

Liverpool City Council Best Value Inspection

December 2020-March 2021



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Lead Inspector

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1. Executive Summary:

- 1.1. Liverpool is a city with a great sense of its history and traditions, with many residents fiercely proud of their heritage. In part, due to the decline in its historical activity, it is highly economically deprived even though it hosts a world-leading knowledge economy and, pre-pandemic, was one of the leading UK attractions for tourism.
- 1.2. The City Council has many hard-working, long serving, committed and dedicated officers delivering key services in difficult circumstances. The Council itself, has Councillors of all parties who encapsulate the best traditions of local democracy, working for their residents and striving to deliver the best possible outcomes for people and place.
- 1.3. This Inspection report risks devaluing all the good work that is done, as it focusses on serious failings that have been evidenced in both governance and practice in those areas of the Council subject to this Inspection, and the corporate blindness that failed to pick this up and remedy the position. Indeed, the position documented by the Inspection provides the best empirical evidence of Conquest's Third Law of Politics 'The behaviour of any bureaucratic organisation can best be understood by assuming that it is controlled by a secret cabal of its enemies.'
- 1.4. To remedy these failings will require changes to introduce and embed good practice right across the Council, politically and managerially, building on the start that has been made by the Council's current Chief Executive. These recommended changes will involve revising electoral arrangements, strengthening personal accountability for both Members and Officers, and introducing best local government practice together with cultural change.
- 1.5. The evidence and events over the Inspection period leads to the conclusion that there can be no confidence that the Council will be able to take and implement all the required decisions in a sensible timescale. As a consequence, the imposition of Commissioners, supported by Directions is recommended to stand behind the Council and ensure that the right decisions are taken at the right time.
- 1.6. The road to recovery will be hard, as it is inevitable that more bad things will emerge through the process. The outcome will be a Council with transparent decision taking that can legitimately withstand challenge and can be proud of what it delivers.

2. Introduction

2.1. The Secretary of State for Housing, Communities and Local Government, by way of letter dated 17 December 2020, appointed Max Caller CBE to lead a statutory Inspection at Liverpool City Council (LCC), to be completed by the end of March 2021.

2.2. The purpose of the Inspection was to provide direct independent assurance to the Secretary of State that the council is complying with its best value duties following:

a) The Merseyside Police inquiry into fraud, bribery, corruption and misconduct in public office, which involves a significant connection to Liverpool City Council.

b) The response Liverpool City Council submitted to the Ministry of Housing, Communities and Local Government on Friday 11 December 2020 in respect of governance arrangements, oversight and control measures within the Council including details of the measures and controls implemented during the course of the last eighteen months.

2.3. Subsequently on 7 January 2021, at the request of the Lead Inspector, the Secretary of State appointed Viv Geary and Mervyn Greer as Assistant Inspectors.

2.4. The Secretary of State provided the following Terms of Reference in relation to the undertaking of the review, requesting consideration of the following functions of the council and their alignment with the best value duty, the authority's:

- planning,
- highways,
- regeneration and
- property management functions and
- the strength of associated audit and governance arrangements in the exercise of those specified functions.

2.5. In addition, the inspection team were directed to consider whether the authority has effective arrangements in place for securing best value in the functions listed above in paragraph 2.4.

2.6. The full text of the letter of appointment of the Lead Inspector¹ can be found at Appendix 1.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945914/Letter_to_Max Caller_CBE_201217.pdf

- 2.7. The letter of appointment identified the need to seek to agree a Memorandum of Understanding with Merseyside Police, to share relevant information and to avoid prejudicing both the Best Value Inspection and Police enquiries as part of 'Operation Aloft'. This was negotiated and agreed between the Lead Inspector and the Police in the first half of January 2021. A copy is attached as Appendix 2.
- 2.8. Max Caller CBE is a former London Borough Chief Executive and was one of the Intervention Commissioners, following the imposition of Directions on the London Borough of Tower Hamlets. He led the Best Value Inspection of Northamptonshire County Council in March 2018, the non-statutory review of Nottingham City Council in 2020 and was one of the Non-Executives appointed to support Birmingham City Council in their improvement journey. He was also the Chief Executive of London Borough of Hackney, the first authority to be subject to the Direction regime. Earlier in his career, he co-chaired the Local Authority Association (LAA) Adviser group that produced the first LAA code of good practice on highway maintenance.
- 2.9. Viv Geary LL.M is a Solicitor with 35 years' experience of working in local government in five different local authorities. She was a Monitoring Officer for over 10 years both at Unitary Authority and Combined Authority levels. She has worked with three different elected Mayors and is a specialist in local authority governance having developed, reviewed and updated the constitutional arrangements for a range of different local authorities including those operating elected Mayor and Cabinet, Leader and Cabinet, Combined Authority and Committee governance systems.
- 2.10. Mervyn Greer's career spans more than 4 decades, he has experience in construction, property and estates management. Starting working life in the design office of a construction business he joined a major structural and civil engineering consultancy working in the middle east on transport, education, and military facilities. Mervyn moved into the Utilities sector where he was responsible for the South East Water Estate. His experience in major construction companies includes PFIs such as HMG Home Office Marsham Street, Barnet NHS Trust and Kings College United Medical Dental School. Mervyn has also conducted reviews of Local Authorities', NHS Trusts and Police Authorities reporting to Governance Boards. Mervyn was the strategic director for Kier responsible for all activities in the Local Government Sector, at its peak valued at £1.5bn pa. He has directly managed key major contracts with local government including under the Building Schools for the Future programme. Mervyn is now engaged by the Cabinet Office as a Crown Representative, responsible for the relationships with the UK's major Construction and FM suppliers. He is an accredited assessor for the

Government Commercial Function programmes for commercial and contract management capability up to commercial director level. He is co-Chair of the Crown Commercial Service Workplace commercial scrutiny board.

- 2.11. In assessing how to undertake the review the Inspection Team decided to review property disposals from 2015-2020 (the Review Period) to see how the Council had complied with its best value duty. This Review Period covers a period from the last year of the previous Chief Executive through the period when the Mayor chaired management team through to the current Chief Executive's time in post, to test the impact they had made on the organisation. As the Inspection has followed case studies end-to-end, this has meant looking at some issues from much earlier in time, to trace the story in full.
- 2.12. The Inspection has been undertaken by calling for and reviewing all documentation, relating to over 65 property transactions, highway and building maintenance tender appraisals, an extensive programme of interviews with Councillors, Officers, former Officers, contractors and members of the public. The document review encompassed both published documents and working papers, where they existed. This has enabled an end-to-end assessment of property transactions from initial call for expressions of interest, through negotiations, legal documentation, to planning, planning enforcement, and building control issues. It has also enabled the determination of key elements required to be included in any recovery plan and to identify the support the Council might need to ensure success.
- 2.13. As the Inspection progressed, it became clear that the quality and coverage of LCC's record keeping, particularly in the Regeneration Directorate was often patchy. New documentation became available only as individual transactions were examined, in a significant number of instances. Towards the end of the Inspection, it was evident that crucial officer exchanges were not held on the files supplied and it became necessary to request that these needed to be recovered from LCC's servers. This only became clear as part of interviews. This report therefore deals with record keeping as an issue as part of the Inspection. The Inspection of LCC is based upon the evidence and documentation provided, supplemented by interviews, which has been reviewed at pace, to meet the timeframe specified by the Secretary of State. As part of the justification for some of the decisions has been the wider benefits to Liverpool and its citizens, the concepts and application of Social Value considerations has also been explored.

Best Value – Generally

- 2.14. The Best Value legislation states: "A best value authority must make arrangements to secure continuous improvement in the way in which its

functions are exercised, having regard to a combination of economy, efficiency and effectiveness².

2.15. The concept of continuous improvement must mean that the best value duty must be a process. It must mean that even in the best performing local authorities' errors will occur, failures of policy or practice may result despite good intentions and that an instance of this would not automatically mean a failure to comply with the best value duty. However, it must also mean that an authority will learn from its past performance, rectify defects, and not continue along a path when failure is evident. Such events should be clearly isolated and exceptional, rather than regular and repeated and should be immaterial in value or wider implications. A continued failure to correctly value land or assets, is not an isolated matter and capable of being considered a failure to make the necessary arrangements that the legislation envisages.

