a confidential basis to the statutory and other senior officers, the former Mayor and former Cllr. Choudhury for comment.

17 December 2014: The Secretary of State for Communities and Local Government appointed Commissioners to discharge certain specified functions of the Authority, including the approval of property disposals.

17 December 2014: Advice received from leading counsel on progressing the draft report to OSC.

December 2014/January 2015: Initial officer responses raise concerns about content of draft OSC report and the proper process for consideration of draft OSC report.

27 February 2015: Advice received from the then Head of Legal Services and the then Head of Democratic Services on progressing the draft OSC report.

March/April 2015: Mark Norman (Legal Adviser) reviewed draft OSC report.

April 2015: Following discussion with the Commissioners and former Chair of OSC, Head of Paid Service commissioned Richard Penn through SOLACE Enterprises to carry out an independent review of the actions of statutory officers and others in progressing the investigation into the marketing and sale of Poplar Town Hall.

23 April 2015: Former Mayor and former Cllr. Choudhury removed from office by the election court. Fresh Mayoral and ward elections required and scheduled for 11 June 2011.

7 May 2015: UK General Election.

11 May 2015: Advice received from leading counsel that the draft OSC report should not be considered during the pre-election period before the Mayoral and ward elections on 11 June 2015.

19 May 2015: Richard Penn issued interim investigation report to the Head of Paid Service (HOPS).

28 May 2015: Advice received from leading counsel on timetable and process for consideration of draft OSC report (including distribution to officers for comment) at an extraordinary OSC meeting following the Mayoral and ward elections.

11 June 2015: Mayoral and ward by-elections.

16 June 2015: Richard Penn final report issued to HOPS. The report concluded the (then) statutory officers had taken appropriate action to progress the investigation into the marketing and sale of Poplar Town Hall.

22 June 2015: HOPS circulated confidential draft OSC report to officers for comment with a view to the matter being reported by the Interim Monitoring Officer to the OSC on 7 July 2015.

24 June 2015: Lead Commissioner accepts the findings of the Richard Penn report and informs the HOPS it is reasonable to conclude that the matters against the statutory officers are closed.

24 June 2015: Adjourned annual Council meeting appointed new Chair of OSC.

26 June 2015: Extensive officer comments received on the confidential draft OSC report circulated to them.

24 July 2015: Interim Monitoring Officer left, Head of Legal Services becomes Interim Monitoring Officer pending permanent Monitoring Officer taking up her post on 17 September 2015.

2 September 2015: Fieldfisher external solicitors instructed to provide further advice.

OSC RECOMMENDATIONS

3. Recommendation 1

The Governance Review Working Group consider the introduction of thresholds at which property disposals can be referred to, or called in by, the Overview & Scrutiny Committee.

- 3.1 One factor to be considered would be whether all property disposals with an estimated value of over £500,000 (or possibly £1M or £2M) should be referred to OSC. This should also be considered in light of the government's consultation (issued in February 2015) on proposed amendments to the allocation of local authority functions between the council and the executive. The proposed amendments contained in draft statutory Regulations, include a provision that the decision to dispose of land or buildings where the value exceeds a defined minimum sum should not be a function of the executive. The draft Regulations issued in February set the the proposed threshold value at £500,000, subject to the outcome of the consultation.
- 3.2 The context for this recommendation includes a number of concerns about the circumstances in which the disposal of Poplar Town Hall took place and that OSC were not specifically sighted on the disposal which was made under executive authority (the former Mayor and Corporate Director).
- 3.3 Alternatively, some disposals might be considered sufficiently "significant" or "key" for OSC (or an appropriate resources sub-committee of the OSC) to become involved. Such involvement might depend on the scale/significance of the disposal and could also include annual analysis of the disposals database.
- 3.4 Whilst recognising that Mayoral decisions are public when made in Cabinet and key decisions are published on the website, the recommendation is intended to address expectations of transparency and accountability that may have been lacking in the Poplar Town Hall disposal.

4. Recommendation 2

The Governance Review Working Group consider issuing guidance as to the validity/lapsing of certain categories of decisions.

