

CR	Advice	Answers
1.	Can you please describe your involvement in the first LRIE project?	<p>Ad-hoc involvement – since the procurement for the Strategic Feasibility Study. Work was led by Special Projects Team – Mike Sullivan the Procurement Manager. SS advising on project since that time. This followed his role in St Barts project.</p> <p>He advised re consultant appointment, Strutt & Parker involvement – could it be extended etc?</p> <p>Detailed involvement followed once bids in from developers. Had input in handling correspondence – assisting Mike Sullivan – correspondence with Brian Raggett. Asked to look at Procurement regulations.</p> <p>Advice given on an ad-hoc basis to Bill Bagnell, Mike Sullivan, David Holling, Nick Carter. DH involved SS in discussions as a matter of interest/learning.</p> <p>Did not attend meetings regularly, i.e. Project Board/NTCTG. Recalled attending a meeting – a project board? with St Modwen in attendance. This was a cross-party group. Gordon Lundie was Leader at the time.</p>
2.	At what stage did you become involved?	Covered in the above.
3.	Can you recall what you were asked to provide advice on?	<p>Procurement advice – contractual/procurement elements for appointing Strutt & Parker for Feasibility Study only.</p> <p>No certainty project would have legs at that point so looked to a limited scope. Only found would proceed at a later date.</p> <p>Extension of Strutt & Parker arrangement. SS not comfortable in broadening scope without Executive approval as not in original tender. However, there was a view that the consultant (S&P) had taken the project so far and was felt to be a waste to look elsewhere. Section 151 Officer approved not for Executive as relatively minimal sum.</p> <p>SS was surprised/shocked that Strutt and Parker identified path to bring in bidders at so soon a stage.</p>

		<p>Beyond that, Opportunity Document produced. SS gave feedback on document, gave advice on that. Reports to Exec – felt needed advice. Be clear on Council’s objectives.</p> <p>JCole – why shocked? SS not been involved day to day in project. JCole questioned that. SS – St Barts had weekly project board, was closely involved throughout. Not so LRIE re next steps, asked to comment on produced Opportunity Document. Not felt wrong, more unexpected. A potential lesson to learn.</p> <p>LDillon – was David Holling involved in Opportunity Document? SS – felt potentially was, could not recall 100%, but he recalled being copied into some DH emails on the matter. Did discuss document with DH.</p> <p>LDillon – recollection of advice not being taken? SS – formulated advice in discussions, this was taken. Post Opportunity Document. Market testing exercise undertaken and project evolved to selection process. Could not recall advice ever being ignored.</p> <p>CRowles – part of collaborative discussions? SS focus on client objective – what WBC wanted.</p> <p>LDillon – Nick Carter the Project Sponsor? SS – NC was instrumental in meeting WBC objective to deliver project. His focus was on that.</p> <p>Once developer was selected, SS became more closely involved, shadowed DH. St Modwen were appointed. SS worked on Heads of Terms, participated in officer discussions. Heads of Terms were needed before St Modwen appointed. Heads of Terms followed the market testing. Was contact with FDL/Wilson Bowden.</p>
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4.	<p>How involved were you in advising the Council on the appropriate procurement route that was used to identify a developer for this project?</p>	<p>SS - not involved in advising what appropriate procurement route for appointing St Modwen. Strutt & Parker made recommendation re procurement route/ why no regulated process. SS did advise on S&P approach/recommendations – questioned the approach. Strutt & Parker questioned – if land disposal then procurement route fine. Soft market testing report – showed objective was for land disposal and so outside procurement rules both then and now.</p> <p>LDillon – surprised at speed between soft market testing and appointment? SS – S&P devised shortlisting process. St Modwen selected. It was seen as acceptable to progress in this way due to this being a land disposal. Not Heads of Terms at time, therefore didn't have full detail. To be agreed at later stage. Generic advise provided to Executive Members, took time before able to confirm if to proceed for certain.</p>
5.	<p>As the project progressed were you comfortable that this option remained the most appropriate route (based on S&P advice)?</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] S&P and St Modwen had experience of working within the sector. They had produced similar before for other projects.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

