

INDEPENDENT REVIEW OF LAND AND PROPERTY DISPOSAL AND ACQUISITION SUNDERLAND CITY COUNCIL

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1. Background

- 1.1 This report refers to issues raised by Mr Len Lowther (LL) regarding land transactions in Sunderland City Council (the Council).
- 1.2 On 13 July 2017 this firm was commissioned as external/independent investigators by Mr Les Clark, Chief Operating Officer – Place, Economy and Place Directorate.
- 1.3 The initial Terms of Reference (TOR) required an independent analysis of the issues raised by LL where he had alleged impropriety in the Council's handling of matters relating to the sale/disposal of Council owned land and property and in some instances the subsequent granting of planning approval. The TOR required the investigators to establish directly with LL which specific sales/disposal of land and property he felt should be subject of investigation.
- 1.4 On 2 August 2017 the investigating officers met with LL. The meeting was voice recorded. From this meeting it was established what areas required investigating and these were transposed into formal investigation TOR. The TOR were agreed with the Council and shared with LL:-

“To conduct an independent investigation with regards the Councils handling of matters relating to the sale/disposal of Council owned land/property, planning approval and building regulations; with specific reference to:-

- *The Pier Point Development and references to the former Jobes Café Site and Marine Walk*
- *Centre Point*
- *Hetton House*
- *Land at Hendon the Janet Fraser Site*
- *Belford House*

The investigation will include, where deemed appropriate, interviews with relevant Members and Officers.

The investigation will include the relationship between Council Members and Officers involved in the sales with respective purchasers, their agents or other third parties.

The investigation will include governance and over sight arrangements put in place in relation to the sales and establish whether they were in keeping with current Council Policy.

Provide a report to the Council with recommendations.”

2. Methodology

- 2.1 LL's interview and the subsequent agreed TOR allowed the investigation to focus on the relevant areas of the issues raised. These areas were the subject of investigation policy and provided the appropriate proportionality to the investigation.
- 2.2 The Council provided unrestricted access to all relevant documents. To maintain the integrity and confidentiality of the investigation, requests for the documents were

managed by the Council's Internal Audit Section. Files were received by the investigating officers both in hard copy and electronically. These were subject of scrutiny and appropriate scheduling.

- 2.3 Open source research provided the investigating officers with a degree of background information in relation to private companies and individuals mentioned by LL. Information from Companies House provided a checking mechanism as to the connection between relevant companies and those individuals that held directorships in them. Such research has allowed the investigation to discount the suggestion of councillor misconduct and as such no members of the Council have been subject to interview.
- 2.4 Council officers have been given the opportunity to provide information and background regarding the Pier Point Development and Hetton House. This has been by way of questionnaire, or face to face voice recorded meetings. The investigating officers considered that in respect of Belford House, Centrepoint (land at Dundas Street) and the Janet Fraser Site, Council documents contained sufficient information to inform the investigation and provide appropriate conclusions and Council officers were not questioned on these topics.
- 2.5 Some Council officers named in the report have also been given the opportunity to comment on the factual accuracy of its findings. These comments have been considered by the Investigating Officers and, where appropriate, changes have been made.
- 2.6 Where appropriate, private individuals have provided the investigation with background information. Such information has given context to decisions, certainly regarding valuation and the disposal of Council owned land.
- 2.7 Craig Fitzakerly – Managing Director of Fitzarchitects has provided a statement concerning both the Pier Point Development and Hetton House. Although this statement was prepared some time ago it is still relevant and gives context as to the impact on both individuals and small companies when allegations have been made by way of Freedom of Information Act requests and social media. Mr Fitzakerly has also provided information concerning his firm's involvement as architects in the Belford House sale and subsequent development.
- 2.8 Decisions taken by the Council concerning the valuation, sale and disposal of land and the application of section 123 of the Local Government Act 1972 have been the subject of relevant scrutiny. Delegated decisions by Council officers and adherence to Council policy and best practice guidance have also been examined.
- 2.9 Part of this process has required us to confirm professional qualifications of Council officers involved in the valuation, sale and disposal of land. These are as follows:-
 - Nick Wood – Head of Property (previously Estates and Valuation Manager), MRICS, Registered Valuer
 - **(name)**– Strategic Property Manager (previously Senior Valuation Surveyor), MRICS, Registered Valuer
 - **(name)** – Strategic Property Manager (previously Senior Surveyor), MRICS, Registered Valuer
 - **(name)** – Valuation Surveyor, MRICS

Freedom of Information (FOI)

- 2.10 To put this report in context it is important that the reader is aware of the significant history of FOI requests received by Sunderland City Council and South Tyneside Council from LL, and their efforts to respond to these (Attached WC 1).
- 2.11 Where relevant, FOI requests and responses have been incorporated into this report. In some instances the responses have led to confusion, seemingly as a result of Sunderland City and South Tyneside Councils taking different approaches to disclosure and/or not liaising or discussing their rationale when disclosing documents. In these circumstances, it would have been helpful if the two councils had liaised in order to avoid inadvertent confusion. We are aware that FOI requests have continued to be submitted by LL during the course of this investigation. We are also aware that he has used social media to highlight his complaints and his allegations concerning the conduct of certain Council officers.

Section 123 Local Government Act (LGA) 1972 and Council Policy

- 2.12 Section 123 LGA includes, but is not limited to, the following provisions:-

“Disposal of land by principal councils.

- (1) Subject to the following provisions of this section, a principal council may dispose of land held by them in any manner they wish.*
- (2) Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained”.*

- 2.13 The purpose of this section is ultimately to ensure, so far as reasonably possible, that public assets are not sold at an undervalue, save with the authority of the Secretary of State.
- 2.14 Section 123 indicates that a principal council is able to dispose of land as it chooses. However, except in the case of a short tenancy, the consent of the Secretary of State is required if the council intends to dispose of the land at less than the best consideration reasonably obtainable. A failure to obtain the necessary ministerial consent in cases of disposals of land at an undervalue may therefore make such a decision *ultra vires* (beyond the powers of the Council).
- 2.15 Councils are subject to additional marketing and advertising requirements when disposing of land consisting or forming part of an ‘open space’ under section 123 (2A) of the 1972 Act. ‘Open space’ is defined in section 336 of the Town and Country Planning Act 1990 as *“any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground”*.

Best consideration reasonably obtainable

- 2.16 Section 123 (2) manifests itself as a duty upon the Council to achieve a particular objective when disposing of land (i.e. obtaining the best consideration reasonably obtainable).

2.17 This provision does not impose a duty to conduct a particular process or, for example, to have regard to particular factors (see *R (on the application of Salford Estates (No 2) Ltd) v Salford City Council* [2011] EWHC 2135 (Admin)). That being said, the process followed may have an important, or even determinative, evidential role in assessing a council's section 123 (2) compliance (see *R (Midlands Co-operative Society Ltd) v Birmingham City Council* [2012] LGR 393).

2.18 Case law provides some guidance as to what considerations may be relevant when determining a local authority's compliance with section 123 (2). Such factors may include, but are not limited to, the following:-

- consideration that can be taken into account is that which has commercial or monetary value to the local authority;
- the duty to obtain the best price does not require the highest offer to be accepted;
- a lower cash offer can be accepted by a local authority, for instance, where it is accompanied by a bid with a more well-prepared and detailed scheme. The deliverability or credibility of a bid are commercial factors which are relevant to an assessing whether consideration offered is the best reasonably obtainable;
- a local authority should take reasonable steps to investigate how far opposing bidders would be willing to commit themselves to the highest offer they are prepared to make;
- the terms on which the land is disposed are relevant to the assessment of whether the consideration offered is the best reasonably obtainable;
- the Court is not entitled to substitute its own view on the fact and merits for that of the local authority. The Court may only interfere where there was no material upon which the authority's decision could have been reached or, if in reaching the decision, the local authority disregarded matters that it ought to have taken into consideration or if it took into account matters that were irrelevant or if its decision was irrational;
- there is no need for a local authority's decision making process to refer to section 123 (2) explicitly, provided that the substance of the section 123(2) duty has been performed;
- the Court is only likely to find a breach of section 123 (2) if a council: failed to take proper advice; failed to follow the advice for reasons it could not justify; or had followed advice that was so erroneous that in accepting it the local authority must have known it was acting unreasonably.

2.19 The Council should, when disposing of land, obtain the views of professionally qualified valuers as to the current market value of the land or likely amount of any undervalue. In order for the Council to demonstrate that it achieved best consideration reasonably obtainable, it would be prudent to:-

- market the property; and/or
- obtain an appropriate professional valuation.

- 2.20 However, in order to discharge the duty under section 123 (2) there is no absolute requirement to market the land or obtain an independent valuation. These processes are merely evidentially indicative of section 123 (2) compliance.

Disposing of land at an undervalue

- 2.21 It may be that a local authority deems it necessary or appropriate to not obtain best consideration reasonably obtainable when disposing of certain pieces of land. Local authorities may dispose of land at an undervalue with the consent of the Secretary of State.
- 2.22 The Local Government Act 1972: General Disposal Consent 2003 (the General Consent) is set out in Circular 06/03 and outlines that specific consent from the Secretary of State is not required for the disposal of any interest in land where the local authority considers the disposal will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. The General Consent can only be relied upon in relation to disposals where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (the undervalue) is £2,000,000 or less.

Council Policy

- 2.23 The Council following its own policy in relation to the disposal of land is only one factor to be taken into account in regard to its section 123 (2) duty. Compliance with section 123 (2) is focussed on outcome rather than specific process or procedure. However, defects in the decision making process may still be the subject of challenge on public law grounds.
- 2.24 The Council's relevant policy for the disposal of land, at the time relevant to the investigated disposals, appears to be expressed largely by several reports to Cabinet. These reports make reference to other documentation but the main procedure for disposal of land appears included within the reports themselves.
- 2.25 A report titled "*Disposal Policy for Surplus Land and Property*" was presented to Cabinet at a Cabinet meeting on 14 March 2007 (the 2007 Policy). Cabinet was recommended to approve the policy and it was approved. This report constitutes the Council disposal policy for 2007, but also outlines the Council's main procedure and policy for handling disposals from 1993 (the 1993 Policy).
- 2.26 A second report titled "*Strategy for Surplus Assets*" was presented to Cabinet at a Cabinet meeting on 2 December 2009 (the 2009 Policy). Cabinet was recommended to approve the policy and it was approved. The 2007 Policy disposal procedure is set out in the 2009 policy.
- 2.27 A third report titled "*Disposal Procedure for Surplus Land and Property and Amendment of Delegation Scheme and Financial Procedure Rules for acquisition and disposal of assets*" was presented to Cabinet at a Cabinet meeting on 7 September 2011 (the 2011 Policy). Cabinet was recommended to approve the policy and it was approved. The 2011 Policy re-affirms the 2009 Policy but introduces a number of amendments. The 2011 Policy appears to act as a top-up to the 2009 Policy and is often referred to in internal Council correspondence as 'the 2009 Policy, as amended by the 2011 Policy' (the 2009/2011 Policy).

- 2.28 Reference has also been made to particular provisions within the Council's Constitution and relevant delegation scheme.
- 2.29 The above policies will be referred to specifically when attempting to determine whether the Council was complying with internal policy at relevant dates.

3. Pier Point Development

Background

- 3.1 The Pier Point Development concerns land situated on Marine Walk, Roker, Sunderland. As the name suggests it is adjacent to the coast. The development has been referred to as, the former Jobes Café Site, Marine Walk and Pier Point. For the purposes of this investigation it is referred to as Pier Point. This development is now complete. LL lives opposite the development.
- 3.2 LL raised a number of issues and allegations regarding the Pier Point Development. These issues include:-
- *The initial sale of the land known as the former Jobes café site by the Council to Vedra Leisure*
 - *A suggestion that Councillor Linda Scanlon (a member of the Council) was a director of Vedra Leisure resigning her directorship prior to the sale by the Council*
 - *An inappropriate relationship between Dan Hattle (a Council officer) and Fitz Architects*
 - *Building Regulations and illegal decisions regarding disabled access*
- 3.3 These allegations were transposed into an investigation policy and included the following parameters:-
- *Initial valuation/sale of land by the Council to Vedra Leisure*
 - *Planning applications by BBL NE, dates submitted, delegated or committee decision, officer involved, dates of approval*
 - *Building Regulations including references to disabled access, work commissioned by Len Lowther and Council responses*

Former Jobes Café Site

- 3.4 On 7 June 2002 a site comprising of 600 square metres was identified by the City Council as being suitable for development. The area was the site of the former Jobes Café.
- 3.5 On 13 January 2004 it would appear that the then Head of Land and Property agreed to the sale of 1200 square metres of land at Marine Walk to a Mr **(name)** Mr **(name)** (was a Director of Beach Bar Leisure Ltd) at a sale price of £25,000. It is assumed

that this land included the site of the former Jobes Café. There is no explanation in the file regarding the increase from 600 to 1200 square meters.

- 3.6 A Delegated Responsibility Record Form B was completed on 15 January 2004 under file reference 12/94 (Attached WC 2). The form was signed by **(name)** MRICS – Senior Valuation Surveyor and, what appears to be, **(name)** FRICS – Principal Property Surveyor. The text states:

“Agreed to the sale of the Council’s freehold interest in 1200 square metres of land at marine Walk for development as a public house/restaurant/play area”

- 3.7 The relevant delegation scheme for the time is not now available and we have therefore been unable to determine whether or not correct procedure was followed.
- 3.8 The form indicates that £25,000 was the highest offer and this was made by way of ‘sealed offer’. It also confirms that members/officers in “Planning and Highways” were consulted. Other than this there is no evidence on file which indicates how the land in question was marketed by the Council.
- 3.9 We were given sight of a report by Peel & Co dated May 2014 (Attached WC 29). The report concerns an instruction by the Council in April 2014 to provide a valuation based on the freehold interest of Land at Marine Walk, Sunderland as at November 2007.
- 3.10 The Peel & Co report indicates a market value of the land at £nil, as at November 2007.
- 3.11 In November 2014 a letter was received by the Council from Peel & Co Chartered Surveyor’s (Attached WC 3). The letter states:

“We understand that you wish correspondence to confirm that Peel and Co Chartered Surveyors, a firm who specialises in the licensed, leisure and hotel sectors, undertook a valuation of the above site as at November 2007 reflecting the market conditions and planning permission prevalent at that time.

