

Appendix H - Findings and Recommendations

Purpose of review:

To better understand the advice and guidance received in relation to the Council's decision when procuring a preferred partner for the LRIE redevelopment.

Terms of Reference Point 1 – To review the governance arrangements put in place by the Council to manage the LRIE development

Findings:

- 1(a) We hoped to find that Project Management had been a key aspect of this project, but in practice found no evidence of formal project management methodology having been in use by Council officers. The Council had a project management methodology in place from 2009 but this was only applied in relation to ICT projects, and as a result the records show a lack of project management controls; for example there was:
 - No evidence of formal project management meetings – minutes proved unavailable;
 - No obvious clear project budget (there were annual budgets);
 - No clear evidence of management of external consultants; and
 - There was a piecemeal approach to the whole project.
- 1(b) We did not find evidence that a clear business case was established for redevelopment of the LRIE. An early Strutt and Parker document did give some elements of a business case and it was clear that reports to the Executive certainly did give some details, but whilst there was a clear goal to secure redevelopment of the site, the route to that goal was not clear in the evidence presented to us.
- 1(c) Interviews with witnesses suggested that there was incomplete understanding of the purpose, role and responsibility of different individuals and groups in the process.
- 1(d) There was a lack of clarity over who was in charge of the day to day management of the project amongst officers.
- 1(e) It was evident from the interviews that some Members had been unclear as to the purpose of the Newbury Town Centre Task Group in relation to the LRIE redevelopment. The Terms of Reference of the Newbury Town Centre Task Group that we found were only in draft form, and there appears to have been an over-reliance on the Newbury Town Centre Task Group which was only a consultative body.
- 1(f) Although there was evidence of officers meeting as a group, and that group included the Chief Executive, Property, Planning, and Legal where necessary, there was no formal project group set up to oversee the whole project at the outset. The Task Group noted that a formal Project Group was constituted after the development agreement was completed with St Modwen, but that meetings of this group were suspended following the legal challenge.

- 1(g) The Council did monitor the progress of Strutt and Parker via regular updates provided by them, and it is evident that this information was shared with the relevant governance groups.
- 1(h) Project document filing and retention was good in some areas but not adequate in all areas. A great number of formal meeting documents were made available for this review, but document/record management was a concern for the task group as there had been some key gaps in some areas, such as the lack of a risk register, and of minutes of project management meetings.
- 1(i) The cost of the project was not fully understood at the outset of the project. This is in part due to the fact that the project developed in a piecemeal manner. Costs were however approved by Executive and allocated to the project at each stage. It is considered that a clear business case at the outset would have resulted in a better understanding of the full financial implications of the project.
- 1(j) Risk management arrangements were inadequate. Although there is mention of a risk register in the records there is no evidence of it actually being in place for the project - amongst other things this should have captured which individuals were responsible for the risk to the Council from this project at both Officer and Portfolio Holder levels.

Terms of Reference Point 2 – To review the advice and guidance received by the Council which resulted in the OJEU commissioning rules not being followed

Findings:

- 2(a) As the Council did not have sufficient expertise in house for a project of this size it was necessary to procure external expertise. It was noted that the in-house procurement expertise had been reduced, and that there was no sign of a proper skills gap analysis at the outset of the project.
- 2(b) The Council did seek support from external property and legal advisers at appropriate times.
- 2(c) Progress through the stages of the LRIE was piecemeal, in that each stage was gone through, and then it was presented to and reviewed by Members of the Newbury Town Centre Task Group, before being considered and determined by the Executive. As a result advice procured at each stage was procured on an ad-hoc piecemeal basis.
- 2(d) The Council had an established relationship with Strutt & Parker, who had been engaged to assist the Council with other redevelopment projects such as Parkway. While it was acknowledged that the Council had established a good working relationship with Strutt & Parker, there was some concern that there could have been “project creep” from one project to the next.
- 2(e) The advice, which was considered at appropriate times and by the Executive when taking decisions, indicated that the Council was acting properly in proceeding in the manner that it did. There is nothing to suggest that the advice received was irrational and there was evidence that what was proposed was not unusual.

- 2(f) The Council received clear unequivocal advice from Strutt and Parker that the transaction proposed was a land transaction and thus fell outside of the scope of procurement legislation.
- 2(g) The Council also obtained legal advice from both the internal Legal Team and external legal advisers, Bond Dickinson. The legal advice was also clear and unequivocal that the proposed land transaction was outside the scope of the procurement regime.
- 2(h) The reports to Executive and the minutes of the meetings where this was considered provide clear evidence that the Council had not closed its eyes to the question of procurement, and it was openly discussed and considered in meetings of the Executive. There was no intention to avoid compliance with any legal duty to undertake a procurement exercise.