		<p>[REDACTED]</p> <p>SS recalled a conversation with Bond D after clearing with David Holling. DH was the lead.</p> <p>Selection of Bond D – SS advised that quotes were sought from three organisations – Bond D appointed.</p> <p>It was clear that legal costs would likely vary. The cost of tenders could only be estimates, was not a fixed fee.</p> <p>SS – WBC particularly sought clarity on procurement approach. This was an extra cost to incur.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>JCole – happy that signed Developer Agreement contained the necessary wording, gave clear reasoning for non-OJEU route?</p> <p>SS – yes.</p>
6.	<p>The Council published a VEAT Notice and this was subject to some criticism in the Court of Appeal. Can you please explain the purpose of the document and why it was served.</p>	<p>SS sought VEAT notice, part of need for transparency.</p> <p>Felt this to be a good risk mitigation strategy. Drafted by Bond Dickinson. Felt fully in order. Court of Appeal commented – insufficient (or similar) as Planning lawyers.</p> <p>SS considered that it contained the necessary provisions for St Modwen selection.</p> <p>CRowles – Were external lawyers questioned? SS – did question and always do so. Needed to be satisfied on VEAT notice. Sarah Clarke agreed much challenge.</p> <p>SS – VEAT better for transparency.</p>
7.	<p>Can you describe the processes that were followed to appoint the external legal advisers?</p>	<p>SS – not involved in appointment process, but DH, as part of shadowing, outlined the scoping and invite to tender processes.</p> <p>4 quotes were sought. Local Government Lawyers listed specialisms required.</p> <p>Bond Dickinson involved in Park Way/their precursor - Bevan Brittan.</p> <p>Cheapest was selected.</p> <p>LDillon – was cost the driver? CRowles – was proper process followed?</p> <p>SS – needed to firstly be comfortable on the quality of legal advice to be received.</p>

8.	In your opinion, was that an appropriate route by which to determine the most appropriate legal advisers?	<p>Yes.</p> <p>On the decision – many lawyers, including QC’s, had stated publicly that decision made was wrongly decided.</p>
9.	What were the external legal advisers asked to advise upon?	<p>SS – negotiation and conclusion of Developer Agreement. Unclear beyond that.</p> <p>LDillon could seek answers in writing if more detail needed and not contained in the paperwork.</p>
10.	What advice did you receive regarding the project and how was that advice communicated to relevant officers and Members?	<p>SS – procurement implications. [REDACTED]</p> <p>[REDACTED]</p> <p>+ procurement/VEAT notice.</p> <p>For DH to cascade as necessary - NC aware (also aware from Tim Seddon), plus Members (incl Pamela Bale & Gordon Lundie) and key officers.</p> <p>CRowles – opinion on judgment? WBC unlucky?</p> <p>SS – felt so. Felt judgment raised more questions than answers. Created uncertainty in the market. Some QC’s declared publicly that was wrongly decided.</p> <p>Differs from/impacts on prior caselaw. Difficult to see where the line was.</p> <p>LDillon – did advice outline the value/risk of the chosen approach, rather than OJEU?</p> <p>SS believed it did not. The tender had concluded, St Modwen were appointed. Senior Members and officers wanted deal done.</p> <p>The deal was not unlawful. It was based on a good precedent. Deals of recent months – same processes. Felt view at time of VEAT was to challenge.</p> <p>JBrooks - OJEU around for many years. What was saved in terms of time and money from not following OJEU? What was the upside? & LDillon questioned approach when WBC risk averse.</p> <p>SS could not recall. Would not necessary disagree with point being made, with benefit of hindsight would have put to OJEU. But no requirement for OJEU for a land transaction - exempt. Was comfortable with OJEU process.</p>