We confirm that we have had no material involvement with the site and acted objectively in providing our independent opinion. Our valuation concluded that the price paid for the site was within parameters we would have anticipated”.

- 3.12 When interviewed, Nick Wood stated:

“Peel & Co were asked to do a retrospective valuation in November 2014 to comment on the market value of the land sold to Beach Bar Leisure in 2007.

So they will have based their opinion on cost and values and comparable evidence thereof in 2007.”

- 3.13 Mr Wood went on to state that requesting retrospective valuations was a common practice for tax purposes, in particular, Capital Gains Tax and Capital Transfer Tax. Although this may be the case there is no evidence on file that would indicate that any valuation took place prior to the sale in 2007.

- 3.14 The site was sold to Beach Bar Leisure Ltd on 19 November 2007 and not as suggested by LL to Vedra Leisure Ltd. However on 10 March 2004 Vedra Leisure Ltd was granted planning permission for the site for the erection of a two storey building to provide a bar with family area, restaurant and two staff apartments (Attached WC 4). Companies House records indicate that the two companies were connected through common directorships.
- 3.15 Lynda Rontree Scanlan was a former director of Vedra Leisure Ltd. She was appointed on 23 June 2003 and resigned on 1 August 2003. Lynda Scanlon was first elected as a member of the Council in May 2011 and re-elected in May 2015. The suggestion that she was in some way involved in the sale of the land as a councillor is incorrect. Councillor Scanlon has not been interviewed as part of this investigation.
- 3.16 The contract to sell the land did contain a condition that development should take place within 12 months (Attached WC 5). The condition was not backed up with a 'call in option'. Mr Wood provided some additional information with regards this point, he stated:

“I can confirm that when the Council commenced the Marine Walk public realm improvement process we did look into this sale to try and understand why it hadn't been developed and remained vacant.

.....following legal advice, we repeatedly tried to contact the purchaser to discuss why this had not happened - there should be correspondence on file to this effect.

*However this proved very difficult with the reason being that the original person who dealt with the acquisition, **(name of Director)**, no longer had any involvement with the company. This company was non-trading with its listed address at a local solicitors office.*

We engaged with the new owners when we found out that the assets of this company had been sold. Subsequently the directors of Fitz Architects informed us that they proposed to develop the site and therefore satisfy this condition. “

- 3.17 It is unfortunate that the Council did not include a call in option in the contract to ensure that the proposed development occurred on the site. Had such an option been included, a failure to develop the site would have allowed the Council to purchase the land back at the sale price. Council officers have indicated that the inclusion of call in options in development contracts was not standard practice at the time of this sale.

Regeneration

- 3.18 The potential development of the seafront was highlighted in a report to the Seafront Members Steering Group in January 2010 (Attached WC 6). It would appear that this report supported the Seafront Regeneration Strategy and the Marine Walk Master Plan. The former Jobes Café Site is identified as Site 3 in the report and states that the site was under the ownership of a private developer.
- 3.19 The report stated that previous planning permissions had expired. The report recommended that the Council work with the developer and produce a development

brief to guide the redevelopment of the site. The report also stated that as the site was the focal point it detracted from the appearance of Marine Walk and as such priority should be given to it.

- 3.20 In February 2010 the Council identified that no development had taken place on the site. Efforts were made to contact the directors of Beach Bar Leisure Ltd in June and September 2010 without success. It is understood that the Council did consider acquiring the land back however the contract being what it was this option was not pursued.
- 3.21 During interview, Daniel Hattle – Regeneration Manager, expanded on the role of regeneration within the Council. He stated:

“.....I spend most of my time on is regeneration, its capital projects, its master planning, development briefs, anything that’s working with partners to help them deliver their regeneration objectives.....”

but my general role is around urban regeneration and actually the sea front, the whole sea front regeneration project sits with me...”

Fitz Architects

- 3.22 Companies House records indicate that in October 2012 the previous directors of Beachbar Leisure Ltd resigned and the new Directors were appointed. These directors included; Craig Fitzakerly, Caroline Fitzakerly, Clinton Mysleyko and Gemma Mysleyko. (Craig Fitzakerly and Clinton Mysleyko are also Directors of Fitz Architects).
- 3.23 In addition to this, Council documents indicate that in 2012 Mr Fitzakerly contacted the Council to say that he was potentially purchasing the company, along with its only asset, the former Jobes Café Site.
- 3.24 In the statement provided, Craig Fitzakerly expanded on this point. He stated:

*Knowing the potential of our sea front and the ambitions of the Council’s master plan for the area, the Sunderland born directors of Fitz Architects (Craig Fitzakerly and Clinton Mysleyko) approached the directors of Beach Bar Leisure Ltd (**names**) to make an offer to purchase their company. Beach Bar Leisure Ltd was purchased by Craig, Clinton and their spouses in October 2012 for £90,000 and this was the start of a huge personal financial investment into regenerating this undeveloped area of our sea front. Once the company was purchased we changed the company name from Beach Bar Leisure Ltd to BBL NE Ltd*

- 3.25 Prior to this there is no evidence to suggest that Fitz Architects were connected in any way to Beach Bar Leisure Ltd or, in fact, the purchase of the former Jobes Café Site from the Council in 2007. There is no evidence to suggest any Council involvement in the purchase of Beach Bar Leisure by Fitz Architects.
- 3.26 Council documents indicate negotiations taking place between August 2012 and June 2013 with Mr Fitzakerly. These negotiations include a reference to an area not included in the original sale.

The Land Exchange

- 3.27 On 14 August 2012 Mr Wood wrote to Craig Fitzakerly. The letter included the following:

“Without Prejudice – Site of the Former Jobes Cafe, Marine Walk, Sunderland.

“Further to your enquiry regarding the above and the query regarding the strip of land edged red on the attached plan which was not included within the sale of the site to Beachbar Leisure in 2007.

It appears as that this land was excluded from the sale as historic plans show a footpath over the land, however, following investigations with our Rights of Way team and physical inspection it is apparent that there is no footpath.

On the basis that if this issue had been picked up at the time of the original sale this land would have been included at no extra cost and the purpose for the sale is to enable development to enhance the area the Council would be prepared to transfer the land on the following Heads of Terms.”

- 3.28 The price of the land was indicated as £nil however the purchaser was liable for the seller’s costs of £1,000.
- 3.29 On 11 June 2013 **(name)** – Senior Surveyor, emailed **(name of Valuation Technician)**. He stated:

“We have agreed to do a land swap down at Marine Walk. From looking at the files we have retained the rectangular parcel of land from the original sale based upon o/s lines by mistake as this land goes nowhere.

However as part of the landscaping we need to put a footpath through the triangle to the south, which we did transfer in the original sale.

I have therefore agreed to a land swap for nil value where each party will bear their own costs.

Can you complete a del decision and instruct legal.”

- 3.30 On 12 June 2013 Mr Wood wrote to BBL NE Ltd c/o Fitz Architects. The letter included a reference to the discussions with Mr **(name of Senior Surveyor)** and terms of the land exchange.
- 3.31 On 13 June 2013 a Decision Record (For use in the case of Decisions (including Key Decisions) made by Officers under Delegated Powers was completed (Attached WC 7). The decision and reason states:

“Agreed to the exchange of the Council’s Freehold interest in 25 square metres or thereabouts of land in return for 74 square metres or thereabouts of land from BBL NE Ltd at Marine Walk, Roker”

“Council requires BBL NE Ltd land to facilitate the construction of a footpath”

3.32 The document was signed by N. Wood (Estates and Valuation Manager) and **(name)** (Senior Valuation Surveyor).

3.33 The Decision Record states that the Deputy Chief Executive is the Delegated Officer with the power under the Council's Constitution to make the decision. However, the Decision Record indicates that the decision maker was an officer authorised by the Delegated Officer (an Authorised Officer). The Authorised Officer is stated to be Nick Wood, and the paragraph of the Directorate delegation scheme relied upon is stated to be PS1. Paragraph PS1 (OCE Delegation Scheme V.3.3 20130331) states:-

“To authorise, in consultation with the Leader, Cabinet Secretary and the Executive Director of Commercial and Corporate Services:-

a) the acquisition and disposal of freehold and leasehold interests in land where the consideration is less than £250,000;

and

b) The acquisition and disposal of leasehold interests in land where the annual rental is less than £250,000.

provided that in each case, save for:-

(i) leases granted for a term of seven years or less; or

(ii) where a disposal of a surplus property is proposed at less than best consideration to a Voluntary and Community Sector organisation in accordance with the Surplus Building Policy (Community Benefit) approved by Cabinet at its meeting on 6th April 2011 and the consideration or annual rental is less than £250,000.00 before any concession; or

(iii) where the disposal is within the scope of the Deputy Chief Executive's delegated authority to agree rent concessions;

in the reasonable opinion of the Deputy Chief Executive, the transaction represents the best consideration reasonably obtainable. (2.37)”

3.34 This Delegation Scheme indicates that such decisions can be authorised by (in consultation with the Leader, Cabinet Secretary and the Executive Director of Commercial and Corporate Services): the Estates and Valuation Manager up to an amount of £20,000; the Head of Planning and Property Services up to an amount of £50,000; and the Deputy Chief Executive for amounts over £50,000 but less than £250,000, provided that it is the reasonable opinion of the Deputy Chief Executive (or, presumably, the delegated Authorised Officer) that the transaction represents the best consideration reasonably obtainable.

3.35 The form indicates that individuals consulted were Councillors S Bonallie, B Curran and J Jackson. These individuals were local ward councillors and Council officers have indicated that consultation with such individuals is standard practice. However, these individuals did not hold the positions required for consultation in order to authorise the decision to dispose of this land. This appears to be contrary to the Council's relevant policy and procedure. Council officers have indicated that decision records are placed on a Members digest and sent via email to all Members, including the Leader and Cabinet Secretary, but this is for information not consultation.

3.36 As outlined below, an internal valuation of the land involved was conducted on 14 August 2013. The valuation indicates that both the disposal and acquisition of the land would be far below £20,000 and so the Estates and Valuation Manager would

be authorised to make such decisions, provided it was their reasonable opinion that the transaction represented the best consideration reasonably obtainable. It is not apparent how the Decision Record form could have been correctly completed prior to the valuation taking place. This appears to be an example of the Council not following correct policy and procedure.

- 3.37 On 18 June 2013 a memo was completed by **(name)** - Valuation Technician, Property Services to the Head of Law & Governance, headed "Land at Marine Walk, Roker". The memo included terms agreed and was signed by Mr Wood.
- 3.38 On 16 July 2013 Clinton Mysleyko, a director at Fitz Architects emailed details of his solicitor to the Council. This is followed by various emails between Iris Law (Solicitors acting for Fitz Architects) and the Council regarding the land exchange.
- 3.39 On 14 August 2013 an internal valuation report was completed for land at Marine walk by Mr **(name) (Senior Surveyor)** and Mr Wood (Attached at WC 8). The land being acquired was valued at £2,336 and the land being disposed of was valued at £820. The conclusion stated:
- "The land being acquired is of greater value than the land being disposed of, therefore from a best value perspective a land swap with no consideration would be recommended."*
- 3.40 Between the 6 September 2013 and 18 September 2013 various emails were exchanged concerning the sale, searches and the land transfer.
- 3.41 On 19 September 2013 Mr **(name of Valuation technician)** emailed **(name of Senior Legal Assistant)**, copied to Mr **(name of Senior Surveyor)**, requesting that the land transfer should be progressed.
- 3.42 On 15 October 2013 following document exchanges between **(name of Senior Legal Assistant)** and **(name of representative)** of Iris Law, two memorandums were prepared confirming the land exchange had been completed.

Planning

- 3.43 The first application for planning permission was submitted on 1 February 2013 by **(name of company representative)**, BBL NE c/o Fitz Architects (Attached WC 9). The agent was Craig Fitzakerly of Fitz Architects. The application proposed a flexible mixed use development consisting of use class A1 (retail), A3 (restaurant and cafe), A4 (drinking establishment), A5 (hot food take-away) and D1 (assembly, arts and leisure) to create up to 5 Retails/Leisure units on the ground floor; and 5 no. C3 (dwelling houses), B1 (business) on the upper floors.
- 3.44 The site address was given as Former Jobes Cafe, Marine Walk, Roker, Sunderland, SR6 0PL. The application states that Pre-Application Advice was given by Daniel Hattle at a meeting on site on 18 June 2012.
- 3.45 Government guidance suggests that pre-application engagement by prospective applicants offers significant potential to improve both the efficiency and effectiveness of the planning application system and improve the quality of planning applications and their likelihood of success. Such advice can assist by:

- *Providing an understanding of the relevant planning policies and other material considerations associated with a proposed development;*
- *working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development;*
- *discussing the possible mitigation of the impact of a proposed development, including any planning conditions;*
- *identifying the information required to accompany a formal planning application, thus reducing the likelihood of delays at the validation stage. The information requested must be reasonable (more information can be found in Making an application);*
- *putting in place a Planning Performance Agreement where this would help with managing the process and agreeing any dedicated resources for progressing the application.*

3.46 The guidance also states that pre-application engagement needs to be tailored to the nature of the proposed development and the issues to be addressed. It is recognised that the parties involved at the pre-application stage will vary on a case by case basis, and the level of engagement needs to be proportionate to the nature and scale of a proposed development. Each party involved has an important role to play in ensuring the efficiency and effectiveness of pre-application engagement.