Best Value - Land and Property Disposals

2.16. Legislation states that local authorities can dispose of land held by them in any manner they wish as long as it is sold at the best rate that can be reasonably obtained. With the exception of land given on a short lease (less than seven years) any disposals at less than best value needed the permission of the Secretary of State³. Best value is defined as the best price that could be reasonably obtained and this, in practice, means at a price set by an accredited valuer as per the technical Appendices to the 2003 Consent Order⁴.

2.17. In 2013 a general consent⁵ was issued by the Secretary of State. The consent acknowledged that disposing of land at less than best value can sometimes create wider public benefits. Where disposal will help secure improvement of the economic, social or environmental well-being of the area, public bodies such as local authorities could undervalue assets (except for land held for housing or planning purposes) by £2 million or less without the Secretary of State's permission.

2.18. In undertaking a 'less than best' disposal local authorities are expected to satisfy themselves that there are no state aid implications, undertake valuations to ensure that they are not exceeding the £2 million limit and demonstrate the wider public benefits gained. Even under the general consent, housing land is expected to be sold at best /market value and requires permission from the Secretary of State to sell at less than best value.

² [Local Government Act 1999 Part 1 section 3\(1\)](#)

³ [section 123 of the Local Government Act 1972](#)

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7690/462483.pdf

2.19. In 2015 the Government allowed receipts from land and asset sales to be converted into revenue to provide finances for Local authority services. This encouraged local authorities to sell off parts of their land and property portfolio to generate further income.

Social Value

2.20. Since its introduction in 2012/13, The Public Services (Social Value) Act 2012 has been most effectively taken up by local government and applied to in sourced and outsourced service delivery in varying degrees of success. The original intention of the Act was never to be a punitive measure against suppliers and service providers but was more putative in its design, to ensure that public authorities understood the value of their service to the communities they served.

2.21. As a stand-alone guide this had little positive effect until some level of measurement of intended social value (SV) outcomes could be applied. Through the LGA National Advisory Group (NAG) in partnership with the Social Value Portal the National Social Value Task Force (NSVTF) was set up. This group developed a range of measures that could be adapted and used when authorities were either procuring or commissioning services so that the SV could be assessed. These measures are published in Toolkit form as the National TOMs Framework (Themes, Outcomes and Measures)⁶. For local government, which leads the way on SV delivery, the use of TOMs is currently best practice and gives some consistency of measurement for authorities and suppliers alike.

Thanks

2.22. LCC had assured the Secretary of State of their willingness to engage openly with the Inspection. The Inspection Team wish to thank and acknowledge the efforts made by the Council to provide substantial documentation and to make available Senior Councillors and Officers to meet the timetable, and the openness of the communications. All requests for documentation, information or the facilitation of meetings were dealt with efficiently and speedily. No doubt, many staff were involved in making this happen, but the work of Lisa Smith, Lucy Horne and Brigid Parkinson helped enormously. Special thanks also go to Linda Cheng and Paula Crawford for their welcome and practical support.

2.23. The Inspection Team would also like to thank those Officers, Members and members of the public who came forward to share their personal concerns. Their willingness to share information helped to identify areas of focus.

⁵ ibid

⁶ <https://socialvalueportal.com/national-toms/>

Throughout the Inspection Team has endeavoured to see all of those who wanted to meet us and welcomed written submissions from those who wanted to set out the history as they saw it or to point us to areas which needed exploration. Some of the topics identified were outside the scope of this Inspection. In such a short Inspection period it was never possible to explore every item raised and come to a specific conclusion on that individual topic. That would require an in-depth audit process with considerably more resources. However, each area looked at has contributed to the overall findings and conclusions. They have highlighted the systemic nature of the issues facing LCC leading to the overall findings and conclusions. Just because an individual site or issue is not mentioned by name does not mean that the Inspection Team failed to look at it or take it seriously.

2.24. The Inspection Team were supported by Eleanor Smyllie, seconded from MHCLG. Her knowledge, skills and commitment were instrumental in ensuring this report was delivered to the Secretary of State to meet the deadline. Her insights and work are a credit to the Civil Service.

3. About Liverpool City Council

- 3.1. Liverpool is the largest constituent member of the Liverpool Combined Authority. The Council serves a growing and vibrant population of approximately 498,000⁷ making it the 10th biggest council by population size in the UK. The city centre area also houses up to 50,000 students and other short-term residents not captured by the ONS figure but captured in health statistics⁸.
- 3.2. Liverpool is the fourth most deprived local authority area in England⁹. It has a comparatively youthful population with 42.5% of the population under the age of 30 compared to an English average of 37.7%¹⁰ but life expectancy is 6 years lower than the England average and health outcomes are poor with a recent report concluding 86% of people are not active enough to maintain a good health¹¹. Its employment rate is also below the national average and 16% of Liverpool residents have no qualifications (16-64) which is double the national average of 8%¹².
- 3.3. The decline of Liverpool's dockland and industry is well documented and has left numerous vacant sites across the city. This combined with an aging housing stock has meant that development and regeneration initiatives are welcomed in the city.
- 3.4. The city centre has seen large amounts of investment and development over recent years, this has started to spread along the waterfront and out towards the Georgian parts of the inner-city centre arch. However, the outer suburbs have seen comparatively little investment. Much of the city centre development has been student accommodation and hotels, justified by its growing student population. Within the city there are four universities serving around 50,000 students, a large proportion (around a fifth overall and around a third at University of Liverpool) coming from outside the UK to study in the city¹³. Before the pandemic, there was a thriving tourism sector, in 2019 Liverpool was the 5th most visited city in the UK¹⁴.
- 3.5. There are currently 15 local authorities with a directly elected mayor and

⁷ Liverpool Key Statistics Release, data point as of 3rd March 2021 (<https://liverpool.gov.uk/council/key-statistics-and-data/headline-indicators/>)

⁸ Liverpool Key Statistics Release February 2021 (<https://liverpool.gov.uk/council/key-statistics-and-data/headline-indicators/>)

⁹ [Indices of Deprivation 2019](#)

¹⁰ UK Census (2011). "Local Area Report – Liverpool Local Authority". Nomis. Office for National Statistics, accessed 13 March 2021

¹¹ [Mayor of Liverpool Inclusive Growth Plan March 2018](#), accessed on 13 March 2021

¹² Ibid

¹³ [The Great British Brain Drain: Liverpool](#) 20 Jan 2017, accessed on 13 March 2021

¹⁴ [Mayor of Liverpool Inclusive Growth Plan March 2018](#), accessed on 13 March 2021

cabinet model of governance. Initially the change to this model was only available following a local referendum in favour of an elected mayor, but since 2007 it has been possible for a Council to resolve to change to the mayor and cabinet model without the support of a referendum. Liverpool City Council resolved to adopt an elected Mayor (the Mayor) and Cabinet model of governance in February 2012. In May 2012, the first and only elected Mayor of Liverpool City Council, Joe Anderson OBE, was elected and was re-elected in 2016. Mayoral and all other local elections were postponed in 2020 due to the Covid pandemic and, following his arrest and suspension by the Labour Party, Joe Anderson stood down from acting as Mayor and has decided not to seek re-election in May 2021.

- 3.6. An elected mayor, who is not a councillor cannot be removed during their term of office unless they become ineligible but if they are unable to act or stand aside the statutory deputy mayor, who is a councillor, exercises their powers. In Liverpool, as a consequence, Cllr Wendy Simon is acting as Mayor. Otherwise, although the mayor is an authority's principal public spokesperson and provides the overall political direction for a council, an elected mayor has no additional local authority powers over and above those found in the leader and cabinet model, or the committee system.

Political Balance

- 3.7. LCC currently elects 90 councillors representing 30 wards, on a uniform pattern of 3 members per each ward. Elections for a third of council seats occurs each year. In normal circumstances, the mayoral election will take place in the third year. The last elections took place in 2019, and, following death and resignations, the current political balance of the Council is 68 Labour, with 10 Liberal Democrat, 3 Liberal, 4 Green 2 Independent and 3 vacancies. Labour has controlled LCC since 2010.
- 3.8. An elected mayor is required to appoint a cabinet comprising at least 2 but not more than 9 councillors and, together with the mayor, they are the local authority's executive. It is the executive who are the decision makers for all matters unless they are council functions under the Functions and Responsibilities Regulations¹⁵ or otherwise assigned as a local choice function or delegated by the mayor to a cabinet member, an officer or retained by the mayor as a mayoral responsibility. The LCC Mayor has appointed nine cabinet members. Their responsibilities cover a number of overlapping and conflicting components. Evidence from a number of witnesses leads to the conclusion that the Cabinet was not a key source of governance in LCC.