Terms of Reference Point 3 – To better understand the cost of the initial advice and the subsequent cost of defending the Council’s position in the High Court and Court of Appeal

Findings:

- 3(a) The advice from Strutt and Parker was commissioned on a piecemeal basis. The failure to review all options for progressing this to conclusion means that the Council could not have known at the time whether or not a more effective outcome could have been achieved.
- 3(b) After the initial work undertaken by Strutt & Parker, the Council undertook a procurement exercise for further property work. A tendering exercise was undertaken at the Feasibility Study stage; there were 3 responses, and Strutt & Parker were awarded the contract with their quote of £39k. That exercise involved the Council’s Procurement Officer, who was independent of the project. The estimated value of the work was below the then threshold of the Contract Rules of Procedure requiring contracts to go out to formal tender, which was £50k. Strutt and Parker were then engaged to undertake the Opportunity Document and Market Testing work, and reports requesting the retention of Strutt and Parker for this work, together with the estimated costs, were approved by Executive. Strutt and Parker were invited to provide a fixed fee quote for the final stage of consultancy work on the project, the developer selection process
- 3(c) The Council undertook a procurement exercise via a written invitation to quote, prior to appointing external lawyers to assist with the project. An invitation to quote was issued to four legal firms, with local government experience and the specialisms required. Each of the firms responded and provided a quote, including details of the firms, and the lawyers who would assist, how they would approach the project, experience, and costs. The firm which submitted the lowest quote, Bond Dickinson, was appointed. However, no evidence was seen to demonstrate how the submissions had been assessed in order to ensure sustainability, efficiency and cost savings.
- 3(d) It is clear that the Executive was asked to approve costs at each stage of the project. We heard evidence that there were challenges regarding costs as the legal disbursements budget was limited and there were pressures on officers

to deliver work in unreasonable timescales. We did have some concern over how these costs were allowed to escalate, but it was felt that this was once again because of the piecemeal nature of the project.

- 3(e) The total cost of the project and litigation which followed was £946k. The construction of the LRIE Access Road incurred costs of £5.2m, which was funded in part by LEP funding, s106 contributions and DfT Challenge Funding.
- 3(f) The Council spent £156k on property consultants who advised in relation to the project.
- 3(g) The Council spent £58k on legal advice relating to the drafting and completion of the Development Agreement. The Council's in house legal team spent over 200 hours working on the project to the value of £27k. The hourly rate of officers in Legal Services is notably lower than lawyers with equivalent levels of post qualification experience in external firms.
- 3(h) The Council spent £378k on legal costs associated with the litigation which followed. In addition, 135 hours of officers time within Legal Services was recorded against the litigation which has a value of £18.5k.

Terms of Reference Point 4 – To review what lessons have been learnt from this case

Findings:

- 4(a) Evidence was submitted that suggested that consultation and communications with those directly affected was limited. This is disputed by officers but it is considered that communications could have been better.
- 4(b) Whilst it is clear above that there are some things that could have been done better in this project, when we ask the question “if we had been there, based on the records we have seen and the advice given that we have seen, would we have made any different decisions regarding the proposed redevelopment of the London Road Industrial Estate?” We came to a simple answer “No”.

Recommendations:

- (1) OSMC should satisfy itself that the Council has in place appropriate project management methodology. This should be tested in order to provide assurance that this is now operating effectively and consistently across the organisation. This should include standardised documentation such as a risk register, and project sponsors should ensure that project managers understand their role. This would also ensure that appropriate governance structures, including Project Groups and Governance Groups are formally constituted and are understood by all.
- (2) All projects should be supported by a clear business case.
- (3) All projects should have a sufficient budget allocated to that project at the outset, including the cost of procuring external advice, and budgets should be monitored appropriately.

- (4) Each Committee / Board should review its Terms of Reference on an annual basis, possibly after the Annual Council Meeting to ensure that the Terms of Reference remain up to date and appropriate.
- (5) A review should be undertaken to ensure that any group fulfilling a governance role understands its purpose and function. All bodies need to understand the role they play in the decision making process.
- (6) The Council's Record Retention Policy should be reviewed to consider whether it is fit for purpose and being implemented uniformly across the organisation. It was considered that the Property Team, which appeared to have poor controls, could improve by establishing a formal document numbering system to reference and then store documents in a central repository. The current document was created for siloed services and is not ideal for long projects – in this era of relatively cheap electronic storage consideration should be given to permanent storage of all documents and emails relating to major projects, and to the long-term availability of such data in the light of future changes to software and storage media.
- (7) Project risks, including financial risks to the Council, need to be assessed and then recorded in a risk register for all projects. This risk register should document ownership of risks both at officer and Member level.
- (8) There is no justification for the Council substantially extending its in-house legal team for large scale (one-off) projects; the Council should continue to procure external expert advice where in house expertise does not exist, or where there is insufficient capacity in the in-house team.
- (9) External expert support for projects should be appropriately procured following a skills gap analysis at the start of the project. Procurement of external experts should be done transparently.
- (10) For future large scale projects OSMC should satisfy itself that the Council tests the market fully and assesses partners to ensure value for money.
- (11) External advice should be procured on the basis of the anticipated full project, in stages if necessary, and on the basis that it may not proceed through each stage of the same.
- (12) All officers' time should be recorded when dealing with large scale projects.
- (13) The Council should review and improve how it consults and engages with those who may be affected by the Council's proposals. Significant projects such as this should have a clear communications plan with a list of key stakeholders.
- (14) Legal Officers should be reminded that the Council's Contract Rules of Procedure must be followed when appointing external advisers which should be done in a uniform and standard process to ensure value and efficiency in accordance with those Rules.

- (15) Future partners should be expected to assist in reviews such as this free of charge and consideration should be given to making this a contractual requirement under the terms of engagement.