3.47 Pre application advice is managed by the Council's Planning Department. It is a formal process subject of application and fees. Guidance to the process can be found in the Pre Application Charges Charter dated 1 October 2011 (Attached WC 10).

3.48 There is no one-size fits all approach to providing efficient and effective pre-application services. Local planning authorities are encouraged to take a flexible, tailored and timely approach to the pre-application services they offer, which are appropriate to the nature and scale of a proposed development. When interviewed Daniel Hattle stated:

"I suppose its what the definition of pre application advice...."

Anything I'm giving is almost pre, pre application advice. But I guess to a developer, an applicant, they don't necessarily see the difference in that"

3.49 There is no evidence to suggest that any formal pre application advice was applied for and/or provided by the Council's Planning Department.

3.50 Mr Hattle's role and relationship with Fitz Architects is subject of significant negative comment by LL both online and correspondence with the Council. LL suggests that Mr Hattle spent more time at the Fitz Architects Office than his own office within the Council. When interviewed on this point he stated:

"No, that's not true at all. You know, probably when they were doing the sea front stuff, they were based in [The Place]in [Sunnyside], its like managed office which was at that point owned by the Council through one of the tenants and I would often pop down...."

- 3.51 On 23 May 2013 the application was approved under delegated powers (Attached WC 11). The planning officer was **(name of planning officer)**. The authorising officer initials were AJ. The approved application included an amended description of the development and contained the following proposal: Erection of a two storey terrace of buildings to provide flexible mixed use development of 5 no. Commercial units on the ground floor (mix of use classes A1 (retail), A3 (restaurant and cafe), A4 (drinking establishment), A5 (hot food take-away) and 6 no. First floor units comprising of dwelling houses (use class C3) and offices (use class B1) with associated parking area and bin store to ground floor and raised decking to north elevation.

Disabled Access

- 3.52 The decision was accompanied by a document which detailed the issues considered by the planning officer when reaching the conclusion to approve the application. This included a reference to the disabled access and stated:

“Question

It is not clear how disabled access will be met as the plans show stairs leading to the living accommodations above.

Answer

The proposal has been subject of detailed discussions with Building Control Officers and the provisions for disabled access as required by The Building Regulations 2010, Approved Document M (incorporating the recent 2013 amendments) is relevant to the scheme.

In respect of access to the first floor accommodation, there is no legal requirement to provide a lift/lifting platform to residential units at this level (App Doc M, Section 6.1 – 6.3). There is a specific legal requirement, to provide level access to ground floor residential properties only.

Nonetheless, the development must incorporate an ambulant disabled staircase giving access to the first floor units, which must be fully in accordance with App Doc M, Section 7. This requirement for the ambulant disabled staircase has been incorporated within the proposed scheme.

In general, there are provisions to incorporate a lift/lifting platform to non-residential properties. However, in this instance it is not required. LABC Services have national agreements, that non-residential units under 100m sq & incorporate no unique facilities, do not require the provision of a lift/lifting platform. Such small commercial units, as in this instance cannot justify the cost/maintenance costs for such a small facility.

In light of the above, as the proposed scheme fully complies with the requirements of App Doc M, there are no access related issues that would prevent Building Regulation Approval being granted. As the scheme raises no concerns from a Building Regulation perspective, there is no material planning justification to refuse the application based on the provision of disabled access.”

The approval of the application is subject to the imposition of 14 Conditions.”

3.53 In interview (**name of planning officer**) stated:

“...there was an issue about whether a lift potentially should go in ...and that was really discussed with Building Control and Building Regs and whether it would meet their, whether there was a requirement for a development of that size and scale to actually provide a liftwhich there wasn't.

....but in terms of providing a lift there was no requirement to do so, so there was no real reason, justification for me to go back and say you need to put a lift in this development.”

3.54 On 28 June 2013 a report commissioned by LL was published (Attached WC 12). The report was headed 'Proposed Mixed use development at Marine Walk former Jobes Café, Marine Walk, Roker, SR6 0PL. Planning Application Reference 13/00249/FUL'. The report was completed by Access & Inclusion by Design Ltd (AID). We understand that the report was shared with the Council. However, we have found no reference to this report in the documents shared with us by the Council. The document was disclosed to us by LL.

3.55 The scope of this report was 'To provide an access assessment of the above development with regards to the provision of access to the units and external facilities'. The report considered the planning application, Supplementary planning guidance Development Control Guidelines and Building Regulations – Approved Document M.

3.56 The report contained the following conclusions:

“It is our view that the approved development is not inclusive and:

- *That the lack of access will significantly disadvantage many disabled people;*
- *Make it very difficult for service providers and employers to meet their obligations under the Single Equalities Act and defend any claims made against them;*
- *Does not provide equality of access to employment and services;*
- *Restricts employment opportunities for people with ambulatory disabilities;*
- *Does not meet the council policies regarding access for disabled people and Design and Access statement does not describe how the proposal meets the councils policies or any justification for not doing so;*
- *Is not compliant with the Building Regulations Approved Document M and associated guidance documents.”*

3.57 Although there is some awareness by Council officers of this report, there is no evidence on file that would suggest anybody within the Council considered the report or its conclusions.

3.58 In interview (**name of planning officer**) stated:

"I don't recall, I mean I got a lot of, a lot of correspondence after, after the decision was made back and forth but I don't recall, I don't recall seeing that document."

3.59 Between 19 December 2013 and 15 April 2015 a number of applications for non material amendments were submitted by Fitz Architects and approved by the Council.

Second Planning Application

3.60 A further planning application was received by the council on 15 April 2015. The applicant being Clinton Mysleyko, of BBL NE. The agent shown was Craig Fitzakerly, Fitz Architects.

3.61 The Description of Proposal was a development of a detached two storey flexible mixed use building consisting of either: A1 (retail), A3 (restaurant and cafe), A4 (drinking establishment), A5 (hot food take-away) with associated parking area and bin store to ground floor at Marine Walk, Roker along with conversion of existing enclosed ground floor parking area to a flexible mixed use building (as above use-classes).

3.62 The site address given was Land at Marine Walk, Roker, Sunderland, SR6 0PL. The application states that 'Pre-Application Advice' was given by Mr Daniel Hattle.

Call In

3.63 On 14 June 2015 LL emailed a number of Councillors and Council Officers (Attached WC 13). The email raised concerns and complaints with regards the new planning application. The email suggested that the planning application submitted by Fitz Architects was in fact illegal.

3.64 On 16 June 2015 Councillor Richard Bell emailed Development Control. The email stated:

"After looking at this email, I would like to refer this application to committee for decision, Ref. No. 15/00782/FUL"

3.65 In interview (**name of Development Control Manager**) – Development Control Manager, stated:

"But to me that procedure is the correct way to do it. They weren't trying to amend it as part of the previous permission."

They've applied for a new stand alone permission which is what we, as officers, would have advised them to do.

To sort all potential issues as the result of the changes that were being made were being fully detailed and considered as part of the over all scheme and whether, you know, they weren't just applying for one amendment to the original approval. Its allowed us to look at all of these issues again which is obviously what will have happened. You know, cumulatively, so to me that was."

- 3.66 On 17 February 2016 the Planning and Highways Committee met and approved the application (Attached WC 14). The approval was subject to 16 conditions. Item 6 on the minutes refers to the application. The report to the Committee included the following conclusion:

"It is considered that the proposed development will contribute to the achievement of sustainable development from an economic, social and environmental perspective as identified within the key themes of the NPPF, via the introduction of two further commercial units along the lower promenade area of Marine Walk.

Furthermore whilst it is recognised that the development proposal will lead to a loss of a small area of amenity space, it has been indicated that the development would not have a serious adverse effect on the amenity, recreational or nature conservation value of the allocated open space as a whole and as such the further regeneration of the lower promenade is considered to meet in part the aspirations of the Seafront Regeneration Strategy and the Marine Walk Master Plan.

The proposal is considered to comply with relevant NPPF and UDP policies in accordance with the Marine Walk Master Plan.

In light of the continued regeneration of the Marine Walk promenade area, it is recommended that Members approve the application subject to the conditions listed below."

- 3.67 On 19 February 2016 Fitz Architects were informed of the Planning Committee decision (Attached WC 15). Communication then continued between Fitz Architects and the Council regarding the planning conditions.
- 3.68 Other than **(name of planning officer)**'s rationale on 23 May 2013 and the subsequent report by AID, the issue of disabled access is not discussed in any great detail within the Council documents. However FOI requests and subsequent answers by both Sunderland City and South Tyneside Council have provided a further insight into decisions that were being taken by Council officers.
- 3.69 On 16 April 2014 **(name of South Tyneside Council officer)**, Corporate Lead, Corporate Affairs, South Tyneside Council responded to LL on the issue of approved document M. He stated:

"There is no specific, separate, written evidence of how the access statement satisfies the requirements of approved Document M. The project has been assessed for compliance with the Building Regulations and the Authority believes that the plans and supporting documentation including the access statement meet the requirements of Part M which requires "reasonable

provision to be made for people to gain access to and use of the building and its facilities”.

No written assessment exists that concludes lift access is not required. We believe that the submission meets with the requirements of Part M and meets with the spirit and intention of national guidance issued by Local Authority Building Control.

Site Constraints are as mentioned in the access statement and shown on the plans that access has already been provided by Sunderland City Council through the planning” process.”

- 3.70 On 15 May 2014 **(name of South Tyneside Council officer)** responded to a further FOI from LL. The FOI considered requested the following information:

“Please provide evidence how the access statement will satisfy the requirements of approved document M to ensure that all new buildings are accessible to all and provide equivalent amenity in enabling access to and use of a building and its facilities.

Please provide the assessment that concluded, lift access to first floor office space not being considered reasonable for this development.

Please provide details of the constraints of the site that South Tyneside building control department considers valid reason not require a lift to the first floor office space.”

- 3.71 It would appear that that this request was subject of an internal review on 2 May 2014. The review panel consisted of **(name of South Tyneside Council officer)** and **(name of South Tyneside Council officer)** Deputy Monitoring Officer. Officers providing information to the panel included; **(name of South Tyneside Council officer)** - Information Governance Team, **(name of South Tyneside Council officer)** – Corporate Lead Corporate Affairs and **(name of South Tyneside Council officer)** – Building Control Manager.

- 3.72 The response to the FOI included Pre Application advice notes dated 31 May 2012 (Attached WC 16), referred to by the Council as a record of assessment. On the issue of disabled access the document states, ‘The main concern with this development is access for disabled and wheelchair users, as required by Approved Document M’.

- 3.73 The advice document then sets out five areas of design advice dealing with the issue of access. The document concludes, ‘Further discussions are advisable if this scheme progresses or if a revised scheme is designed’.

Approved Document M

- 3.74 Building Regulations establish standards that must be achieved in the construction of buildings. A series of Approved Documents set out what typically would be acceptable for compliance with the relevant requirements of Building Regulations. There is no legal obligation to follow the guidance in the Approved Documents.

- 3.75 Approved Document M – Access to and Use of Buildings provides guidance document relating the requirements of the Building Regulations for access to and the use of buildings. The latest version was published in March 2015 and took effect on 1st October 2015. M4(3) of Schedule 1 of the Building Regulations is the requirement to provide reasonable provisions for wheelchair users.
- 3.76 **(name)** – Building Control Operations Manager, South Tyneside Council provided commentary on this point when interviewed. He stated:

“...if you look at the actual requirement of Part M and it says “reasonable provision should be made” its about being reasonable. There’s other guidance at the time from LABC to say when it was reasonable to not insist on a lift.

..we’ve checked the plans and made that decision that what we had in front of us was reasonable. If there had been other provisions made that made it reasonable to accept that without the lift and that’s the, that’s the technical side of building regs is reasonable provision, read some guidance, now you have to go and make that decision.

Do you think what you’ve got, what they’re proposing is reasonable? It’s not black and white, its not, in this case and in that case and even now there’s a lot of interpretation and stuff and its down to, if you don’t want to comply with, if you don’t want to go down the lift route. They have to justify it to building control and why they’re not going to do that”.

Building Control

- 3.77 The Building Regulations 2010 cover the construction and extension of buildings. There are two phases to building control; the planning phase and the construction phase. In this case Fitz Architects were in partnership with South Tyneside Council for the planning side of building regulations. The compliance with building regulations at the point of construction and issuing the relevant completion certificates was completed by Sunderland City Council.
- 3.78 Mr **(name of Building Control Operations Manager, South Tyneside Council)** provided an explanation of the arrangements regarding Building Regulations for the Pier Point Development:

“you’re only really a partner for the plan exercise because you’ve got two phases in building control. You put your plans in to us first, for a commercial development, we’ll check them and see if, you know, there may be issues and you need to look at this, you need to look at that. We get them to a point of approval and then we pass on them to the site inspection side and they do the site inspection to make sure the work complies with the approved plan.

So, you’re only partners for the plan exercise because otherwise we couldn’t have people driving all over the country doing inspections and stuff. So, how the system works is, you put the plans in to your partner authority and then once it gets to approval we get the plans from the approvals team and we forward them on to what we call the inspecting authority, so it’s the actual place in which the extension or the development is being built.”

3.79 In his meeting with the investigating officers LL also raised concerns with regards road safety issues and fire safety within the development itself. The investigation has considered these areas and can find no evidence to suggest that they were not adequately considered by the Council during the planning and development stages. Building Regulation Completion Certificates have now been issued for both the residential and commercial units within the Pier Point Development.