¹⁵ [Local Authorities \(Functions and Responsibilities\) \(England\) Regulations 2000](#)

3.9. In Liverpool, in addition to the nine Cabinet Members, the Mayor has a number of Mayoral Leads, who are appointed by, and report to, the Mayor and, sometimes a specified Cabinet Member to assist in the delivery of the Mayor's priorities. Over the Review Period this number has fluctuated and has included both non-Councillor, and past Councillor appointments. The appointment process for these paid posts is not always transparent. This aspect is discussed in more detail in paragraphs 9.14-9.15 A full list of Special Responsibility Allowances given to councillors over the Review Period can be found here:

<http://councillors.liverpool.gov.uk/ecCatDisplay.aspx?sch=doc&cat=259>

Officer Structure

- 3.10. Over the Review Period LCC's officer structure has changed many times. At the start of the period, the City Solicitor and Monitoring Officer (MO) was not on the top management team but reported to the Director of Finance and Resources (S151 Officer). There was no post explicitly linked to the Internal Audit function. Instead, it was titled Financial Management System Programme Director. In the Regeneration Directorate (Regeneration), the Divisional Manager Highways and Transport reported directly to the Director but all other Divisional Managers reported via an Assistant Director. The Divisional Manager Planning reported to one of these, AD Planning and Development, who also had responsibility for property matters except Housing.
- 3.11. Over the next 3 years the structure regularly changed, both in personnel and structure terms. A common feature was overlapping responsibility with titles not really reflecting roles. This was borne out in the documentary evidence where senior officers dropped in and out of projects and decisions were signed off by individuals who seemed to have no responsibility for the project.
- 3.12. The position was further complicated, following the departure then Chief Executive, with the Mayor chairing the officer team with an interim statutory Head of Paid Service reporting to the Mayor, as part of that team.
- 3.13. Once the current Chief Executive, Tony Reeves (TR) took up post the top management team stabilised with both the other two statutory officers at the top table, but the rotation continued in the Regeneration Directorate for a little longer.
- 3.14. At the start of the Review Period a number of direct and professional services, and much that might be considered client-side functions, were delivered by private sector providers. In 2016 street cleansing and refuse collection returned to in-house control, TUPEd into a pre-existing LCC wholly owned company.

This was repurposed and renamed Liverpool Streetscene Services Ltd (LSSL) to provide the vehicle. The Company Directors appointed by LCC included the Director of Community Services as the only officer who was the client-side Director. Subsequently, in 2018, an element of highways direct service provision was purported to be TUPEd back inhouse from Amey who continued to provide client-side staff under a framework agreement. This is discussed in more detail in Section 5.

- 3.15. TR took immediate steps to rationalise and improve control, making the MO responsible for Audit and Governance and being on the top team, ensuring the appointment of a new Director of Finance and moving Property and Asset Management (PAMS) out of Regeneration into Finance.
- 3.16. In the ten years before the Inspection, LCC had externalised and reinternalised many of the services subject to this Inspection. These processes had not always been managed well and both physical and corporate knowledge and culture had been lost at each stage. What was clear was that, in Regeneration, the only way to survive was to do what was requested without asking too many questions or applying normal professional standards. The result of this approach is discussed in subsequent sections of this report.
- 3.17. The Mayor appoints his or her cabinet and can determine which “executive” decision making responsibilities can be undertaken by individual cabinet members, officers, through joint arrangements with another authority, or by themselves as mayor. Decision making responsibilities on executive matters are otherwise fulfilled through decision making at Cabinet meetings. The usual split of responsibilities between the officers and members is not changed as a result of the use of the mayoral model, nor are any of the record keeping responsibilities. Officers provide options, advice and guidance to the decision makers and implement the (lawful) decisions made as a result. Members work closely with officers, but both must respect the split of roles and not seek to step over that line.

The Constitution

- 3.18. The same legislation that established the elected mayoral model also introduced a requirement on local authorities to publish their Constitutions. The Constitution is part of the framework seeking to ensure that decision making in local authorities is open, transparent, and undertaken applying proper decision-making principles. It is a fundamental building block of good governance. As well as governing the conduct of meetings it sets out the decision taking structure of the Council and the regulations under which a range of processes take place, together with Codes of Conduct for Members and Officers, working relationships and other detailed matters which together govern the Local

Authority. It also provides the framework for scrutiny and challenge of individual decisions. The legislation requires the Constitution to be kept under review and updated as required.

3.19. The Inspection Team considered the LCC Constitution and how decision making, and scrutiny processes worked in practice, in particular in relation to the areas subject to the Best Value Inspection, namely Regeneration, Planning and Highways. The Inspection Team specifically looked at contract and property Standing Orders, the terms of reference for the Audit and Governance (Select) Committee, Companies Governance Committee and the Complaints Sub-Committee together with issues relating to declarations of interest and codes of conduct¹⁶. What emerged is described in more detail, mostly in the section on overall governance issues, Section 9 below.

Local Authority Trading Companies (LATCo)

3.20. LCC discloses a number of subsidiary companies which are recorded in Note 37 to their unaudited 2019/20 Statement of Accounts and note 41 to the 18/19 accounts¹⁷. Two of these fall within the purview of this Inspection, Liverpool Streetscene Services Ltd (LSSL) and Liverpool Foundation Homes Ltd (LFH).

3.21. The financial statement for LFH discloses a loss of £0.7m on a turnover of £0.3m in its first year of trading.

3.22. LSSL discloses a loss of £2.2m on a turnover of £37.4m. Previous year's financial statements show that as turnover increases the loss increases. The previous year figures show a loss of £0.8m on a turnover of £31.9m and the year before that, a loss of £0.6 m on a turnover of £25.7m. No dividends are paid.

3.23. The Constitution provides for Council oversight of its subsidiary companies, as distinct from Councillors acting as Directors on their boards, to be overseen by a Companies Governance Committee with the Terms of Reference can be found on LCC's website¹⁸. This Committee rarely meets. Its last meeting was on 10th December 2020 to consider the recommendations of the Redmond Review. Previously, it met on 14th May 2019 to consider a paper from the working group on Company Governance. This paper was approved but no action has been taken yet to turn their recommendations into constitutional changes and operationalise the agreed position.

¹⁶ <http://councillors.liverpool.gov.uk/ecCatDisplay.aspx?sch=doc&cat=370>

¹⁷ <https://liverpool.gov.uk/council/budgets-and-finance/statement-of-accounts/>

¹⁸ <http://councillors.liverpool.gov.uk/documents/s222826/Terms%20of%20Reference%20Updated.pdf>

3.24. There is no record of the Council appointing an officer to act as shareholder representative or to agree a shareholder agreement to govern their relationship with the companies subject to this Inspection and this needed to be done irrespective of wider issues. The Inspection Team was advised that such actions had been deferred pending a more strategic review of LCC's holdings but that in hindsight, it would have been wiser to deal with these critical governance issues as a priority.

3.25. Following feedback from the Inspection Team during the course of the inspection LCC at an Extraordinary City Council meeting on 3rd March 2021 removed all Councillors from their company boards and either replaced them with officers or left them vacant.

4. Regeneration Directorate

- 4.1. The Inspection Team heard from a number of sources that in the early part of the Review Period, corporate management and oversight was sketchy and in Regeneration itself, no divisional management or team meetings took place. Many individuals described the style in Regeneration as intimidating. Little instruction or direction was committed to writing. Instructions were given to undertake specific elements of a task to ensure that the total picture was not evident. It was suggested although bullying was not overt it was clear what would happen if instructions were not followed explicitly. More than one person told us that the Director's style was to see you at your desk, make it clear that what he said was the Mayor's wish and that the file should look right. People who did not comply did not last.
- 4.2. Not every Officer was put under the same type of pressure or felt it in the same way: The Inspection Team heard from one Officer who did not experience a bullying culture as others did- they were not shouted at or threatened with the sack- but they did feel pressure to behave in a particular way with certain people and could not speak out as they would have wished. Since the arrests, suspensions, and the arrival of the Inspection team a lot of pressure has been removed and they are "no longer wary of every email that arrives in the inbox." The Inspection Team considered that all this testimony was very telling about the pervading tension in Regeneration and other areas subject of the Inspection.
- 4.3. The Inspection Team noted significant differences in record keeping in different parts of the Directorate. Planning, Planning Enforcement and Building Control files, whether paper or electronic, were clearly full and contemporaneous. It was possible to trace the development of analysis through to decision. The Inspection Team heard from planning officers who drew attention to particular cases where it was considered pressure had been applied to get the 'right' outcome. However, if these cases had not been linked to particular developments that had been identified as being of interest, there would have been nothing specific in the records that would have indicated that this was more than an exercise in normal professional leadership. The evidence on enforcement was much more conclusive. A number of instances were noted where works were recorded as having started on site, either in the absence of consent, satisfaction of conditions or the entering to of planning agreements e.g., Section 106 agreements. In normal circumstances, enforcement action would have been commenced in line with published guidance. Requests for authority to take action were either refused or ignored. Some planning agreements were only finalised when the development was proposed to be sold on and would not have proceeded without a valid consent.