- 4.1 OSC note that some of the concerns raised in relation to the disposal of Poplar Town Hall stemmed from the proposals for sale being developed and actioned in 2011 based on a decision in Cabinet made in 2008 (some 3 years earlier and itself based on a business case/planning brief prepared in 2006).
- 4.2 Notwithstanding the formal/technical position, OSC has concerns as to the genuine validity of such a course of action and suggest that it would be appropriate to have a policy as to the lapsing and/or retaking of decisions in circumstances, perhaps after 2 years, where no action has been progressed pursuant to a decision (i.e. the decision has effectively been dormant).
- 4.3 A clear approach on this would reduce uncertainty as to authorisation and would ensure contemporaneous and more transparent decision making, based on up to date information.
- 4.4 In the Poplar Town Hall disposal this might have facilitated a fuller consideration of the proposals for disposal prior to officers moving to marketing the property in 2011.

5. Recommendation 3

The Governance Review Working Group consider clarifying the delegation to officers of certain planning functions.

- 5.1 The OSC has observed that there has been a lack of clarity as to whether the correct process was followed concerning change of use and listed building consent applications.
- 5.2 It notes the Mazars' report findings that the use of delegated authority was in line with the Council's constitution. This involved the report for the application being drafted by a Planning Officer and signed by the Deputy Team Leader on 18 June 2013. In addition, the draft decision notice, which authorises the issue of the final notice was signed by the Deputy Team Leader on 3 July 2013.
- 5.3 Officers have explained that there is a difference between the Council's long-term financial interest as an "owner" and the Council's role as the local planning authority. Planning and listed building application forms apparently define the interpretation of ownership for the purposes of completing these application forms. In this context under the Application for Listed Building Consent for Alterations, Extension or Demolition of a Listed Building Planning (Listed Building and Conservation Areas) Act 1990 'owner' means a person having a freehold interest or a leasehold with at least seven years unexpired. Notwithstanding the possible interpretation of the words "sites/buildings owned by the Council" within the Constitution, it is the 1990 Act definition that is routinely applied by officers in their interpretation of planning and listed building applications.
- 5.4 In the case of Poplar Town Hall the applicant's 199 leasehold interest effectively meant that it was regarded as the 'owner' in planning terms, notwithstanding that the Council remained the Freeholder. For the reasons given above the decision was therefore not referred to the Development Committee.
- 5.5 The wording and revision of the Constitution and its amendment is a matter for the Council as advised, but it seems there is potential for it to be revised or amended to remove any possible scope for misinterpretation in the future.

6. Recommendation 4

The Governance Review Working Group consider the fitness for purpose of the current financial procedure rules relating to property disposals.

- 6.1 The OSC recognise that this may form part of the ongoing best value review and should focus on clarity and transparency. The OSC appreciates that procedures may require a degree of flexibility but note and agree with the observation from PWC in relation to the sale of Poplar Town Hall that, *"the acceptance of the late bid created the possibility of manipulation which could have been avoided or significantly reduced, either by excluding the late bid which the Authority would have been within its rights to do, or by delaying the opening of all bids until the late bid was received."*
- 6.2 The context for this recommendation is in particular the lack of clarity, accountability and record keeping in relation to the decision to accept, open and prefer the late BAFO from Dreamstar which was not the highest bid. Also, the subsequent decision to engage two bidders in a contract race and decisions to extend the date for contract exchange.
- 6.3 OSC understand that the new Cabinet-agreed asset disposal and lettings protocol addresses these issues and is currently subject to compliance testing. The Governance Review Working Group might usefully consider the outcome of the compliance testing and whether any delegations/authorities for decision making in relation to the variation or departure from the "usual" procedure for property disposals are appropriate.

7. Recommendation 5

The Governance Review Working Group consider how the current role undertaken by the Commissioners in relation to disposal decisions might transfer into a new framework/process to maintain a similar approach after the Commissioners depart.

- 7.1 At the time of writing the Secretary of State Commissioners have a role in relation to the disposal of property. The Directions issued by the Secretary of State include the requirement for the Council until 31 March 2017, to obtain the prior written agreement of the Commissioners before entering into any commitment to dispose of, or otherwise transfer to third parties, any real property other than existing single dwellings for the purposes of residential occupation. This is a timely opportunity to consider how the property disposal function will operate in the absence of the Commissioners. For example there may be useful parallels with a requirement that the three statutory officers have to be satisfied about proceeding where a disposal decision is made by the Executive Mayor.
- 7.2 Consideration might also be given to transitional provisions and an audit process which will ensure that disposals have in fact been undertaken in accordance with processes agreed with the Commissioners to satisfy them as to disposal.

8. Recommendation 6a

The Governance Review Working Group to consider the issue of the proper process and procedure for OSC to seek and obtain external legal advice.