The 2007 Disposal and Section 123 LGA 1972

3.80 The Jobs Café site was sold by the Council to Beach Bar Leisure Ltd in 2007 for £25,000. The Council had the power under section 123 LGA 1972 to dispose of this land in any manner it wished, unless £25,000 represented a consideration less than the best that could have been reasonably obtained.

3.81 Evidence on the file suggests that the land was marketed to some degree by the Council and we understand at least one sealed bid was received from a prospective purchaser.

3.82 The bid by Beach Bar Leisure Ltd was stated to be the highest bid. The 1993 Policy can be used as guidance as to what the Council procedure should have been at this time. Limited information concerning marketing method for this site makes it difficult to assess policy compliance. However, Step 7 of the 1993 Policy indicates that “*the highest acceptable offer*” should be recommended to Cabinet. The decision to dispose of the land was ultimately made by delegated decision, as seen in the Delegated Responsibility Record Form B completed on 15 January 2004. The form indicates that the £25,000 was the highest offer. The relevant delegation scheme for the time is not now available and we therefore have been unable to comment on whether the correct procedure was followed.

3.83 Case law indicates that the highest offer does not always constitute the best consideration reasonably obtainable under section 123 (2). If lower offers were made, these should have been probed and assessed, determining the quality of any associated schemes being put forward.

3.84 Due to the lack of documentary evidence relating to the marketing of the land, we cannot determine many potentially relevant factors concerning section 123 compliance.

3.85 We are unable to determine whether:

- any other prospective purchasers were contacted;
- prospective purchasers were sent a design briefing or were simply asked to put forward financial offers;
- any offers other than that which was accepted were received by the Council.

3.86 The fact that the land was seemingly marketed in some manner is an indicative factor that the Council’s duty to obtain best consideration reasonably obtainable may have been satisfied. However, without further information it is difficult to provide an absolute view.

3.87 The report by Peel & Co dated May 2014 confirms that a retrospective valuation was requested by the Council in April 2014. The report indicates a market value of the

land at £nil, as at November 2007. The subsequent letter from Peel &Co confirms that this retrospective valuation took place.

- 3.88 The suggestion by LL that he made an offer of £40,000 in 2012 for the land does not seem pertinent as the former Jobes Café site was sold in 2007.
- 3.89 Whilst the relevant documentation does not expressly indicate that the price paid in the 2007 Disposal was less than the best consideration reasonably obtainable, the lack of evidence relating to this disposal makes it difficult to establish whether the substance of the section 123(2) duty was performed by the Council.
- 3.90 There is no absolute requirement under section 123(2) for the Council to market the land or obtain an independent valuation when disposing of land. However, it would have been prudent of the Council to obtain an independent valuation of the land prior to agreeing the sale. We have not been provided with documentary evidence to indicate that the Council obtained an internal valuation. Nevertheless, weight can be given to the fact an independent retrospective valuation was conducted which appears to assert that the price paid at the time of the disposal may well have been the best consideration reasonably obtainable.
- 3.91 It may have been possible for the Council to utilise the General Consent, given the perceivably low value of the land. However, there is no evidence to suggest this route to disposal was considered.

The 2013 Disposal and Section 123 LGA 1972

- 3.92 A smaller section of land owned by the Council which, according to Council officers, should have been part of the 2007 Disposal was disposed of in 2013. The land was sold to BBL NE in exchange for a piece of land that BBL NE owned to accommodate the construction of a footpath. The monetary consideration was nil. It was asserted that the small parcel of land was incorrectly missed out of the 2007 Disposal. Further, it is stated that if the small piece of land had been included in the original disposal, it would not have incurred any greater cost to the purchaser.
- 3.93 There is no indication that the land was marketed. This is likely to be due to the Council effectively attempting to rectify an oversight made in the 2007 Disposal. Further, due to the nature of the land, it may have been of little interest to any other prospective buyers other than BBL NE.
- 3.94 The decision to dispose of the land (and acquire the land held by BBL NE) was authorised by a Decision Record completed on 13 June 2013. The relevant delegation scheme at the time required that such a decision could be authorised by the Estates and Valuation Manager, if it was the reasonable opinion of that individual that the transaction represented the best consideration reasonably obtainable. It is not apparent how this requirement could be met, prior to a valuation taking place. Further, it appears that the Decision Record was not completed in consultation with the prescribed individuals.
- 3.95 On 14 August 2013 an internal valuation was completed and recommended a land exchange with no monetary consideration. The valuation asserted that the land being acquired by the Council was of greater value than the land being disposed of. The value of the land disposed of and being acquired was stated to be £820 and £2,336 respectively.

- 3.96 Although the Council could have marketed this small parcel of land and conducted an independent valuation, there was no absolute requirement to conduct either in order for the Council to discharge its duty under section 123 (2).
- 3.97 Given the nature of the land, it appears reasonable to consider that without the adjoining land (owned by BBL NE), its developmental potential would have been very limited and undesirable to prospective purchasers. This would have made expending resources on marketing the land unattractive to the Council. The Council did carry out an internal valuation which makes clear reference to best value considerations and ultimately recommended a land swap with no monetary consideration. Obviously the land being acquired by the Council in the land swap held its own monetary/commercial value, which was stated to be greater than that being disposed of.
- 3.98 The Council's 2009/2011 Policy indicates that this method of disposal (seemingly private treaty) is mainly suitable for achieving best consideration in the case of a 'special purchaser'. Special purchaser is defined in the Council's policy as "*a purchaser who has an existing interest in the property or area and has an interest over and above a normal market purchaser in purchasing the Council's interest*". This description would appear to be appropriate in these circumstances.

Conclusions

- 3.99 Other than a retrospective valuation conducted 2014 there is no evidence on file to suggest that the land was subject of any valuation prior to its sale in 2007.
- 3.100 Evidence would suggest that the land was marketed by the Council and that at least one sealed bid was received from a prospective purchaser.
- 3.101 The bid by Beach Bar Leisure Ltd was stated to be the highest bid.
- 3.102 It is unclear whether the decision to dispose of the land, as outlined in the Delegated Responsibility Record Form B was in accordance with correct policy and procedure at the time, as the relevant delegation scheme for the time is not now available.
- 3.103 The land was sold to Beach Bar Leisure Ltd and not Vedra Leisure Ltd although both companies were connected by way of common directorships.
- 3.104 Lynda Scanlon was a Director of Vedra Leisure. She resigned her Directorship on 1 August 2003. She did not become a member of the Council until May 2011.
- 3.105 There is no evidence to support the suggestion of any inappropriate relationship between Daniel Hattle and Fitz Architects.
- 3.106 Although completed after the granting of the first planning permission in May 2013, there is no evidence within the Council's file that the AID report commissioned by LL was considered for this or the second planning application in August 2015. However disabled access was considered during planning and building control stages.
- 3.107 Informal pre application advice would appear to have been given by Daniel Hattle and not a planning officer.

- 3.108 Building Regulations Completion certificates have now been issues for all units within the Pier Point Development.
- 3.109 The approach to FOI by both Councils has caused some confusion and gives the impression that neither Council have discussed their approach to FOI's submitted by LL. In these circumstances, it would have been helpful if the two councils had liaised in order to avoid inadvertent confusion.
- 3.110 As above, the relevant documentation does not expressly indicate that the price paid in the 2007 Disposal was less than the best consideration reasonably obtainable. However, the lack of evidence relating to this disposal makes it difficult to establish whether the substance of the section 123(2) duty was performed by the Council.
- 3.111 The Council do not appear to have strictly followed the appropriate policy and procedure in relation to the 2013 Disposal, in particular, regarding the Decision Record completed on 13 June 2013. However, failure to follow internal policy and procedure does not, in itself, necessitate a breach of the Council's duty under section 123 (2).
- 3.112 Case law suggests that the Court is only likely to find a breach of section 123 (2) in fairly restricted circumstances. The Court is not entitled to substitute its own view on the fact and merits of a disposal for that of the local authority.
- 3.113 It is only likely the Court will interfere in circumstances where there was no material upon which an authority's decision could have been reached or, if in reaching the decision, the local authority disregarded matters that it ought to have taken into consideration or took into account irrelevant matters or made an irrational decision.

4. Centrepoint – Land at Dundas Street

- 4.1 Centrepoint provide accommodation, health support and life skills to young people between the ages of 16 and 25 with the aim of getting them back into education, training and employment. Centrepoint Sunderland is situated at 15 Dundas Street, Sunderland.
- 4.2 LL has alleged that a building worth £800,000 was given away by the Council. This allegation was transposed into investigation policy and included the parameters of 7 October 2009 until 18 February 2011.
- 4.3 LL was accompanied when interviewed by a **(name of former Council employee 1.)**, a former Council employee. In addition to LL's allegation, **(name of former Council employee 1.)** suggested that Mr Wood and a former Council employee **(name of former Council employee 2.)** had breached Council policy regarding grants when selling the land to Centre Point. He also suggested that **(name of former Council employee 2.)** was dismissed by the Council because of this.
- 4.4 The investigation has confirmed that **(name of former Council employee 2.)** was a former employee of the Council and his name does appear within Council files relating to Centrepoint. However, there is no evidence to suggest that he was investigated and/or disciplined as a result of any conduct concerning Centrepoint, a fact confirmed by Rhiannon Hood – Assistant Head of Law and Governance. The

allegation made by LL concerns valuation and sale of the land and this is where the investigation has focussed.

4.5 On 7 October 2009 the Council's Cabinet met and considered the disposal of land at Dundas Street to Centrepoint to enable development of the proposed supported housing project for young people (Attached WC 17).

4.6 The report to Cabinet titled "*Disposal of land at Dundas Street, Monkwearmouth*" stated:

"The disposal of the site to Centrepoint will enable the development of a purpose built immediate access supported housing scheme for 18 homeless young people in Sunderland. This is in accordance with the Supporting People 5-year Strategy as approved by Cabinet in March 2005 to develop a supported housing project for young people aged 16-21."

4.7 In considering the value of the site, the report states:

"In accessing the value of transferring the land reference has been made to the Local Government Act 1972: General Disposal Consent (England) 2003.

The Director of Development and Regeneration has undertaken a valuation exercise on the Council owned part of the site. This has placed the Market Value in the region of £75,000. However, it must be noted that with investment activity at significantly reduced levels, there is a restriction in the availability of consistent transactional evidence from which to draw comparisons when preparing market valuations.

For this reason, and whilst the valuation figure has been arrived at with due professional care and attention, it must be highlighted that valuation figures reported in current market conditions carry with them an abnormal degree of uncertainty."

4.8 There were significant negotiations on this potential sale during 2010.

4.9 A Delegated Decision Record was completed on 22 December 2010 (Attached at WC 18).The decision states:

"Agreed to dispose of the Council's freehold interest in 0.068 hectares or thereabouts of land at Dundas Street, Monkwearmouth, Sunderland to Centrepoint for the development of a young persons immediate access facility for £75,000 and otherwise on terms to be agreed by the Head of Land and Property."

4.10 The reason for the decision states:

"The disposal of land to Centrepoint will enable the development of a purpose built immediate access supported housing scheme for 18 homeless young people in Sunderland in accordance with the Supporting People 5 year Strategy approved by Cabinet in March 2005.

At its meeting on 7 October 2009 Cabinet agreed to dispose of this site to Centrepoint for nil consideration subject to the market value of the land of

£75,000 being registered as a charge at the Land Registry to protect the Council's investment in the development. However at a late stage Centrepont reported that this caused difficulties with other funding organisations and as a consequence offered to purchase the land at market value of £75,000. This removes the need for a legal charge and is considered acceptable."

4.11 Paragraph PS1 (OCE Delegation Scheme V1.0 06042010) states:

"To authorise the acquisition and disposal of freehold and leasehold interests in land where the consideration is less than £100,000 in the case of freeholds and where the annual rental is less than £50,000 in the case of leaseholds (2.37)"

4.12 The Delegation Scheme indicates that such decisions can be authorised by: the Valuation Manager up to an amount of £20,000; the Head of Land and Property up to an amount of £50,000; and the Deputy Chief Executive for amounts over £50,000 but less than £100,000.

4.13 The form was signed by Janet Johnson, the then Deputy Chief Executive. As the amount of the disposal being authorised was valued at £75,000, the Deputy Chief Executive did have the authority under the relevant Delegation Scheme to make that decision.

4.14 The site was eventually sold to Centrepont on 18 February 2011 for £75,000. Centrepont's new Hostel was opened in April 2016.

Section 123 LGA 1972

4.15 As outlined above, the Council sold the land at Dundas Street to Centre Point for £75,000. The Council had the power under section 123 LGA to dispose of this land in any manner it wished, unless £75,000 represented a consideration less than the best that could have been reasonably obtained.

4.16 We have not received evidence as to how this land was marketed and can only determine that it was not marketed.

4.17 On 7 October 2009 Cabinet considered the disposal of the land. The report presented to Cabinet on this date states that an internal valuation of the land was carried out by the Director of Development and Regeneration, placing market value in the region of £75,000. The report notes the uncertainty surrounding valuation figures at that time. The Council did obtain an internal valuation; however, an independent external valuation would have been prudent given the uncertainty in valuations (expressly acknowledged by Council officers) at that time.

4.18 Reference was made in the report to the General Consent. The initial disposal, as recommended by the report, appears to suggest disposing of the land at an undervalue, specifically at £nil consideration. The report details determinations as per the value of the site.

4.19 The report refers to the General Consent and appears to indirectly refer to the criteria required for disposal at an undervalue, in particular, that the disposal will help secure the economic, social or environmental well-being of its area. This criteria is not referred to expressly but the report does emphasise that disposing the land to

Centrepoint will “enable the development of a purpose built immediate access supported housing scheme for 18 homeless young people in Sunderland...in accordance with the Supporting People 5-year Strategy”. Further, the report outlines economic benefits of the disposal, including savings on accommodation for young care leavers.