- 4.4. On the property side, there was no coherent property-based filing system, nor even a project-based case file. It is accepted that documents relating to the early years of the Review Period were complicated by operational and professional property matters being outsourced to a joint venture with Mouchel under the Liverpool 2020 brand name. The subsequent reintegration into the LCC officer structure accompanied by what was described as a brutal service review substantially reduced staff, had a damaging effect on rent reviews and collection still being felt today, and resulted in much documentation being destroyed. Officers who survived the events talked about having to rescue case files from skips, each morning, to ensure they could deal with live matters.
- 4.5. In almost all the property cases viewed by the Inspection Team, until the last part of the Review Period, there was little original material. The files looked to have been constituted from individuals personal filing systems. When gaps were identified by the team more information was often forthcoming. In particular, it was extremely difficult to trace agreed final versions of Delegated Action Reports (DAR's), the means by which the rules on delegated powers were complied with. The Directorate appeared to have a great reluctance to share the final signed authority with the centre, on the spurious grounds of commercial confidentiality. In a number of instances, the Inspection Team noted DAR's being created to retrospectively authorise deals that were now being finalised, sometimes with the valuation supporting the deal appearing on the file for the first time at this point.
- 4.6. As a consequence, it is not possible to state that the standards of record keeping required by a statutory authority were complied with.

5. Highways

- 5.1. Prior to the Review Period, Highways and associated services were outsourced to Amey LG. These services included refuse and recycling, non-statutory street cleansing, grounds maintenance and parks management. In the highways contractual arrangements with Amey LG professional technical services were also included. These services were gradually, and piecemeal, moved back 'in-house' with responsibility for refuse and recycling, street cleansing and grounds maintenance transferring the Community Services Directorate. In 2016 the services were let under contract with LSSL
- 5.2. In February 2018, following substantial termination of the contract with Amey LG, the highways maintenance services were also transferred to LSSL but remained the responsibility of the Regeneration Directorate. Parks management also transferred to LSSL later in 2018.
- 5.3. This gradual breakup of the highways services appeared to proceed without plan or foresight as to how they would be managed and delivered in future years. There is no evidence that senior managers understood the risks to the service or what resources, structures, processes, or procedures should be put in place to ensure a good service could be delivered.
- 5.4. This situation was exacerbated when the AD responsible for the service was arrested and suspended from LCC. The service continues to operate without a coherent business plan, direction or forward vision.
- 5.5. The majority by value of highway works are by a mix of term and tendered contractors or with mini tenders being used to price specific jobs using contractors already under contract.
- 5.6. The evidence showed that Highways management were reluctant to make use of the professional expertise of the central procurement team. Further, compliance with LCC Contract Standing Orders was poor. Records show a high level of exception reports (in essence, a breach of the rules remedied by a retrospective approval) together with a significant number of compensation events (claims) which increased the overall costs of the schemes. Where it was appropriate to report back to Cabinet, for example, on overspent Capital schemes, this was just covered in the S151 Officers monitoring report, without any justification provided by technical officers.
- 5.7. A number of reasons were suggested to the Inspection Team as justifying this position. The team heard that on key contract management stages prior to commencement of works on site, the highways team abrogated its responsibility to 'set up' contracts to the Central Procurement Unit (CPU) appropriate category manager. This means that the highways team has no foresight of Health and Safety risks, environmental issues or works planning. This, inevitably, leads to additional requirements being identified after tender

and is a cause of the excessive compensation events claims and payments. Jobs were being awarded without knowing the contractor's workplan being agreed in advance of the commission, leading to costs being increased when the necessary traffic management or restricted hours working was established or insufficient allowance for unforeseen conditions. Of course, had the estimate included for these events in advance they could not have been awarded under the relevant Financial limit rules. Overall, the culture appeared to be rule avoidance and a specific example of this is identified later.

5.8. Overlying all of this was the Mayor's insistence that his concept of social value was best achieved by employing contractors with a Liverpool postcode base. When contractors without that qualification won in competition this normally provoked a request for review. The documents reviewed record a complaint to the Mayor from a losing local contractor resulting in external consultants being called in to review the process. Their report revealed some minor irregularities but nothing worthy of intervention. However, the Mayor continued to express concerns. In fact, the central procurement process, if followed properly and followed up on with contractors after award does show how legally compliant social value can be delivered. The practice in Highways did not do this.

5.9. Having said that, there are concerns about how some of the maintenance contracts were awarded. The Inspection Team examined the process for the latest series of term contracts. It was noted that the detailed evaluation at bill of quantities level showed a difference on the sample calculation of around £8000 in £600,000. When grossed up by the percentage addons the numerical difference became much greater, and the award was made on this basis and it was not questioned. In reality, a minor change in the sample calculation could have led to a different outcome. There were no records available to us to check that the sample calculation was predetermined.

Dismantling of the Churchill Way Flyover

5.10. This was a major civil engineering project, let under the NEC3 framework, and was procured by the CPU in mini competition. From our interview it is understood that the Highways team did not know what the Health and Safety plan for the project was prior to commencement on site. At the point of works starting an urgent appointment of safety consultants, Safety Support Consultants (SSC), was instructed. SSC had no previous relationship with the Council or the Highways team or their professional technical consultants. Not only was this in contravention of the Construction Design Management regulation but also this action exposed the site teams to considerable Health and Safety risk. It also increased the commercial risk to the Council of budget over run and additional compensation event claims.

5.11. SSC is a private limited company incorporated in July 2016. Amongst other services it provides Health and Safety consultancy, including to construction

sites. As noted above, it has never undertaken any work directly for LCC and is not on any approved list. For LCC to use its services, unless it was below the exemption limit, would require a waiver of Contract Standing Orders.

- 5.12. In mid-2019, Council officers in Highways requested Amey, who at that stage were still providing a range of professional services via the residual framework contract, to appoint SSC to provide client -side H&S support. Initially, it was suggested that SSC would review in-house design from a CDM perspective and do random site audits. Amey asked why LCC would not procure the service direct and why SSC? as they had no published highways experience. It would also have been possible for Amey, given notice, to deploy their in-house resource or use consultants already known to them.
- 5.13. The files record the assistance given by officers to SSC to enable rates to be set for the task on the basis that this information should not be disclosed to 3rd parties. Amey were given a direct instruction to appoint. From the outset, there were relationship difficulties on site and issues relating to perceived over resourcing with claims to match. From the evidence available on file, the quality and content of the output provided to the client-side did not justify the scale of contract payments. Although the arrangement was announced as lasting only 4-6 weeks, the engagement came to an end after 4 months with expenditure of the order of £250,000, once the CPU became aware and pointed out the availability of framework contractors providing the same service at less cost. This episode is an example of the approach taken by officers to circumvent the control systems.
- 5.14. After examining responses to questions raised and interviews with the appropriate managing officers for LCC Highways Services, the Inspection Team found that there is no overall direction of the service and that management of the capital works services is dysfunctional and without 'ownership' of operational strategy and delivery. The service was split into two key areas of management with sub sections from these. The two principal sections are Capital works and Core Services (Maintenance works). Each area is led by an operational manager.
- 5.15. Dealing with Core Services the Inspection Team found that there is a framework in place to cover most service delivery needs. The framework is under review and will be replaced under a new procurement. Most works under this contract are procured against agreed schedules of rates by direct award with DAR or Cabinet report being processed before executing contracts. The payment mechanisms for this framework are well developed and include checks and balances from both the CPU and suppliers prior to submission of invoices. Spot on-site checks are also made to verify work done and value.
- 5.16. The Inspection Team noted missed opportunities to plan capital works, to control spend against budget and to derive better value from its contracts. Poor

contract management and/or lack of ownership of contracts and the service leading to excessive claimed Compensation Events, lack of market and supplier relationship management and poor specification of contracts and frameworks.