JB	Costs	
11.	<p>The expressions of interest received from the law firms contacted by Legal Services suggest that the project (in terms of negotiating and signing the DA) should have been delivered for considerably less than the actual costs incurred. Can you explain how that happened?</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>CRowles – the cost? Sarah Clarke – original bids had a capped fee. Questioned the qualified cap with external lawyers (pre action correspondence). SS – cost of £58k. ? if pre-litigation fees – point to check on.</p>
12.	<p>Who approved the legal costs?</p>	<p>David Holling.</p>
13.	<p>How were the legal costs monitored?</p>	<p>SS: DH role. Invoices received were checked against lawyer timesheets.</p> <p>CRowles – any challenge of costs? SS – not personally, he did not authorise payments. S. Clarke recalled cases where some aspects/fees were challenged.</p> <p>LDillon - with hindsight - not set a £16k budget? Was that enough at the time? SS -budget would have been approved at the time from the budget bid. If scope had increased would have revised estimates.</p> <p>CRowles – partner led approach – Bond Dickinson, at senior partner level? SS – from managing associate, not necessarily partner level. Spoke to St Modwen lawyers also. WBC, St Modwen, Bond D – all overseeing.</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] £58k felt to be relatively inexpensive.</p> <p>JBrooks – could adapt starting template? SS – not a template to modify, St Modwen tailored here. JBrooks – WBC could have added to their draft.</p> <p>LDillon - Project management – Strutt and Parker costs - quarterly project management costs. What for? <i>(Also referenced in NC questioning)</i></p>
14.	Can you detail how the escalating costs were communicated within the organisation?	Beyond the cap, SS (on DH’s behalf) – DH very conscious of increases. Invoices paid by Chief Executive cost centres. Looking at two years’ work in a short space of time.
LD	Governance	
15.	The advice obtained indicates that there was a level of risk in the chosen route. How was that risk articulated to senior officers and members?	Was communicated to NC/Members. Recalled via e-mails. SS could not recall particular Member concerns over risks.
16.	Do you consider that the specialist legal advice, and the level of involvement of the external legal advisers was appropriate for a project of this scale?	<p>SS – Yes. However, clear benefit for legal to stay in the loop.</p> <p>LDillon – was it right for shadow person to be senior legal officer in the room for some meetings? SS – felt yes. DH featured in the majority of meetings. LDillon - was SS involved/asked re Strutt & Parker outside of procurement exercise/in between? SS – could not recollect clearly on that point.</p>

JC	Learning	
17.	The Council took advice regarding the options available to it. Was the advice received tested against the procedures adopted by other authorities when entering similar transactions?	<p>SS – once Heads of Terms/DA there, looked to external input. Told that structures existed.</p> <p>CRowles – felt reasonable to look to other LAs. Was that normal working practice?</p> <p>SS – aware of processes of others/could follow other areas, but that did not necessarily mean it was the correct way.</p> <p>CRowles – acknowledged would need same/very similar scenarios.</p> <p>SS – WBC process supported by case law throughout.</p>
18.	The Court of Appeal ruled against the Council. Are there any lessons that you will take from that judgment?	<p>SS – always lessons to learn.</p> <p>Would have expected/wanted to see a similar process, i.e. for St Barts.</p> <p>Now though would have insisted on legal input throughout project board. If exceptions were to arise then they needed to be challenged.</p>
19.	Do you have a view on where things could have been done better at the time?	<p>JCole – any different action that could or should have been taken?</p> <p>SS – always options. If chance to run differently, would have taken more structured approach. Legal been involved more in structure. But would not have altered Court of Appeal judgment.</p> <p>The course taken was based on a sound understanding.</p> <p>Pre action – QC advice – all clear on all grounds.</p> <p>CR – simply fell to Court decision on day?</p> <p>SS – yes, found in favour of WBC at High Court. Lost on a technical point in Court of Appeal.</p> <p>Provisions were in DA to stop process and roll back. Looked at mitigation of risks at all stages. Project management or not - processes still existed.</p> <p>LDillon – when to Court of Appeal – what chances to win/lose? Was technicality already identified?</p> <p>██</p> <p>██</p> <p>██</p> <p>██</p>

		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>JBrooks – was DH at Project Boards? SS – unclear on this point. SClarke – membership of different groups covered by NC.</p> <p>JBrooks – felt hit and miss project management approach at WBC? SS – was necessary to follow a clear process with defined parameters. It should be possible to involve key stakeholders as appropriate. A Procurement Strategy should be agreed and reviewed at each milestone. The right expertise needed to be brought in at the right time.</p> <p>CRowles commented – pleased SS had Prince 2 training – ahead of others.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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