- 4.20 It appears that the report, which was approved by Cabinet, seeks to utilise the General Consent in order to dispose of the land at an undervalue. The contents of the report appear to satisfy the criteria required to rely on the General Consent.
- 4.21 The report to Cabinet stated that the proposed disposal be at £nil monetary consideration, with the £75,000 market value being secured by the grant of a legal charge over the disposed land in favour of the Council. In subsequent negotiations with the purchaser it was agreed that no charge would be necessary and the purchaser would instead pay £75,000. The land was subsequently sold to Centrepoint on 18 February 2011 for £75,000.
- 4.22 Selling the land at the internally valued market value of £75,000 constitutes a factor suggesting that the Council obtained best consideration reasonably obtainable and would not need to rely on the General Consent in order to dispose of the land.

Conclusions

- 4.23 In October 2009, the Council’s Cabinet met and considered the disposal of land at Dundas Street to Centrepoint to enable the development of a supported housing project for young people.
- 4.24 An internal valuation of the site stated the market value to be £75,000.
- 4.25 A Delegated Decision Record completed on 22 December 2010 confirms the decision to sell the land for £75,000. This was signed by the then Deputy Chief Executive in compliance with the Council’s relevant policy and procedure at the time.
- 4.26 The site was eventually sold to Centrepoint on 18 February 2011 for £75,000.
- 4.27 Whilst it is unclear how the land was marketed, the ultimate price paid by the purchaser was in accordance with the Council’s internal valuation of market value. It would have been prudent for the Council to obtain an independent valuation in these circumstances.
- 4.28 The Council referred to the General Consent but do not appear to have utilised it. It is possible that the initial proposed disposal at nil consideration (with the market value being secured by legal charge) was viewed as an undervalue which would fall within the General Consent. The Council’s purpose behind the disposal appear likely to meet the criteria of the General Consent, allowing the Council to dispose of the land at an undervalue.
- 4.29 In the event, the land was sold in accordance with the market value of the land, as established by an internal valuation by the Council.
- 4.30 The limited availability of marketing method of the land somewhat inhibits determination of section 123 (2) compliance. However, as we have previously stated,

marketing the land is not precipitate to a council discharging its duty to obtain best consideration reasonably obtainable.

4.31 Ultimately, the Council took advice on the disposal, as outlined in the report to Cabinet dated October 2009. The proposed disposal of the land was approved following that advice. Initially, it appears the land was to be sold at an undervalue, utilising the General Consent. In the event, the land was sold for £75,000, which an internal valuation considered was the market value.

4.32 The relevant documentation assists the Council in their ability to display section 123(2) compliance in relation to the disposal of this land.

5. Hetton House

5.1 In July 2009 Hetton House was is in the ownership of the Council. The main building was used by the Council as office accommodation but had been vacant since 2004.

5.2 LL raised two allegations with regards the Hetton House :-

- *That the Council sold Hetton House to Mr Fitzackerly for £45,000. This figure did not represent its true value.*
- *C3G Ltd is owned by the same directors as Fitz Architects and BBL NE Ltd.*

5.3 These allegations were transposed into investigation policy and included the following parameters:-

- *Identify the date when the disposal of Hetton House was agreed*
- *Consider the initial valuation of land by Kimmitt & Roberts 25 January 2013*
- *Consider the agreement by the council to dispose of land to C3G Ltd on 19 April 2013*
- *Consider planning applications submitted by **(name of company representative)** C3G Ltd*
- *Consider the final sale of land to C3G Ltd*

Decision to Sell

5.4 The issue of Hetton House was first raised by **(name of Valuation Surveyor)**– Valuation Surveyor with Development Control on 23 July 2009. Ms **(name of Valuation Surveyor)** was looking for options for the land and buildings that formed the site which included the potential for development.

5.5 In February 2010 concerns regarding the building's decline was raised by Hetton Town Council with Colin Clark – Head of Land and Property. On 24 February 2010 Mr Clark emailed Mr Wood and stated:

“What do you think.....market?”

- 5.6 On 24 February 2010 Mr Wood emailed Mr Clark, copied to Ms **(name of Valuation Surveyor)**. He stated:

*“Had a look at this property this afternoon with **(name of Valuation Surveyor)**. Its a one-off as it seems to be three terraced houses knocked into one, is in a good residential area with large garden to rear and has development potential. It is a listed building. Difficult to value especially in current market conditions.*

Should we decide to sell I would suggest we invite tenders in accordance with a timetable.

The issue is whether we sell in today’s market and rid ourselves of a vacant property which is a liability, or wait until the market recovers – if and whenever that may be! Its your call but it may well be worthwhile going through a marketing campaign and see what level of interest there is. We can always not sell as per Salterfen.

If we decide to sell there is an arts club in one of the outbuildings under a leases (holding over) which will need to be terminated and who I guess will need to be relocated – we will need to speak with them beforehand”

- 5.7 That same day Mr Clark emailed Mr Wood, copied to Ms **(name of Valuation Surveyor)**, he stated:

“I think we should market the property now. If you can let planners know. Can we do a short report for next cap strat, ie listed building, potential liability, beginning to see some vandalism etc therefore note action to market.”

- 5.8 The Council file indicates that concerns with regards the security of the property were still being raised in May 2011.

Marketing

- 5.9 On 4 May 2011 a draft of the sales brochure was prepared. The brochure invited potential bidders to submit a financial offer, offer form, sketch plan of the development and a written layout and design proposals. The brochure made it clear that the submissions would be assessed on the highest financial offer with the most appropriate use or scheme.

- 5.10 On 3 November 2011 **(name)**, Senior Conservation Officer emailed Ms **(name of Valuation Surveyor)**, he stated:

“Draft Hetton House brief as promised. If you want to have a meeting to discuss once you’ve read it just give me a call”

- 5.11 Attached to this email was a draft copy of the Sales Brochure for Hetton House, the contents of which are detailed in 7 titled sections:

1. The Opportunity
2. Marketing Information
3. The vision
4. Hetton House

- 5. Planning, Conservation and design requirements
- 6. Additional Information
- 7. Tender Process

5.12 On 8 December 2011 Ms **(name of Valuation Surveyor)** emailed Councillors James Blackburn, Florence Anderson and Richard David Tate, she stated:

“Just to let you know we will be advertising Hetton House for sale next week in the local papers. I intend to put a sale board on the property next week also to advertise the disposal”

5.13 This email was also sent to **(name of Town Clerk)** at Hetton Town Council.

5.14 Ms **(name of Valuation Surveyor)** then asked that the advertisement for sale appeared in the following week’s commercial property section of the Echo and the Journal. Council documents suggest that the advertisements appeared in the papers on 14 and 16 December 2011 together with a public notice.

5.15 On 12 December 2011 pro-forma letters were sent to eleven prospective purchasers. The letter states:

“Sunderland City Council is seeking to dispose of its freehold interest in the above site.

The site is considered to be suitable for residential development, subject to planning but alternative uses will be considered.

The disposal will be conducted through a two stage process and developers are now invited to submit a Design Concept Statement in accordance with the attached brief.

The Statement should be submitted in the attached envelope (or in a sealed envelope clearly marked Hetton House) and give no indication of the developer.

The information requested should be returned by 12 noon on Friday 10 February 2012.”

5.16 The prospective purchasers included:

“(name of individuals) Sunderland

Lofthouse and Partners, Sunderland

G L Hearn, Quayside House, Sunderland

Robertson Simpson Ltd & Chadwick Property Consultants, Sunderland

Michael Hodgson, Sunderland

Thomas Watson, Sunderland

Gentoo Ventures, Sunderland

Peter Heron, Sunderland

Paul Airey, Sunderland

Pattinson Estate Agents, Sunderland

(name of individual), Sunderland

5.17 The file indicates that there was no market interest during 2011.

5.18 On 27 February 2012 Mr Wood emailed **(name of Principal Heritage Protection Officer)**, he stated:

“Could you contact Craig directly to see if any progress can be made regarding the drawings you have and how they could assist him. I’m just conscious that we have an empty property here with no market interest and which is costing us money and is a security etc risk.

I’m being pressed to action this one.”

5.19 This is the first reference within Council documents to, we assume, Craig Fitzakerly – Managing Director of Fitz Architects. Fitz Architects had not been included in the list of prospective purchasers. Unfortunately, Mr Wood when questioned on this point, could not provide any information as to why this contact had been made.

5.20 In his statement Mr Fitzakerly stated:

“In fact, the property in question was for sale on the open market for approximately 2 years with a huge for sale board fixed the front façade as can be seen in the image below. The property had been put out to tender and then on the open sales market for the 2 years but no acceptable offers or proposals to salvage the building were made.

We decided to design a residential scheme and put an offer forward based on the dilapidated state of the building.”

5.21 On 20 April 2012 Mr Fitzakerly sent a letter to Mr **(name of Senior Surveyor)** . The letter stated:

“Further to our meeting with you on 5 March 2012 and subsequent meeting at our office (11 April) and on site this week (17 April) I write on behalf of myself and Clinton Mysleyko with a written offer for the above property.

Offer:

We will accept the freehold ownership of the site outlined in red in the council’s “design brief” and seek to obtain planning approval for the conversion and refurbishment of the existing listed buildings to create a scheme of one bedroom apartments for residential use.

We will, as discussed, seek to obtain a nominations agreement from City of Sunderland (CoS) Adult Services Department, carry out the conversion works

at our cost and then rent the properties back to CoS via a long lease arrangement.

We will apply to obtain planning approval for a new residential dwelling(s) on the vacant land to the rear of the site and dispose of this plot(s) on the open market. Depending on the financial viability of the redevelopment as we discussed, we will then share the capital receipt from the sale of the plot(s) with CoS.

We will be appointing our solicitor upon receipt of acceptance of this offer and would like to enter into a period of exclusivity until a Heads of Terms agreement has been signed with CoS. This will enable us to expend the necessary time and financial sums on the various services and reports required to secure planning approval and produce our business case.

I look forward to receiving acceptance of this offer at your earliest convenience which will enable us to start work with immediate effect.”

5.22 On 29 May 2012 Mr Wood sent a letter to Mr Fitzakerly. The letter stated:

“I can confirm that I am prepared to offer you a period of two months from the date of this letter in order to confirm your preferred bidder status on Hetton House providing you meet the requirements set out below and any offer made reflects Best Consideration.

The Council will then commence contract negotiations for the disposal of the property to you.

In order for the Council to deal direct with you I will require the following information:

Proposed plans and specification for the development

Development appraisal showing gross development value, cost breakdown and residual land value

Confirmation of funding

Proposed letting arrangement for the completed development to support the gross development value

You should also state your financial offer to the council for the site and illustrate how this is consistent or otherwise with the residual value in the development appraisal.

As agreed the property will not be actively marketed during this period, however the council will not be obliged to accept your offer and will reserve the right to consider any other offer until contracts have been agreed.”

5.23 Email correspondence then continued between the Council and Craig Fitzakerly and Clinton Mysleyko (using Fitz Architects email addresses).

5.24 On 2 January 2013 a valuation report was prepared by **(name of Valuation Surveyor)**(Attached WC 19). The site was valued at a minimum of £40,000.

5.25 On 14 January 2013 Ms **(name of Valuation Surveyor)** emailed **(name of Chartered Surveyor)** (Kimmitt and Roberts). She stated:

“Nick Wood in my office has asked me to contact you with a view to getting a valuation report on one of our properties in Hetton.

The property is Hetton House on Park View and it was a former office for our Sure Start department.

The property is listed and includes outbuildings and a large garden at the rear. The Council have had an approach to sell the property for residential and we are looking for an assessment of demand and feasibility for apartments/large properties on the site and also end values.

Would you be able to undertake this for us and if so what would be the cost? I am happy to pop out to show the details of the property and discuss the proposal that we are considering in addition to our original planning design brief.”

5.26 The independent valuation was then completed by **(name of Chartered Surveyor)** on 25 January 2013. The site was valued at £45,000 (Attached WC 20).

5.27 A Decision Record (For use in the case of Decisions (including Key Decisions) made by Officers under Delegated Powers) (Attached at WC 21) was completed on 8 April 2013. The date of the decision was stated to be 22 January 2013. The decision states:

“Agreed to dispose of Hetton House to C3G Ltd.”

5.28 The reason for the decision states:

“Satisfactory application received.”

5.29 Paragraph PS1 of the OCE Delegation Scheme at the relevant time states:

“To authorise, in consultation with the Executive Director of Commercial and Corporate Services:-

a) the acquisition and disposal of freehold and leasehold interests in land where the consideration is less than £250,000;

and

b) The acquisition and disposal of leasehold interests in land where the annual rental is less than £250,000.

provided that in each case, save for:-

(i) leases granted for a term of seven years or less; or

(ii) where a disposal of a surplus property is proposed at less than best consideration to a Voluntary and Community Sector organisation in accordance with the Surplus Building Policy (Community Benefit) approved by Cabinet at it's meeting on 6th April 2011 and the

- consideration or annual rental is less than £250,000.00 before any concession; or*
- (iii) *where the disposal is within the scope of the Deputy Chief Executive's delegated authority to agree rent concessions;*

in the reasonable opinion of the Deputy Chief Executive, the transaction represents the best consideration reasonably obtainable. (2.37)"

- 5.30 This Delegation Scheme indicates that such decisions can be authorised by (in consultation with the Executive Director of Commercial and Corporate Services): the Estates and Valuation Manager up to an amount of £20,000; the Head of Planning and Property Services up to an amount of £50,000; and the Deputy Chief Executive for amounts over £50,000 but less than £250,000, provided that it is the reasonable opinion of the Deputy Chief Executive (or, presumably, the delegated Authorised Officer) that the transaction represents the best consideration reasonably obtainable.
- 5.31 The form was signed by Nick Wood and **(name of Design Services Manager)**. At the time Nick Wood was Estates and Valuation Manager and **(name)** was Design Services Manager. It is surprising that the form omits a sale price. The land ultimately sold for £45,000 which appears to fall outside the remit of either officers' authority to authorise by delegated decision. However, we understand that the Head of Planning and Property Services position was vacant at the time and that Nick Wood and **(name of Design Services Manager)** received honoraria payments during this period to reflect 'acting up' duties covering the property element of Head of Service. The form does not indicate that the decision was made in consultation with the Executive Director of Commercial and Corporate Services.
- 5.32 On 24 July 2014 Ms **(name of Valuation Surveyor)** emailed **(name of Chartered Surveyor)**. She stated:
- "The sale of Hetton House which you kindly valued for us last year is still rumbling along and the contract for the sale has not been completed. Because of this we would like to revisit the valuation to ensure that the sale price still reflects market value.*
- Would it be possible for you to let me know the cost of revisiting the valuation? The building has deteriorated further since the valuation."*
- 5.33 On 1 August 2014 a further valuation was provided by Mr **(name of Chartered Surveyor)**(Attached WC 22). The site was valued at £45,000. In conclusion he stated:
- "I can see no evidence to support an adjustment in valuation and confirm that, in my opinion, the value of the property, as described in our original report of the 23 February 2013 remains the sum of £45,000."*
- 5.34 On 19 June 2015 the site was sold by the Council to C3G Ltd. The Directors of C3G include Craig Fitzakerly and Clinton Mysleyko. C3G Ltd submitted the subsequent planning applications.