- 5.17. Set against this was a welcomed category management approach and support from the CPU.
- 5.18. The Inspection Team also found that the relationship between the Core Services and Capital Works service lacked structure and process. For example, when questioning the managers of each service, the team were unable to establish how schemes to deliver repairs to potholes became too onerous and were handed over to the capital works team for further work under capital works programme budget i.e., there are no clear criteria for assessing revenue and capital works.
- 5.19. Capital works gave the greatest concern to the Inspection Team. Since the suspension of the Assistant Director, management of the service has been placed with 'operational' engineering staff. Of particular concern are the low contract management capability leading to loss of value for LCC and giving rise to the following concerns: -
- Poor specifications for Mini competitions under the framework leading to excessive compensation event claims from contractors
 - Inadequate health and safety planning prior to commencement of works
 - Inadequate commercial risk assessment that maintains value driven outcomes of contracts
 - Lack of understanding of the commercial lifecycle and the role to be played in it by the Highways team.
 - Lack of visibility and understanding of supply chains

The Sustainable Commercial Life Cycle

- 5.20. Although we noted the increased support provided by the CPU, it will be important for the Highways team to have greater understanding of the commercial life cycle and to be fully involved in the development and management of its supply chains and markets. There is no evidence of the highways team either having full understanding of their key suppliers or active engagement as to market and supplier health. There is no evidence of using lessons learnt from each major contract completion to improve either technical or commercial outcomes of subsequent contracts. Health and Safety must be gripped and put at the top of future risk assessments with clear ownership by contract managers from the commencement of procurement processes. These three elements must be embedded in the Highways procedures to support CPU in procuring better value contracts and that value must be brought to fruition through effective contract management that understands the criticality

of commercial value from contracts. To improve the procurement of construction contracts it is expected that the CPU are adopting the principles of the recently published Construction Playbook¹⁹. Is shown in any improvement plan as a result of the Best Value Inspection. It will be equally important that the Highways team is fully familiar with these guiding principles so that they are applied throughout the contract commercial lifecycle.

5.21. To ensure that the initial contract scheme outcomes are delivered it will be important that the design and procurement remain aligned with business case objective. The introduction of a gateway approval process will ensure that there are sufficient checks and balances as projects develop and that value is maintained.

5.22. In the Inspection Team's judgement, the Highways service needs to be completely restructured to ensure clear lines of leadership guided by the principles of the Construction Play book referred to earlier and appropriate business planning and contract procurement and management principles. It may be that the only way to achieve this in the short term is by partnering with another authority.

Liverpool Streetscene Services Limited (LSSL)

5.23. Of greatest concern to the Inspection Team was the relationship between the core services team and LSSL.

5.24. LSSL was established as a LATCo in March 2016. Its primary functions at the time of inception were to deliver street cleansing service, environmental services (refuse collection and recycling), grounds maintenance and parks.

5.25. In January 2018 LCC and Amey LG mutually agreed to early termination of the highways maintenance service contract. The intention for the service was to transfer the service, with a new contract, to LSSL. At the point of transfer LCC did not have a formal contract agreed with LSSL. This delay in formalising the arrangement was to give LCC time to consider the longer-term agreements for the services. In addition, LSSL presented no working plans for how the service would be delivered or how the TUPE transferred staff would be assimilated into the business. Officers expressed concern about this arrangement, pointing out the frailties of the TUPE transfer of staff to LSSL. These concerns had not been fully disclosed to the Inspection team and have only come to light by interviews with former LCC Officers involved at the time. To date no formal contract has been put in place and rates charged by LSSL have not undergone competitive or best value benchmarking. The current total spend with LSSL for core highways services is £4.3m. The LCC operational manager stated that because of the requirement to use LSSL there is a lack of control over expenditure making the management of budgets impossible. The

¹⁹ <https://www.gov.uk/government/publications/the-construction-playbook>

relationship with LSSL must be either formalised or curtailed for the service to be able to perform more effectively.

- 5.26. These services have been provided by LSSL on a cost-plus basis. Acting under Teckal rules, these costs have not been benchmarked or challenged since 2018. As a consequence, this puts increasing pressure on client-side budgets, it is anticipated that the budget for 2021/22 will need to be increased by £2m to maintain current work schedules of LSSL. This prevents the highways teams from reducing the backlog maintenance liability and ensuring that residential roads across the city do not continue to fall further into unacceptable states of disrepair.
- 5.27. The board of LSSL comprises a chairperson, currently the interim Mayor, and one other Councillor. A third Officer Director was appointed initially (see paragraph 3.14), but the position has not been appointed to since the untimely demise of the person appointed. LSSL's Chief Operating Officer, Accountant and HR Business Manager support Directors at board meetings. It is of concern that LSSL board meetings are both infrequent and do not discuss key reports which would enable the Directors to understand how LSSL is performing in both physical and financial terms. There have been only five quorate meetings between December 2019 and January 2021. Board meeting should occur at least every six weeks and, in the current pandemic condition, should meet at least monthly.
- 5.28. LSSL's 5-year business plan was last published in 2018, some two years after setting up the company and, after commencement of contracts for the service described previously. Since 2018 LSSL has not revised this business plan, although the terms of reference for the Board requires it to review and roll forward the business plan annually. No action or analysis has been reported to the Board even in light of the pressures caused by the pandemic. It is clear that the reporting arrangements cannot ensure the Directors are able to fulfil their roles and responsibilities envisaged by legislation. As it was not evident that appropriate training had been provided to Councillors acting as Directors, it may be that they are unaware of the personal risks they are running.
- 5.29. As noted in paragraph 3.24 it is a major concern that no shareholder agreement exists between LCC and LSSL. There is, therefore, no appointed shareholder representative at Board meetings. The consequence of this is that LCC have no representative to make binding decisions on its behalf, appears not to set financial targets nor to require compliance with key elements of LCC activity which would deliver value for money. Finally, the Inspection Team noted that it was possible for Councillors with no apparent role in the management of LSSL to intervene in its HR practices. This could not have happened in the core of LCC and should not have happened in LSSL. It is therefore hard to see if this operation is truly being operated as a company.

5.30.LCC needs to consider and regularise the position as a matter of urgency before reviewing whether these activities are best operated through this structure.

5.31.It is understood that LFH, LCC's housing company is being wound down as it is no longer being funded to achieve the goals identified when it was set up. A wider review of all LCC's companies is therefore indicated as there is no evidence that the issues highlighted above do not apply more widely.

6. Property

Disposals

6.1. As well as the best value requirements for property disposals summarised in paras 2.16-2.19 above, property disposals in LCC are governed by Rule 13 of LCC's Contract Standing Orders. Although LCC's Standing Orders generally have been updated on a regular basis over the years this particular Rule has remained in force throughout the whole period examined by the Inspection, although with title changes as the Council has changed Member and Officer structures, and remains current today.

6.2. Key extracts from Rule 13 are set out below.

'13.1 In disposing of Council assets, including land and interest in property, the Head of Business Unit/Assistant Director must seek to obtain the best consideration for the Council in compliance with all relevant legislation and Council policies...'

'13.4 For disposals or sale of land or property where the income receivable is greater than £5000, the highest tender may be approved and accepted by the Director ..., in consultation with the Cabinet Member....'

'13.5 Disposals (whether by lease, license or sale of freeholds) of the type of land, to the persons, or in the circumstances set out below shall be by way of negotiation subject to compliance with all relevant legislation by private treaty unless the Director... recommends disposal by way of public auction or public tender: ...

(viii) Disposals of property to a developer of adjoining land who has an approved scheme and requires such property to complete the scheme.

(ix) Disposals of property to developers who are proposing schemes that will have a regenerating effect on the City and investment, which, in the view of the relevant Director in consultation with the relevant Cabinet Member and the Cabinet Member for Finance and Resources, could be prejudiced by inviting tenders.'

6.3. From this it is reasonable to conclude that: the Director of Finance had a veto over agreeing deals done under delegated powers and could insist that matters were reported to full Cabinet; that a disposal to an adjoining landowner could only be dealt with under delegated powers if a scheme with a valid planning consent existed; and that to qualify for the exemption under Rule 13.5 (ix) required some sort of analysis which needed to be shared in some formal way with two Cabinet Members or the Mayor and Cabinet

Member before determining not to invite tenders.