- 8.1 In the course of preparing this report it became clear to the OSC that independent legal advice was required to support the process and that the particular circumstances of this report meant that advice from internal advisers would not be appropriate. This was an unusual situation in circumstances where there was no budget for the external legal expenditure and no specific provision in the Council's constitution for the OSC to obtain external legal advice. In the event, the then Interim Monitoring Officer commissioned Fieldfisher external solicitors to provide advice

to the former Chair of OSC in bringing forward a report to the Committee. The Council also sought independent advice from leading counsel in relation to procedural and process issues.

- 8.2 It would assist the future work of OSC if the circumstances in which it may be appropriate to obtain external legal advice could be clarified and what process should be followed. For example, it may be appropriate for the Monitoring Officer and the OSC Chair to be able to engage external legal advice where appropriate and to involve the Chief Executive if necessary.

9. Recommendation 6b

The Executive Mayor in the process of budget setting is invited to review resource allocation for the OSC to include provision for external legal advice and to progress the transparency agenda.

- 9.1 Funding for the scrutiny function is located within the One Tower Hamlets budget allocation in the Law, Probity and Governance Directorate. The budget contains no specific provision for external legal costs and the process of reviewing the reports in this case and preparing this OSC review has revealed an absence of a budget for some of the other associated expenses. The Committee therefore welcomes the proposed review of resourcing for the scrutiny function.

10. Recommendation 7

The Council, Chief Executive and elected Members strive to improve the organisational culture within the Council and support the ambition of the Best Value Action Plan for organisational culture.

- 10.1 The Chair of OSC during the Municipal Year of 2014-15 made a number of attempts to bring forward observations in a report to the OSC but delays occurred resulting from various procedural issues. Senior members and officers are now working to improve the Council's organisational culture with support from SOLACE to facilitate new relationships and ways of working. This includes objectives which address areas of concern identified by the OSC in relation to the disposal of Poplar Town Hall, including building an understanding of the constitution and its practical application (including the role of OSC), clarifying and communicating delegations and streamlining the decision making process.

11. Recommendation 8

Elected Members should reaffirm their commitment to the ethical standards expected of public office holders and commit to a culture of openness and transparency that transcends the strict application of the statutory requirement to disclose pecuniary conflicts of interests.

- 11.1 In November 2014, having considered the PWC best value inspection report, the then Secretary of State made an oral statement to the House of Commons (which is published and available on the DCLG website). In his statement the Secretary of State commented that he believed the findings in the PWC report painted a picture of 'obfuscation, denial, secrecy, the breakdown of democratic scrutiny and accountability, a culture of cronyism risking the corrupt spending of public funds'. He also made specific reference to Poplar Town Hall commenting that 'Poplar Town Hall was sold to a company involving a person who had helped the Mayor with his election campaign, against internal advice, and the winning bid was submitted after other bids had been opened'

- 11.2 The Committee on Standards in Public Life (January 2013) identified seven principles (the Nolan Principles) which underpin the conduct of those holding public office. These include the principle of **accountability** - being accountable to the public for your decisions and actions and submitting

yourself to the scrutiny necessary to ensure this - and the principle of **integrity** - avoiding placing yourself under any obligation to people or organisations that might try inappropriately to influence you in your work. You should not act or take decisions in order to gain financial or other material benefits for yourself, your family, or your friends. You must declare and resolve any interests and relationships.

- 11.3 In keeping with the Nolan principles' the Council's constitution provides in Article 6 (paragraph 6.03(b)(iii)) that OSC may "Question the Mayor, members of the Executive and/or Committees and chief officers about their decisions and performance whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects."
- 11.4 Nevertheless, despite repeated invitations by the OSC between December 2014 and April 2015, the former Mayor never attended the Committee and the Committee was therefore never able to question him about any matters within the remit of OSC, including declaring any potential interest arising in relation to the sale of Poplar Town Hall. Although the former Lead Member for Resources did attend the OSC to answer questions, the Committee was not satisfied that his answers were open and frank and the OSC were given cause for concern about the willingness to be open of key individuals who could have assisted the investigation.

12. Recommendation 9

The Chief Executive consider if the actions taken by any officers relating to the disposal of Poplar Town Hall require further investigation and notify the Mayor, OSC or full Council (as appropriate) of his decision.

- 12.1 The marketing and sale of Poplar Town Hall has been considered by Mazars and PwC. The Chief Executive should now determine whether any further investigation and/or action is required in accordance with the Council's human resources procedures.