(Chartered Surveyor, Kimmitt and Roberts) and (name of election candidate)

- 5.35 In June 2016 (**Chartered Surveyor**) entered into email correspondence with a (**name**) (a prospective independent candidate in the 2016 General Election) In one of those emails dated 2 June 2016, (**Chartered Surveyor**) stated:

“I can confirm that I, personally, prepared the valuation to which you refer, and can further confirm that the Market Value of the property at the time of sale was £45,000.

I have great sympathy with you concerns over this, and fully respect and support your right to question it. To the casual observer, not in possession of the full facts, the agreed price looks to be low. However, there were a number of exceptional factors at play in this case. Each of these factors, individually, had a significant impact on value, but collectively the impact was huge – a ‘perfect storm’ in valuation terms.”

- 5.36 The email correspondence was shared with LL. LL considers that the reference to a ‘perfect storm’ supports the view that Hetton House was sold at an undervalue.

- 5.37 (**name of Chartered Surveyor**) was spoken to by the investigating officers and stated that he regretted using the phrase ‘perfect storm’. He stated that in valuation terms the development proposal had no profit and this was borne out in subsequent development. He also stated that he was contacted by someone who suggested that he was lent on by someone at Council to produce a low valuation, an allegation he denied.

- 5.38 Mr Fitzakerly provided some further context to this in his statement. He stated:

“Initially we put forward an offer of nil value due to the state of the building but this was rejected. Our increased offer of £45,000 was assessed by an independent valuer, and being the highest and only offer received was accepted and signed off by the elected council members.

The building sat for years with the council using rate payer’s money to pay for security and maintenance of the building and the grounds etc. whilst it was empty. Prior to the offer, the building was deteriorating rapidly. Thieves had been in through the roof and the holes that were left had flooded the building with rainwater. The buildings were in a derelict state including the roof, plaster work, timberwork, dampness, glazing and walls and total new drainage and service connections are required.”

Section 123 LGA 1972

- 5.39 On 19 June 2015 the Hetton House site was sold to C3G Ltd for £45,000. The Council had the power under section 123 LGA to dispose of this land in any manner it wished, unless £45,000 represented a consideration less than the best that could have been reasonably obtained.

- 5.40 Evidence on the file indicates that Hetton House was marketed by the Council. A draft sale brochure was created including pertinent information relating to the site and the sale process. Further, it appears from the file that a decision was made to advertise the sale of Hetton House in local newspapers (the Echo and the Journal) and a sale board was placed at the site.

- 5.41 On 12 December 2011 the Council invited 11 prospective purchasers to submit Design Concept Statements if interested in purchasing the site. A deadline of 10 February 2012 was implemented for responses. This manner of marketing was compliant with the Council's 2009/2011 Policy and in accordance with the Council's duty under Section 123(2).
- 5.42 It would appear that there was no market interest during 2011. Indeed, evidence on file indicates there may have been no interest following the passing of the 10 February 2012 deadline.
- 5.43 A statement of interest was subsequently received from Craig Fitzakerly and Clinton Mysleyko. The Council agreed to give Mr Fitzakerly and Mr Mysleyko a two month period to prepare their submission and offer. During such time, the Council staff confirmed that the site would not be actively marketed. However, made clear that the right was reserved to consider any other offers until contracts were agreed.
- 5.44 The Council carried out an internal valuation in January 2013, valuing the land at a minimum of £40,000. A Delegated Decision Record was completed on 8 April 2013 (although dated 22 January 2013) confirming the decision to dispose of the land to C3G Ltd. However, no sale price was indicated. It is not apparent how the decision to dispose of the land could be, in the reasonable opinion of the officer making the decision, best consideration reasonably obtainable when no consideration amount is specified.
- 5.45 Later that month, the Council obtained an independent valuation, valuing the land at £45,000. This valuation was revisited a year later and re-affirmed by the valuer to remain indicative of market value as at August 2014.

Conclusions

- 5.46 The Council decided to sell Hetton House in 2010.
- 5.47 Hetton House was actively marketed in 2011. Prospective purchasers were contacted by the Council. There was no market interest in 2011.
- 5.48 Hetton House was subject to an internal valuation in January 2013 which valued the site at £40,000.
- 5.49 A Delegated Decision Record was completed on 8 April 2013. No sale price was indicated on the form. It is not apparent how the decision to dispose of the land could be, in the reasonable opinion of the officer making the decision, best consideration reasonably obtainable when no consideration amount is specified. Nevertheless, not following internal policy and procedure in this regard does not, in itself, necessitate a failure to comply with section 123(2).
- 5.50 It was subject and two independent valuations in 2013 and 2014 which valued the site at £45,000.
- 5.51 Hetton House was sold to C3G on the 19 June 2015 for £45,000. The directors of C3G include Craig Fitzakerly and Clinton Mysleyko.
- 5.52 The land was actively marketed by the Council and the Council obtained both internal and independent valuations.

- 5.53 On balance, the relevant documentation assists the Council in their ability to display section 123(2) compliance in relation to the disposal of this land.
- 5.54 **(Chartered Surveyor)** confirms that this was a nil value site. He regrets using the term 'Perfect Storm' when communicating with **(name of election candidate)**. He denies any suggestion that he provided a low valuation at the request of a Council officer.
- 5.55 The evidence does not support an allegation that the site was sold undervalued or that Fitz Architects were treated more favourably by the Council.

6. The Janet Fraser Site

- 6.1 Within Council files this site is referred to as land at Commercial Road (Former Littlewoods site) and the Janet Fraser Site. For the purpose of this investigation it is referred to as the Janet Fraser Site.
- 6.2 LL when interviewed alleged that this site was sold at an undervalue and that the Council had not followed the correct procedure when selling the property. LL also suggested that the site had initially been purchased by the Council which spent £600,000 removing asbestos before deciding it did not want the site. Scrutiny of Council documents indicated that at the point of this investigation being commissioned the file was still live. However it was agreed that the investigation would consider Council actions concerning this site up until the date of this investigation being commissioned.
- 6.3 On 15 April 2015 the Cabinet considered a report concerning the acquisition of land at Commercial Road, Hendon (Janet Fraser Site). The report stated:

“Cabinet is recommended to agree to the freehold acquisition of approximately 3.2 hectares (8 acres) of land and buildings at Commercial Road, Hendon, Sunderland for a price of £500,000 and otherwise on terms to be agreed by the Executive Director of Commercial Development in consultation with the Leader and Cabinet Secretary.

Is the decision consistent with the Budget/Policy Framework? – Yes

Suggested Reason(s) for Decision – The proposed acquisition will secure a controlling property interest in a property that is located in a strategically important position enabling the opportunity to support further development of the Port of Sunderland, provide scope for future Service Area operational requirements and having a suitable site to accommodate private sector requirements.”

- 6.4 The site was purchased by the Council on 29 May 2015.
- 6.5 On 22 July 2015 Cabinet considered a report concerning demolition and clearance work on the site. The report stated:

*“Cabinet is recommended to approve funding of up to **£value redacted – sales negotiations ongoing** (estimated) to enable the demolition and clearance of buildings at Commercial Road, Hendon, Sunderland”*

- 6.6 The demolition work would appear to have commenced with the site eventually ready for any potential viewings in September 2016.
- 6.7 Council files indicate interest by prospective purchasers from July 2015 with updates to those purchasers as to the current position being requested in December 2016.
- 6.8 On 7 March 2017, **(name of Valuation Surveyor 2.)** instructed Lofthouse and Partners Limited to carry out an external valuation on Plots 1 and 2 of the site. A report was completed by Lofthouse and Partners Limited on 10 March 2017 (Attached WC 30). The report recommended asking prices for the plots to be based on £ **(value redacted – sales negotiation ongoing)** per acre, with consideration given to offers over £ **(value redacted – sales negotiation ongoing)** per acre.
- 6.9 On 22 May 2017 a Cabinet Briefing note was prepared, the note states:

“ITEM: Disposal of land at Commercial Road, Hendon, Sunderland.

- *The Council owns the freehold of the former Littlewoods site on Commercial Road which has been cleared and is vacant*
- *Cabinet agreed the strategic acquisition of the site on 15 April 2015*
- *The site has been divided into 4 plots, a direct disposal of Plots 1 and 2 is recommended:*

Plot 1 – disposal to Anne Ganley

Plot 2 – disposal to ACT who are being displaced by SSTC3

Plot 3 – retain for future disposal or operational requirements

Plot 4 – retain for use by The Port of Sunderland

- *An external valuation report confirms that a price which is the best reasonably obtainable is being achieved for the disposal of the land in accordance with Section 123 of the Local Government Act 1972*
- *Both purchasers have established construction businesses in the city which will be expanding by the acquisition and development of these plots.*
- *In order to bring forward the sites for development, junction improvement works and a new drainage system is required costing in the region of £ **redacted**. Works will be carried out in-house*
- *Cabinet is recommended to approve the report”*

- 6.10 On 6 June 2017 Tom Terrett, Head of Public Protection and Regulatory Services emailed Mr Wood, he stated:

“As discussed, here are Irene’s queries:

Commercial Road:

How much we paid?

When did we acquire?
 When were the provisional terms for disposal agreed?
 What have we spent on the site?
 More on reasons for sale e.g. does this fit in to some strategy/is it to raise money?

Gilbridge:

How much we paid?
 Competitive impact on Vaux Site/Software Centre?
 She asked for an email from you asap re these points.”

6.11 On 6 June 2017, In response to these questions, **(name of Valuation Surveyor 2.)** prepared the following table/report for Mr Wood:

NOTE; figures below have been redacted to preserve the council’s negotiating position

Purchase Price	£500,000	
Date acquired	29/05/15	
Date provisional terms agreed	12/04/17	In negotiation since Sep 2016 and final points are still to be agreed
Spent on site	£ redacted	Demolition (inc. removal of asbestos and red shale and construction of the western elevation of retained Port building)
	£ redacted	Estimate for highway improvement works and drainage outfall
Capital Receipts	£ redacted	Plot 1
	£ redacted	Plot 2
	£ redacted	Plot 3 (to be sold at a later date)
	£ redacted	Plot 4 retained by Port but potential capital receipt if surplus
Estimated Annual Business Rates Income (currently 50% retention by LA)	£ redacted	Total Business Rates payable by Plots 1 and 2 estimated at £ redacted LA retention currently expected to change to 100% in 2020. Plot 3 has potential for a further annual income of £ redacted at 50% or £ redacted at 100%. If let externally, Plot 4 has a further potential annual business rates income of £ redacted at 50% or redacted at 100% retention. So the whole site has potential to raise £ redacted p.a. in business rates. If all occupied by third parties and LA has 100% retention. £ redacted p.a. if retention remains at 50%

“Reasons for sale:

The site is surplus to requirements (except Plot 4 which is retained by the Port) and will be sold in line with the council’s Disposal Policy approved by Cabinet in December 2009 (attached).

Plots 1 and 2 will be sold subject to planning consent for development.

Development of the site will allow two local building firms to expand their businesses, potentially create jobs and create new premises which will be subject to business rates. Plot 2 will also incorporate a parade of new trade counter business premises.

The sale of plot 2 to ACT construction facilitates the construction of SSTC3 where they currently occupy premises to be demolished. This manages out the risk of costly objection to the CPO and negative PR for potentially closing a local business premises if another alternative not found.

*Unless there is a change in government and policy, 100% Business Rates will be retained by local authorities from 2020 (currently 50%). Estimated income from new buildings in 2018 - £ **redacted** p.a. Estimated income from 2020 - £ **redacted** per annum.”*

- 6.12 On 21 June 2017 Council Cabinet considered the report to Cabinet headed, Disposal of Land at Commercial Road, Hendon, Sunderland (Attached WC 23).The report stated:

“Purpose of Report:

To seek approval for:

- 1. The disposal of the council’s freehold interest in plot 1, Commercial Road, Hendon, Sunderland*
- 2. The disposal of a long leasehold interest in plot 2, Commercial Road, Hendon, Sunderland*

Description of Decision:

Cabinet is recommended to:

Agree to the disposal of plots 1 and 2, Commercial Road, Hendon, Sunderland at a price which is the best reasonably obtainable on terms to be agreed by the Chief Executive in consultation with the Leader and Cabinet Secretary.”