- 6.4. Rule 13.4 also refers to the Scheme of Delegation. The Director of Regeneration had delegated powers (subsequently included within the Director of Finance's delegations when PAMS moved Directorates under the TR changes) to dispose of property etc. where the disposal represents best value subject to prior consultation with the Mayor and relevant Cabinet Members and the decision being reported to the relevant select Committee within one cycle. The Inspection Team do not accept that this delegation must override Rule 13 in its entirety as only 13.4 refers to the use of delegated powers. Even if it did, the requirements to consult before use of the power needs to be documented and there is no evidence that this was done.
- 6.5. At the start of the Inspection, the Inspection Team called for a schedule of all disposals completed from 2015 onwards. Over 65 specific cases were identified for more detailed end to end examination. These were selected because of the method chosen for securing an offer i.e., the exemptions referred to above; the particular policy initiative which was relevant i.e., Homes for a Pound; or because the sites could be linked to the Police investigations. Officers preparing these schedules were initially confident they had captured all the relevant disposals. However, as the Inspection progressed more disposals came to light, in part because they had been linked to wider schemes involving land swaps with consideration involved and in part because of the lack of a coherent record keeping system noted earlier.
- 6.6. Each one of the disposals examined had some sort of issue and it is important not to necessarily judge on the basis of perfect hindsight vision. As the Inspection progressed, though, what became a depressingly familiar pattern emerged. The Inspection Team have chosen to illustrate some of this using the case studies set out in part 12 of this report.
- 6.7. In case after case, the Inspection Team noted that there was no attempt to seek any form of market test. Many instances were noted where LCC held the freehold of, often a former industrial or commercial unit let on a long leasehold with a restrictive covenant on use and with a low or peppercorn ground rent. Sometimes valuations were prepared on a number of bases, but rarely on the basis of a likely alternative planning scenario. The concept of preparing an informal planning brief was absent. Alternative valuation scenarios were also prepared which discounted the likely highest valuation. These valuations were almost entirely prepared in house. Not every site started here, some did not have a valuation recorded on file until it was needed to certify the proposed deal.

- 6.8. More often than coincidence would allow, the person/company who was found at that point to have acquired the lease was drawn from a very restricted pool. Heads of terms were agreed, certified as being best value reasonably obtainable in the marketplace and recorded as being authorised, although it did not fulfil the requirements of the delegation to enable them to rely upon it and authorisation should have come from Cabinet. There was no evidence of the analysis and consultation with Members that the Rules provided for. This was neither set out in the Delegated Action Report (DAR) itself nor did the file contain any correspondence to evidence compliance. It was reported that the Director did not hold Cabinet Member briefings, as was the practice in other parts of LCC, so there appeared to be no formal mechanism to record any advice that might have been sought or proffered.
- 6.9. Solicitors on both sides were instructed. LCC often did not have the resources to handle the number of cases in process so outside solicitors were commissioned. It was noted that this was commonly done directly by the Regeneration Directorate without any involvement with the City Solicitor. This meant that the City Solicitor never had oversight of the scale and scope of activity and could never ensure a consistent approach which protected LCC's interests and ensured compliance with Standing Orders. Because the client was seen, by the outside Solicitor, as being whichever Regeneration officer was the lead, advice on the advisability or risk of agreeing alternative terms proposed by the purchaser was not considered in the round, just doing the deal mattered.
- 6.10. Step by step, the deal outlined in the Heads of Terms was undermined or cut back. Very often, when planning sought to agree routine S106 agreements as part of the planning process, the costs of this were sought and usually agreed to be deducted from the consideration. Overage clauses were trimmed back to effectively make them unenforceable. Pre-emption clauses, designed to allow LCC to buy back the property if development did not proceed, were undermined and when proposals were put in place to structure the deal into a Special Purpose Vehicle, not carried through to have an effect.
- 6.11. At the point of exchange, it was often necessary to recertify the value as the existing DAR did not cover the new terms. This was always forthcoming. From time to time, both legal and finance officers raised concerns, but no-one thought it correct to call a halt, reflect on where the deal now was and whether it was still right to continue. Instead, the files were full of, 'what do we now do to get this deal over the line.' Securing LCC's best interests were not on the agenda.

- 6.12. When officers tried to resist, implied threats were employed. The Allerton Golf Course lease extension is a good case in point.
- 6.13. Valuation of golf course interests are very difficult. There are few comparables, and most valuers do not have sufficient experience to be able to properly certify a valuation. For this deal LCC employed CBRE who have sufficient specialist experience to undertake this commission. For the proposed lease extension and redevelopment of the clubhouse and site. CBRE prepared a full valuation appraisal on a capital premium basis. Subsequently, LCC at service Director level decided that an income stream was preferable. Negotiations were commenced to convert the deal into that format. This led to a number of clauses being promoted to LCC that significantly disadvantaged the Council. When these were challenged, the solicitor acting for the proposed lessee made it clear that if terms were not agreed the delay and blockage would be raised the next day at a lunch that the developer was holding with the Mayor and the Director. It was seen by both the LCC's retained solicitors and the client officers to whom this correspondence was copied as an implied threat.
- 6.14. No records exist showing the declaration of this alleged hospitality. LCC conceded the point to let the deal go through.
- 6.15. During these negotiations CBRE were kept abreast of the position. Eventually they wrote to LCC saying that the position had been reached that they could no longer certify that this was best value. It was suggested to the Inspection Team in interview with the client officer that a meeting had taken place where this position had been retracted but also conceded that there was no record of this discussion nor any further correspondence. More importantly the DAR was drafted to say that CBRE had been appointed to provide specialist valuation advice on the deal. The next sentence reads that PAMS certifies that these terms comply with best value. In the Inspection Team's view, no PAMS officer, who was unnamed in the report, could have the experience to provide this certification.
- 6.16. In many instances, in the files, it has been hard to establish what deal actually was approved and who authorised it. There is evidence of retrofitting an approval to the final contract. As one of the case studies makes clear, getting an authority in advance was not always done and rectifying an authority once it was known that the terms would not be delivered was not a priority.

- 6.17. It would have been open to both finance and legal officers to have required such major changes to have been considered or reconsidered by Cabinet. This would have exposed such schemes to detailed review and required explanation on the face of the report as to why the deal had changed. Proper democratic scrutiny would have been achieved and, if the deal continued, however poor it might seem in hindsight, the elected representatives concerned could have been held accountable at the ballot box. Even listing the various deals as key decisions as they went through might have alerted Councillors to what was going on.
- 6.18. These typical events often relate to projects where there might have been an opportunity to pray in aid the provision of Rule 13.5 (viii) – dealing with adjoining land. It clearly cannot apply when the adjoining land is across a highway which is not proposed to be closed or bridged. It cannot apply when there is no approved scheme at all but the Inspection Team saw disposals where that Rule was used in both situations.
- 6.19. The Inspection Team reviewed the latest tranche of Small Site disposals late in the Inspection period. This came about because this project had been omitted from the schedule of disposals provided as a result of the initial document request. It was reviewed because it had been missed so was seen as an exception. The project was being managed by two graduate surveyors who were clearly apprehensive about how their processes would be judged. They had been allocated the project before the suspensions and arrests and then allowed to manage the process with little intervention.
- 6.20. It is worth reporting here because it was an example of what had been looked for in a normal local authority. The record demonstrated understanding with both professional practice and LCC procedure. The decision record was properly prepared and documented. They had recognised the risks to LCC in releasing all the sites in one tranche to the developer that had offered the best price and decided to release each one only on satisfactory completion of the current site. The records were not perfect but were an example of what good professional practice in a local government setting should look like. If this is the future, it is possible to see a recovery plan taking hold.

Property Asset Management Services (PAMS)

6.21. From the inspection process we noticed that the narrative for the Property Asset Management Service (PAMS) falls into two distinct periods:

- Pre 2018 under the Regeneration Directorate and
- Post 2018 under the Finance and Resources Directorate

6.22. In 2018, TR took the important decision to take the PAMS team out of the Regeneration Directorate and place them in the Finance and Resources Directorate where their development would go unhindered. Each of these periods is examined to highlight how property has been misused under the management of the Regeneration team and how this contrast with the more Corporate Property approach taken in recent times.

Pre 2018

6.23. Under the management of the Regeneration directorate the PAMS team lacked senior direction and support to use property assets strategically to deliver sustainable regeneration projects that supported the corporate objectives of LCC. More commonly, the Regeneration Director used property assets as 'disposable' assets at best to meet goals only of the Regeneration team. This was with apparent disregard to the strategic importance; capital value or social value of the properties being used.