- 6.13 The report also stated:

“Suggested reason(s) for Decision:

The disposal of Plots 1 and 2, Commercial Road, Hendon, will enable these plots to be developed for employment uses which enables further investment in the City, creation of jobs, business rates revenue and obtains a capital receipt for the Council. In addition, one of the disposals facilitates the relocation of a business being displaced by the Sunderland Strategic Transport Corridor Phase 3’s forthcoming Compulsory Purchase Order.

Alternative Options to be considered and recommended to be rejected:

Retain the land; The land is surplus to operational requirements and was acquired to facilitate development. Retaining it would not secure further investment in the City, create jobs, business rates revenue and provide a capital receipt for the Council.

Advertise the land for sale. The land will be disposed of at a price which is best reasonably obtainable. Advertising the land for sale would delay development of the site and would not necessarily improve outputs for the city.

These options have been considered and are not recommended”

- 6.14 On the 22 June 2017 Mr Wood emailed Mr **(name of Strategic Property Manager 2.)** indicating that the report had been approved by Cabinet.

Present Position

- 6.15 We understand that the Council is now progressing the sale of two plots within the site to cater for the expansion plans of two local businesses. We also understand that the Council’s solicitors have been instructed to progress the necessary legal documentation and the proposed sales will be conditional upon the prior grant of planning permission. To progress matters the Council are seeking planning permission for the wider scheme (i.e. the four plots within the site) and submission of a planning application is scheduled to be made in the near future. Following the grant of planning permission the sales will be completed.

Section 123 LGA 1972

- 6.16 The Council has the power under section 123 LGA to dispose of this land in any manner it wished, unless the land is sold for consideration less than the best that could have been reasonably obtained.
- 6.17 An external valuation report for Plots 1 and 2 of the site was completed by Lofthouse and Partners Limited on 10 March 2017. The valuation report recommended asking prices for the plots to be based on £ **redacted** per acre, with consideration given to offers over £ **redacted** per acre.
- 6.18 The report considered (and subsequently approved) by Cabinet on 21 June 2017 recommended that Plots 1 and 2 of the site be disposed of at a price which is the best reasonably obtainable. The reason for the recommendation states that such disposals will enable further investment in the city of Sunderland, create jobs, generate business rates revenue and obtain capital receipt for the Council. The report recommended that the land was not advertised for sale, stating that this would delay the development and not necessarily improve outputs.
- 6.19 Obtaining an external valuation for this land was prudent as the Council has decided not to advertise the land on the open market and it is unclear exactly how contact/negotiations have been established with the prospective purchasers.
- 6.20 The report approved by Cabinet stated that the Head of Law and Governance had been consulted and her comments were contained in that report.

Conclusions

- 6.21 The Council purchased the site on 29 May 2015.
- 6.22 The file indicates interest from prospective purchasers in July 2015.
- 6.23 An external valuation was completed on 10 March 2017 by Lofthouse and Partners Limited.
- 6.24 On 21 June 2017 Council Cabinet, following recommendations from a report to Cabinet, approved:
- *The disposal of the council's freehold interest in plot 1, Commercial Road, Hendon, Sunderland*
 - *The disposal of a long leasehold interest in plot 2, Commercial Road, Hendon, Sunderland*
- 6.25 Carrying out an independent, external valuation was prudent in these circumstances. However, this alone does not guarantee compliance with section 123(2) (although it is evidence indicative of compliance).
- 6.26 We understand that negotiation in relation to the sales of these plots is still ongoing.

7. Belford House

- 7.1 This site was formerly occupied by Belford House and Ashcroft House. They were declared surplus to Council requirements in 2005. In 2006 the properties were subject of an arson attack and in view of their dangerous condition they were demolished.
- 7.2 LL alleged that Belford House was sold by the Council undervalued. This allegation was transposed into investigation policy and included the following parameters:-
- *Identify the date when disposal of Belford House was agreed.*
 - *Include letters /emails with regards development opportunity*
 - *Include responses and offers*
 - *Include Councils agreement to sale and date of sale*
- 7.3 Scrutiny of the Belford House file identified significant development interest of the site in 2006. On 6 June 2007 the Council Cabinet discussed the site and an offer of £2,301,000 by RDM Homes Ltd was accepted by the Council.
- 7.4 The file indicates that due to the down turn in the financial markets which followed in 2008, RDM Homes Limited were unable to complete at the agreed price. On 11 March 2009 the decision to dispose of the Councils freehold interest in the site was rescinded until market conditions improved.

- 7.5 Scrutiny of Council documents shows that a disposal strategy was again considered in 2011 with an updated development brief being circulated internally in March 2011. In April 2011 the Councils solicitors were instructed to prepare a report on title including searches.
- 7.6 On 16 May 2011 a design submission requirement brief for Belford House was circulated internally. In July 2011 the submission timetable was agreed together with the placing of an advertisement in the Sunderland Echo and The Journal. Copies of the Sunderland Echo have been seen (Attached WC 24) which confirms that the advertisement was placed in the paper on 8 and 15 July 2011.
- 7.7 On 12 July 2011 pro forma letters were sent to thirty prospective developers. This would appear to include Brent Ganley and Fitz Architects. Four developers were considered against the scoring matrix. Three of which proceeded to stage two. These included; Clinton Mysleyko, Fitz Architects Ltd, submitted on behalf of Glenrose Developments, **(name of company representative)**, Yuill Homes and **(name of company representative)** , Gladedale (Sunderland) Ltd t/a Bett Homes. The Council wrote to the three developers inviting offers for the site on formal tender basis.
- 7.8 Open source research of Companies House indicates that at the time Glenrose Developments Ltd were trading as Glenrose Developments (Tunstall) Ltd.
- 7.9 On 25 November 2011 Bett Homes offered the sum of £602,000. Yuill Homes offered £258,000. Glenrose offered £640,000. The same day **(name of Senior Valuation Surveyor)** – Senior Valuation Surveyor emailed Mr Wood with details of the offers. The email noted that the highest offer was 70% down on the proposed sale of the same site in 2008.
- 7.10 Mr Wood then emailed Mr Clark, he stated:

“please see note below regarding tenders received at Belford House.

You will recall the rep from the HBF says this market has withstood the economic recession better than the other sectors and hence we chose this site to take to market.

These offers are about 25% of the previous offer of £2.3m recd at pre crash values for this site. However this offer seemed to me too high and the second offer was from Yuill at £1.5m (and who have now offered £258k i.e. 20% for the same scheme!)

Clearly these offers are disappointing but market value has been established – it is now for the organisation to decide whether they want to progress at such a low level of capital receipt i.e. do they need the money.”

Please advise.”

- 7.11 On 5 December 2011 Mr Clark emailed Sonia Tognarelli – Chief Finance Officer, he stated:

“We have advertised this site for disposal and have received 3 bids.....£640k, £602k and £258k.

The previous highest offer for the site, some 3 years ago now, was £2.3m. That offer seemed too high at the time and the second offer was £1.5m. Even so you can see that when comparing highest offers we are now looking at 25% for the same site.

I have spoken to Janet and she shares my view that we do not progress the disposal but sit tight for the moment and wait until the market shows some signs of recovery. Are you ok with this approach?"

7.12 The same day Ms Tognarelli emailed Mr Clark and stated:

"Colin I agree – its quite stark.

There's no need at this stage to progress – so sitting tight is the best approach."

7.13 On 6 December 2011 Mr Wood wrote to **(name of company representative)**, Glenrose Developments the letter stated:

"The Council has now had the opportunity of considering all offers and unfortunately your bid was unsuccessful.

The Council has now had the opportunity of considering all offers it received and I can inform you that it has been decided not to progress any further the proposed disposal."

7.14 Similar letters were also sent to Bett Homes and Yuill Homes.

7.15 In January 2012 Brent Ganley wrote to Colin Clark. The letter stated:

"I wish to express interest in purchasing the former Belford house site.

*I have instructed **(name of valuer)** to provide me with an open market valuation, a copy is attached. I appreciate that the valuation is perhaps less than current market value, however, I believe the actual price that would be realised would not be much greater then £500,000.00*

I, therefore, confirm that I would be prepared to offer the sum of £500,000.00 subject to contract. I do not need to obtain funding and could proceed as a cash purchaser."

7.16 Mr Ganley's letter is accompanied by a letter from **(name of valuer)**, BSc(Hons) MRICS to Mr B Ganley. The letter states:

"I refer to the above and in particular to our recent meeting in respect of your proposed purchase of the former Belford House development site.

I can confirm that I have given this matter serious consideration and can report as follows that taking into consideration the downturn in the property market and the increasingly tough continuing market conditions I understand that you still wish to purchase this development and progress to construct 10 bespoke detached dwellings.

I understand that the proposed houses will extend to around 5000 sq ft and will be designed to a contemporary and modern standard and finish to a high standard.

Having carefully analysed recent sales transactions in the immediate vicinity I am of the opinion that each plot to you as a developer is worth in the region of £50,000. I have also considered a development appraisal valuation I believe the site at Belford House has a residual value in the region of £500,000.

I have not seen any proposed plans but I'm aware of the standard that you are proposing and have taken this into consideration.

I trust this brief valuation overview is satisfactory for your immediate purposes and I look forward to progressing this matter further with you in due course."

7.17 We understand that this offer was rejected by the Council.

7.18 On 3 April 2012 Brent Ganley emailed Mr Clark, the email reaffirmed Mr Ganleys interest in the site. The email included:

"My proposal for the land would be to develop about 12 executive homes in line with the Council's own aspirations for the site set out in the Development Brief and in existing Sunderland UDP Policy H7 and emerging planning policy in the draft Sunderland Local Development Framework.....

I would therefore like to discuss with you how i can work with the Council to progress the purchase and development of the site for executive housing. One suggestion I have would be to enter into a contract with the Council which included an overage agreement so that any future profits can be shared. I understand that the Council have disposed of other areas of land recently and have entered into similar contracts. An overage payment would allow the land to be developed within the parameters of the Council's development budget, but at the same time allow the Council to protect its interests."

7.19 This email not only generated further dialogue between the Council and Brent Ganley but also caused the Council to revisit the potential sale of Belford House.

7.20 On 14 October 2013, Ms **(name of Valuation Surveyor)** emailed Mr Hattle. The email stated:

"Nick has asked us to bring Belford forward again. I have the final version from 2011 which will need updating into Belford House's format. I have been through the document and attached the changes I need.

*I have met with **(name of Engineer)** to get them to update the highways information particularly as I want to protect our use of the playing field behind from being landlocked in the future in case it does not get used as playing fields. They are coming up with a brief for me to cover all eventualities.*

Let me know who will have a look at this and when they are ready I will sit down and talk it through."

- 7.21 Open source research with Companies House shows that Tunstall Construction Ltd was incorporated on 17 October 2013. One of the Directors is Brent Ganley.
- 7.22 On 20 March 2014 Ms **(name of Valuation Surveyor)** emailed eighteen developers with regards the sale of Belford House. The site was also advertised in the Sunderland Echo and the Journal on 26 March 2014.
- 7.23 On 23 May 2014 Fitz Architects submitted tender documents on behalf of Tunstall Construction Ltd. Mr Fitzakerly provided some further background to this in an email to the investigating officers on 21 November 2017. He stated:

“Tunstall Construction approached us after the site was re-tendered by the council in 2014, as the first tender in 2011 didn't achieve the land values Sunderland City Council required so they re-tendered it again years later. Tunstall Construction were aware we had worked on the scheme previously and had experience of the site and the previous tender process. We only submitted the concept designs which was the first stage requirements in the tender process. We made it through to the second stage and this again was a financial offer between the client and the council, and again we had no involvement in this stage (like it was with the first tender) but the offer from Tunstall construction was accepted. Please see attached some original documents.

After being successful with the design tender and then also the client agreeing a land value with the council we were Tunstall's appointed architects for the project and have produced the planning and building regulation applications. The client has sold the plots as self-build plots. There are 8 in total.”

- 7.24 On 11 July 2014 Tunstall Construction wrote to the Council. The letter stated:

“We would like to offer £752,000 (Seven Hundred and Fifty Two Thousand pounds) for the land at Belford House”

- 7.25 On 14 July 2014 Cussins Ltd wrote to the Council and made an offer of £450,000 for the site.

- 7.26 On 18 July 2014 **(name of Risk and Assurance Specialist)** emailed **(name of Valuation Surveyor)**. The email was headed Tunstall Construction Ltd and stated:

“Company Report attached. As you'll see it's a relatively new company (incorporated October 2013) so there is little information and no financial accounts to review. On incorporation there was 1 share with a nominal value of £1. When the second director was added an additional share, again with a nominal value of £1 was created. Based on this, there does not appear to be a significant amount of equity invested into the company so presumably the funding of any purchase and subsequent development will be from other funding sources e.g. borrowing, unless additional equity is invested”

- 7.27 This email would appear to be in response to a credit check of Tunstall Construction Ltd (Attached WC 25). The company is scored at 51 out of 100. The risk information states, ' Average Risk – This company has an average risk status and should be treated with a degree of caution'. The credit limit is given as '0', the text states,

'Selling to this company? The credit limit is the recommended maximum outstanding debtor exposure at any one time'.

- 7.28 On 22 July 2014 Ms **(name of Valuation Surveyor)** emailed Brent Ganley, the email was headed 'Subject to Contract without Prejudice' and stated:

*"Following your meeting with **(name of Senior Surveyor)** I can confirm that we are in a position to recommend the sale of land at Belford House to Tunstall Construction Limited. This recommendation will be subject to confirmation of proof of funds, acceptance of heads of terms and Cabinet Approval.*

I will be drafting the heads of terms for you and these will be sent out in the post. If you can sign and return them along with proof of funds and cashflow for the site.