6.24. The PAMS team also came under pressure during this time to save money for the department. This resulted in a significant head count reduction from 52 FTEs to 26 FTEs. This number was further reduced in 2017 to 17 FTEs. The pressures noted throughout the Inspection Period resulted in further vacancies occurring. This reduction in numbers compromised the team's ability to function as an effective property management department and key posts, as well as estate knowledge, was lost.

6.25. As example of the effect of this reduction and capacity in the team a key post lost was that of Rent Officer. This affected the management of the 'let' estate and timely collection/payment of rent. Without this role in place, LCC continues to have a significant outstanding rent debt of c£7m. This would have been difficult to collect before the pandemic but now it is likely that significant write offs will be necessary.

- 6.26. To support the PAMS team and to augment the low capacity available, the team often relied on external support for valuations and technical advice. They engaged local and national property specialists on an ad hoc basis.
- 6.27. The Inspection Team has seen evidence that, in many instances, the valuations provided by external expert surveyors was dismissed or ignored by the regeneration team when agreeing final terms on disposals or acquisitions of property. Similarly, the technical advice provided was also not taken into consideration when finalising transactions.
- 6.28. As many of the transactions were carried out using DAR's it appears that the external professional advice and valuations were 'used' to gain one-time approval from Cabinet. Between this initial approval and finalising the deal many changes may have taken place that have not been subject to scrutiny, approval or amendment to the agreed delegated authority provided by Cabinet.
- 6.29. Both Members and other Officers involved were blind-sided by these actions.
- 6.30. The PAMS team played an increasingly low-level role in these property transactions and were often side-lined. So too were the finance, central legal and scrutiny teams. This is evidenced in the Case Studies included in part 12 of this report.
- 6.31. This way of doing business not only reduced the value of properties and was a dereliction of the Council's duty to achieve best consideration for disposed properties but also, in some cases, cost the Council in external, legal, and valuations appointments. Moreover, the loss of s106 income (not paid by developers) to support the developments proposed went unchecked, further providing evidence that best value was not being achieved.

Post 2018

- 6.32. Since the appointment of a new Chief Executive in July 2018 significant improvements have been made in how LCC manages its property portfolio. Most important of these changes was the move of the PAMS from the Regeneration to the Finance and Resources Directorate. Under the management of a newly appointed head of service, this significant move has allowed the PAMS team to take stock of its processes and procedures. They have developed and published plans that are incorporated in the corporate Medium Term Financial Plan. However, the plans that have been published are

considered only short term and are:

- The Corporate Asset Management Plan 2020/21
- The Commercial Property Investment Strategy 2020/21

These therefore cannot be considered as substantive in the MTFS and longer-term plans and strategies must be developed to support the LCC's corporate financial strategies.

6.33. In October 2020 the PAMS team engaged CIPFA property consultancy to appraise the health of the management of the Corporate Property Estate. The resulting report set out a number of recommended work streams that will support LCC and the PAMS team to adopt and implement a Corporate Property management approach. This will be a significant move and, if implemented fully, will be catalyst for sustainable and best value development across the city. However, the support for Corporate management of LCC's property portfolio is not clear from the current Asset Management Plan. It would be expected that, as part of an improvement plan for PAMS that a revised 5 year Business Plan and a 5 year Corporate Asset Management Plan will be evident.

Opportunity and Future Proofing the Service.

6.34. It was noted that the department uses a number of data capture systems, the principal of which are Concerto and Tribal systems. The opportunity presents itself to update how data is used to forecast property uses, costs and values to LCC and to improve property decisions beyond a 5-year horizon.

6.35. How data is used to support the Corporate Property approach will be key to ensure that the team can fully support decision making by property occupiers in the future. The implementation of an integrated workplace management system will help both property users/occupiers and Members to better understand the strategic goals for the use of property and will give better insight to the PAMS team on:

- Facilities Management and Estates Compliance
- Better space utilisation reducing property costs
- Better value from capital projects
- Better maintenance and resource planning

7. Procurement

LCC Central Procurement Unit

7.1. LCC Central Procurement Unit (CPU) has made significant changes to how it procures goods and services for the departments subject to this inspection. In particular, the introduction of category managers and business unit contract management support is a meaningful step taken.

7.2. However, it was noted that a number of important issues remain for urgent resolution:

7.3. Contract change and contractual compensation events valued at under £5,000 are currently the responsibility of site level management sign off. Until the restructuring of the Highways department is complete it is considered that this additional spend must be brought under control with greater scrutiny from the designated contract manager in the CPU.

7.4. The Premises Management Unit (PMU) currently does not have in place a contract for Hard FM service. Significant spend (£23m) is procured by spot purchase orders, in the case of PMU this is entirely by exemptions. This is unsustainable in a number of ways:

- No control over expenditure and budget management
- Significant risk of non-compliance of the estate
- Lack of data collection and collation to monitor; cost in use of the property portfolio, value of backlog maintenance liability, accurate forward planning of PPM etc.

It is therefore essential that CPU procures a Hard FM framework or makes use of an appropriate existing national framework to urgently recover this situation.

Future Procurement

7.5. It should be noted that this is an opportune time to make advancements in commercial procurement for LCC. These opportunities exist because: the exit from the European Union has triggered rules reform for public sector procurement. A Green Paper setting out the reforms is under development; consultation on the Green Paper closed on 10th March 2021. It is understood that TR has been involved in the consultation process.

7.6. For procuring units the Cabinet Office is developing bespoke training packages for local authorities to assist in preparing for the implementation of reforms. Cabinet Office will fund the training programme to be rolled out from 2022.

7.7. The National Procurement Policy Statement (NPPS) is anticipated to be published in March 2021 and this will set out Government's strategic national priorities for procurement. This will include further guidance on social value, effective delivery and enhancing commercial procurement skills and capability. The NPPS will be underpinned by legislation which will require larger contracting authorities (with an annual spend of over £200m) to publish pipelines by April 2022.

7.8. The LCC CPU should take advantage of the training programmes being provided and ensure that its forward plan embraces the principal policies that will be set out in the new legislation and guidance.

The Outsourcing Playbook and Construction Playbook

7.9. Although it is recognised that the LCC CPU has made significant advances in recent years it was noted that further improvements could be made that would make a sea change in its effectiveness in the future. In support of the rules reform already mentioned the adoption of the principles of the Government's Outsourcing Playbook²⁰ and Construction Playbook²¹ will have a profound effect on how procurement works in the future. The roll out of these two Playbooks has the full backing of government, industry, suppliers, professional bodies and the Local Government Association. Training in their practical application is available through the LGA.

Applying Social Value in procurement.

7.10. In September 2020, a new SV Framework for central government departments was agreed and released. Developed by the Department for Digital, Culture, Media, and Sport (DCMS) together with the Cabinet Office and led by a prominent Liverpoolian, Claire Dove CBE, this framework paved the way for the inclusion of SV as an evaluation metric in future procurement processes. This was confirmed by the release of PPN 06/20 and further endorsed through PPN11/20²². In short, this requires all contracting authorities to include at least 10% evaluation score to SV. This is mandated and will be incorporated in the National Procurement Policy Statement and Rules Reform green paper currently in consultation. Some departments have opted to raise the level of measure to 20% of evaluation scoring.

7.11. Without demonstrating SV in tenders, for the first time since its introduction, suppliers, whether in house or external private sector will be evaluated out of procurement competitions.

7.12. In general, through engagement with Officers and Members, the Inspection Team found that there is a stated passion for delivering social value to the citizens of Liverpool. However, the application of SV assessment of contracts

²⁰ <https://www.gov.uk/government/news/updated-outsourcing-playbook>

²¹ <https://www.gov.uk/government/publications/the-construction-playbook>

²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921437/PPN-06_20-Taking-Account-of-Social-Value-in-the-Award-of-Central-Government-Contracts.pdf

and property deals that were witnessed did not accord with this. Indeed, the myopic view that suppliers of services to LCC must have a Liverpool postcode, as stated in interview by the Mayor, demonstrates, at best, a lack of understanding of the Act and at worst, an attempt to stifle healthy competition in tender processes. The adverse effects of this approach are demonstrated in a number of cases examined.