The Cabinet date we are aiming for is September. The sale couldn't progress until Cabinet have authorised the sale. You would then have 6 months to get your planning"

- 7.29 On 13 August 2014 proof of funds was requested from Brent Ganley by Ms **(name of Valuation Surveyor)**. The same day Brent Ganley emailed Ms **(name of Valuation Surveyor)** stating that they had a private backer who was out of the country. Brent Ganley stated that he would contact him and ask him to send over proof of funds electronically.

- 7.30 There is no evidence on file that suggests that any such proof of funds was received.

- 7.31 On 3 September 2014 Council Cabinet approved the sale to Tunstall Construction Ltd, as recommended in the report to Cabinet of the same date (Attached WC 26). Brent Ganley was informed of this decision by email on 12 September 2014.

- 7.32 Despite Brent Ganley agreeing the 'Heads of Terms' subsequent emails indicate that efforts were being made to change these in March 2015 which would allow the developer to sell off the plots with outline planning permission rather than completing the development on each plot.

- 7.33 This issue was then subject of significant negotiations between Brent Ganley, we assume his solicitor and the Council. On 29 May 2015 Brent Ganley emailed Ms **(name of Valuation Surveyor)** , he stated:

"I have spoken to Giles at length, our backer and a mortgage agent and none of us can get comfortable with the call back agreement.

Seeing that I am paying a fair market price, could this not be excluded altogether."

- 7.34 The same day Ms **(name of Valuation Surveyor)** emailed Brent Ganley and copied to **(name of Solicitor)** and Mr Wood, she stated:

"This is very difficult for us because the site was tendered and awarded on the basis of a call back option and the terms you agreed too which went to Cabinet included the call option. We have tried several versions of the call option to try and satisfy your funding but we are not able to remove it

completely. All of our land sales for development include a call option to ensure that development occurs on the site and this is why they are released to ensure they are developed and land banked.

If you do not intend to develop the site then the council would take it back to ensure that development occurred on the site.

As a compromise I've discussed with **(name of Senior Surveyor)** and the very minimum we could go to (and I would need Nick's agreement on his return next week) would be that all the major infrastructure and servicing for the 8 properties on the site would need to be commenced within 12 months of the option agreement and completed within 18 months. This would at the very least satisfy the council that development was occurring and the site was not being land banked.

This is a major deviation from our original call option.

If Giles can make the amendments to the paperwork to reflect the above it will mean it will be ready for signature when **(name of Solicitor)** and I return".

7.35 Brent Ganley emailed back, he stated:

"I'm very happy with that and have instructed Giles to amend the paperwork this afternoon, he will have it complete for Monday.

*Is there anyone else we can forward this on to in **(name of Solicitor)**'s absence?"*

7.36 On 20 April 2016 a delegated Decision Record was completed and signed by **(name of Strategic Property Manager 1.)**, Councillor Speding and Mr Wood (Attached WC 27), the decision made states:

"Agreed to revise the purchase price for the sale of land at Belford House to £602,000 following a claim for reduction due to unforeseen abnormal development costs."

7.37 The reason for the decision states:

"The adopted policy for the disposal of development sites seeks gross offers on a greenfield basis to ensure bids are considered on a consistent basis. The price is then subsequently subject to reduction for any abnormal costs. At its meeting of 3 September 2014 Cabinet agreed to the sale for a gross price of £752,000. Following site investigations the purchaser submitted a claim to reduce the price by £207,000 to reflect the cost of unforeseen works relating to contamination, highway works and surface water management. The claim has been verified as justifiable by the Council's quantity surveyor and following negotiation with the purchaser a revised price of £602,000 has been agreed reflecting a reduction of £150,000. The revised price meets the Council obligations to achieve the best price reasonably obtainable and is in excess of the next highest gross bid received."

7.38 The 2009 Policy (as amended by the 2011 Policy) outlines the relevant procedure in relation to abnormal development costs.

- 7.39 The 2009/2011 Policy indicates that abnormal development costs exceeding £100,000 should be internally verified and scrutinised by the Council. Whilst the interplay between the 2009 and 2011 Policies are not entirely clear here, the 2009/2011 Policy appears to indicate that abnormal development costs may be accepted by the Deputy Chief Executive, in consultation with the Executive Director of Commercial and Corporate Services. The requirement under the 2009 Policy to refer decisions regarding abnormal development costs exceeding 10% of the original highest offer to Cabinet does not appear necessary under the 2009/2011 Policy. The 2009/2011 Policy appears to indicate that Chief Officers exercising delegated powers in relation to property disposals must consult with the Leader and Cabinet Secretary.
- 7.40 Paragraph PS11 (OCE Delegation Scheme) indicates that the following individuals are able to “agree abnormal development costs for all sites”: Executive Director of Commercial Development; Chief Operating Officer; Head of Property; and Head of Design and Technical Services.
- 7.41 The Decision Record indicates that the abnormal development costs claim was verified and deemed justifiable by the Council’s quantity surveyor. Further, Nick Wood, as Head of Property, is named on the Decision Record as the Authorised Officer who made the decision and has signed the completed form. This appears to be encompassing with the relevant policy and procedure at the time.
- 7.42 Consultation requirements for such a decision are not entirely clear under Council policy. However, the 2009/2011 Policy appears to indicate that Chief Officers must consult with the Leader and Cabinet Secretary under these circumstances. The decision record states that only Councillor Speding, the Cabinet Secretary, was consulted. Council officers have indicated that decision records are placed on a Members digest and sent via email to all Members, including the Leader and Cabinet Secretary but that is for information not consultation.
- 7.43 On 22 April 2016 Belford House was sold to Tunstall Construction Ltd for £602,000. Council records indicate that payment was made via the law firm Swinburne Maddison LLP.

Money Laundering

- 7.44 In December 2007 the Council published a briefing note for Managers in Higher Risk Areas concerning Prevention and Detection of Money Laundering (Attached WC 28) The briefing note highlights examples of signs of money laundering where suspicion should arise, these include; unusual transactions or ways of conducting business and the lack of traceability of persons involved.
- 7.45 The briefing note also highlights types of risk factors which may, either alone or cumulatively with other factors, suggest the possibility of money laundering activity, these include; illogical third party transaction such as unnecessary routing or receipt of funds from third parties or through third party accounts and the absence of an obvious legitimate source of funds.
- 7.46 Despite credit checks being conducted by the Council and these themselves identifying a certain amount of risk there is no evidence within Council documents that proof of funds was established following the email by Ms (**name of Valuation Surveyor**) on 14 August 2014. There is certainly no indication that any officer

considered what was taking place as suspicious within the terms of the Council guidance.

- 7.47 Ms (**name of Valuation Surveyor**) is of the view that the sale would not have proceeded without proof of funds being established having said that she could not provide an explanation as to why that information was not on the file.

Section 123 LGA 1972

- 7.48 The Council had the power under section 123 LGA to dispose of this land in any manner it wished, unless £602,000 represented a consideration less than the best that could have been reasonably obtained.
- 7.49 After the initial proposed sale was unable to complete, evidence on the file shows that the Council decided to market the site in 2011. This is encompassing with the Council's duty under section 123(2).
- 7.50 The Council created a design submission brief in May 2011. The sale of the site was advertised in the Sunderland Echo and The Journal on 8 and 15 July 2011. Pro-forma letters (presumably including the design brief) were sent to thirty prospective developers. These procedural steps appear in accordance with Council policy and are encompassing with the Council's duty under section 123(2).
- 7.51 The 2009/2011 Council Policy provides that design submissions should be evaluated against the objectives of the brief. In the event, four of the developers were considered against a scoring matrix. Three developers were invited to make financial offers on a formal tender basis. The offers received amounted to £640,000, £602,000 and £258,000.
- 7.52 A view was taken that as the offers were significantly lower than that offered in 2007, the best approach would be to not progress the disposal and wait until the market showed signs of recovery. Council policy is silent on the procedure which may be required in order to make such a decision
- 7.53 It seems as though it would have been prudent for the Council to obtain a valuation of the land (an internal valuation at the very least) before the decision was made not to dispose of the land following the tender process. The 2009/2011 Council Policy indicates that the "highest acceptable offer" should be recommended to Cabinet. The highest offer does not appear to have been recommended to Cabinet here, no doubt because none of the offers made were deemed "acceptable". Council policy is also silent on the procedure which may be required in order to make such a decision.
- 7.54 A subsequent offer of £500,000 was made by Brent Ganley in January 2012. We understand this offer was rejected, which would be in-line with the decision not to progress disposal at that time.
- 7.55 The land was eventually re-marketed in March 2014. Eighteen developers were emailed and the site was advertised in the Sunderland Echo and The Journal on 26 March 2014. We understand that Fitz Architects submitted tender documents on behalf of Tunstall Construction Ltd on 23 May 2014. Tunstall Construction subsequently offered £752,000 for the land on 11 July 2014. Cussins Ltd made an offer of £450,000 on 14 July 2014.

- 7.56 On 3 September 2014, Cabinet approved the sale of the land to Tunstall Construction Ltd for £752,000. The report to Cabinet of the same date indicates the land was marketed in accordance with the 2009/2011 Policy, using a two stage sealed tender process. It goes on to state that the bids received were considered in accordance with an appropriate evaluation criteria assessing quality of development proposals. The report confirms that the only financial bids received were from Tunstall Construction Ltd and Cussins Ltd.
- 7.57 A Decision Record completed on 20 April 2016 confirmed the decision to revise the sale price of the land to £602,000 following a claim for reduction due to unforeseen abnormal costs. The reduction of £150,000 was verified as justifiable by the Council's quantity surveyor and Nick Wood, Head of Property, was stated to be the Authorised Officer. Nick Wood signed the completed form. This procedure appears to be in accordance with the Council's 2009/2011 Policy. However, it is unclear whether the correct procedure was followed in terms of consultation.

Conclusions

- 7.58 In June 2007 an offer of £2.3M for Belford House was accepted by the Council.
- 7.59 Due to the financial markets the prospective purchaser was unable to complete on the agreed price.
- 7.60 Disposal of the site was again considered in 2011 and the site was advertised. Offers were made, however a decision was taken by the Council not to sell but wait for the market conditions to improve.
- 7.61 In January 2012, Brent Ganley offered £500,000. This was rejected.
- 7.62 Brent Ganley again contacted the Council in April 2012 expressing an interest in the site.
- 7.63 In October 2013 Tunstall Construction Ltd was incorporated with Companies House. The directors included Brent Ganley.
- 7.64 In March 2014 the site was again marketed by the Council.
- 7.65 On 11 July 2014 Tunstall Construction Ltd offered £752,000 for the site.
- 7.66 On 13 August 2014 proof of funds was requested from Brent Ganley. Mr Ganley suggested that his backer was out of the country. This explanation and the fact that the credit check advised to proceed with caution did not in itself cause officers to consider the Council's Money Laundering guidance. There is no evidence to indicate that proof of funds was ever received by the Council.
- 7.67 On 3 September 2014 the Council Cabinet approved the sale to Tunstall Construction Ltd. Brent Ganley was informed of this decision by email on 12 September 2014.
- 7.68 Despite Brent Ganley agreeing the 'Heads of Terms' subsequent emails indicate that efforts were being made to change these in March 2015 which would allow the developer to sell off the plots with outline planning permission rather than completing the development on each plot.

- 7.69 On 20 April 2016 a Decision Record was completed and signed by Ms **(name of Valuation Surveyor)**, Councillor Speding and Mr Wood, confirming the decision to reduce the sale price of the land to £602,000 due to unforeseen development costs. This appears to have been made in accordance with the relevant policy and procedure at the time. However, it is unclear whether policy was followed in relation to consultation.
- 7.70 On 22 April 2016 Belford House was sold to Tunstall Construction Ltd for £602,000. Payment was made via the law firm Swinburne Maddison LLP.
- 7.71 The relevant documentation assists the Council in its ability to display section 123(2) compliance in relation to the disposal of this land.

8. Overall Conclusions

- 8.1 There is no evidence of any inappropriate relationship between Council officers and Fitzarchitects.
- 8.2 There is no evidence to suggest inappropriate member involvement in any of the land and property disposals investigated.
- 8.3 Based on the evidence considered within the investigation parameters there is no explicit evidence to suggest that the Council failed to comply with its duty under section 123 (2) of the Local Government Act 1972. However, lack of documentary evidence in certain cases, particularly in relation to the former Jobes Café site, makes it difficult for the Council to display that it has taken sufficient steps to obtain best consideration reasonably obtainable.
- 8.4 It appears that the Council did not follow its own internal policy and procedure at particular times during several of the land and property transactions under investigation. However, this does not, in itself, necessitate a failure to comply with the Council's duty under section 123(2).
- 8.5 Notwithstanding that the Council did not appear to consider the AID report commissioned by LL for the second planning application; the Council did consider disabled access for the Pier Point development and were mindful of approved document M when making their decision.
- 8.6 The Council has answered FOI requests from LL and other interested parties, however the lack of liaison with South Tyneside Council has caused a degree of confusion and clearly highlights differences in what documents would be disclosed following requests. In these circumstances, it would have been helpful if the two councils had liaised in order to avoid inadvertent confusion.
- 8.7 The potential for suspected money laundering was not considered by the Council in July and August 2014 when considering the offer for Belford House by Tunstall Construction Ltd. Although the sale did not complete until 2016, the Council should have persisted with requests for proof of funds from the buyer.

9. Recommendations

- 9.1 The Council should develop and implement an Improvement Plan to address the issues raised within this report, to include:
- a) Review of Council Policy and Operating Procedures in relation to the Disposal of Land and Property, including record keeping.
 - b) Training of relevant Members and Officers in relation to the Policy and Operating Procedures in relation to the Disposal of Land and Property, including anti-money laundering requirements.
 - c) Training of relevant Members and Officers in relation to the procedures for recording Delegated Decisions.

Wilkin Chapman LLP
22 March 2018