The Opportunity

- 7.13. LCC now has the opportunity to demonstrate to its citizens, investors and business communities that social value is at the heart of all that it achieves across the city.
- 7.14. By reviewing and restating its approach to SV, LCC can pledge to its stakeholder communities a consistency in how it intends to evaluate and embed SV in its service delivery. In a move away from the requirement for a Liverpool postcode for contract suppliers LCC will give clear signals that it is open for business with an emphasis on social value creation”.

How can this be achieved in Liverpool?

- 7.15. There are many tools and systems that could be used to develop a Liverpool Social Value Model. Working with organisations such as LGA and central government will provide LCC with support and capacity to re-invigorate its SV platform for change.
- 7.16. In the short term, two key circumstances, the recovery from Covid 19 pandemic and the adoption of rules reform brought about by the exit from the European Union, will need to be addressed. In terms of SV supporting the local community to recover from Covid19 will be of paramount importance. Guidance exists, in the form of a PPN06/20 and the theme “Recovery from Covid19”²³.
- 7.17. Revised procurement rules are currently at consultation (Green Paper) stage and will give further guidance on procurement procedures to be adopted.

²³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921437/PPN-06_20-Taking-Account-of-Social-Value-in-the-Award-of-Central-Government-Contracts.pdf

8. Legal Services

- 8.1. The Legal Service in a local authority should provide the essential corporate and operational legal advice and support for the authority's departments and also have developed systems and processes to ensure that it is seen as the first port of call for legal support. The Inspection Team found dedicated, enthusiastic, and very able lawyers working within LCC. However, the internal resources for the areas under inspection were stretched leading to the outsourcing of large volumes of work and a pressurised work environment.
- 8.2. Like in many local authorities, legal services in LCC were significantly cut from 2010-14. However, over the Review Period their resource and shape has remained reasonably stable. Their position in LCC has changed to make them more visible and central to the Authority's activities. In 2016 having been previously located in a different building, Legal Services moved to the Cunard building to sit alongside the service departments. Also, as noted in the introduction, in 2018 TR moved Legal Services and the City Solicitor/MO from the S151 line management chain to report directly to him.
- 8.3. There are 6 teams of varying sizes within Legal Services, each with a Principal Solicitor undertaking operational leadership. The majority of the work in scope of the Inspection was completed by the Regeneration and Development Team, Regulatory Team and the Contracts and Commercial Team. The Development Team has two qualified lawyers and two skilled legal assistants to cover a substantial amount of work, in 2017 LCC made 44 disposals of property and maintained an average of 35 disposals a year over the review period. However, Legal Services had a reputation for being 'slow' and struggled to keep up with the volume of work.
- 8.4. The one notable exception to the stability within Legal Services was the departure of the Assistant City Solicitor in 2018 who has yet to be replaced. Senior management roles of this nature are integral to the effective running and prominence of a service. While two of the Principal Solicitors have provided interim cover, the Inspection Team heard that in the absence of this position Legal Services views were not always heard or were consciously ignored when raising valid concerns with other departments. In addition, the vacancy also places additional stretch on the service and reduced the ability of legal services to strategically forward plan.
- 8.5. The apparent lack of capacity has had two particular consequences, firstly large parts of legal work was outsourced, one Officer estimated that 20-25% of the Regeneration legal work was outsourced. The Inspection Team found that while there was a central process for procuring legal work which was

championed as the best method, LCC's CSO allowed client teams to procure external legal support directly without involving Legal Services. When outsourcing whether through the legal team or otherwise, Officers often procured at speed and went to legal firms they had worked with before creating a small pool of preferred firms and solicitors. It led to occasions where both LCC and developer were using the same firm. The Inspection Team were also informed that on occasion the first time Legal Services became aware of outsourcing was when they were required sign off a DAR or to witness the Authority's seal. Securing external legal advice and support is costly and it may be that addressing in house capacity issues through the appointment and critically, the development of internal resources would be more cost effective and beneficial to LCC.

- 8.6. It is also notable that such outsourcing resulted in an absence of copies of external legal files and formal documentation including, for example, leases for completed transactions being part of the LCC records although this is now being addressed. The Inspection Team were also told and saw evidence of external advice being secured to challenge the advice of Legal Services. Linked to this it was noted that challenging a client department's instructions was commonly ineffective, particularly those from Regeneration.
- 8.7. The second consequence of the lack of capacity is that in 2016 it led to Regeneration creating a new solicitor post (at a higher grade than Principal Solicitor) to help speed up and smooth legal processes. The job went to a candidate from Legal Services. Although there was some agreement between Legal Services and the successful candidate about not signing off reports on behalf of Legal Services, for example, there was no professional responsibility to the Legal Service or the MO. The success of the arrangement from the perspective of Regeneration is apparent because this approach has been repeated, and a further solicitor appointed again with line management in Regeneration. The creation of these posts moved the focus of legal support from Legal Services and diminished proper oversight of the legal advice to LCC it also reduced the visibility of the land transactions to the in-house legal team.
- 8.8. Another area of concern is that it was common practice for internal Legal Services to be presented with reports for "sign off" seemingly at the last possible moment with emphasis on the political support behind any proposal. This introduced unacceptable pressures on the internal team, impacting on the robustness of scrutiny, and increasing the reliance and trust placed (or potentially/occasionally misplaced) on the information provided by Officers submitting the report.

8.9. At LCC the MO is also the City Solicitor but there is no specific designation of that role as the Solicitor to the Council in the constitution. In addition, the current delegations to the City Solicitor in the Officer Delegation Scheme are limited and do not reflect the significance of the role and its responsibilities or the work and activities that this officer and their team is, in fact and necessarily, undertaking.

8.10. The LCC recovery plan will need to build the prominence of Legal Services, and include investment in senior staff, increasing oversight of outsourcing and reducing reliance on external firms for non-specialist matters. Any review and update of the Constitution and SO should provide clarity about the full responsibilities of the City Solicitor and MO role for the benefit of both members and the public alike.

9. Overall Governance issues

Behaviours

- 9.1. The 2018 LGA Peer Challenge report into Liverpool City Council found that “Councillors have strong views and sometimes they are expressed in ways that are not the norm in local government”. The team heard that it could be difficult for Members to challenge at meetings and often the challenging behaviour came from the Mayor and prominent Councillors. The evidence indicated that both Councillors and Officers had a limited understanding of declarations of interest and hospitality registers - these important documents that foster transparency. It was clear that they were not monitored, were often incorrect and rarely updated to reflect changes in circumstances. It was noted that the majority of Councillors’ declarations of interest were updated since December 2020 after the announcement of the inspection. Gifts and Hospitality registers appeared not to have been updated until midway through the Inspection Period. Despite evidence to the contrary, the registers recorded that the Mayor and many Members, including Cabinet Members had not received any registrable gifts or hospitality for several years, or alternatively, Members simply did not comply with the requirements of the Code of Conduct. Although significant updating took place while the Inspection Team were on site when it became known this was being reviewed. Officer declarations were hard to examine and cross check. They were not subject to a requirement to update and were not discussed as part of routine management action.
- 9.2. Overall, there was a lack of appreciation of the Nolan principles and the requirements of the Members Code of Conduct. Linked to this there was a lack of understanding in how complaints against Members were handled. Approximately 120 complaints have been received over the Review Period, but the vast majority have not been validated or considered appropriate for any further formal action by the MO. Many have been addressed on an informal basis, and only one complaint has resulted in a determination by the Complaints Sub Committee and the Member being censured in a meeting of full Council. LCC have no regular meeting of an ethics or standards committee (it last met in January 2012) and no way of reporting any monitoring information on complaints. When the recent LGA model code was considered, it was dealt with at a cross-party Member working group on Member training rather than a formal body that might recommend to Council that its provisions be adopted.
- 9.3. Members were often confused about processes and who the complaint was being handled by, the Authority or the Party. The Inspection Team noted a number of examples where there was evidence of pecuniary advantage being obtained indirectly. These included persuading fellow Ward Members

to authorise funding to an organisation where the individual worked or provided consultancy. The Officer response to this was to devise and implement processes which would make it more difficult for Members to take these decisions. There was never a report published or shared with Members which set out the correct behaviours expected. By not publicly addressing breaches in the Code of Conduct, LCC prevented members gaining a wider appreciation of the Nolan principles, the requirements of the Code of Conduct -and what is proper Member behaviour. It also prevents any issues relating to Member behaviour from being visible to the public at large.

9.4. There is also confusion over the appropriate roles of Members and Officers. From the evidence provided it is clear that the Mayor sought to undertake a much more active and direct role in the running of the Authority than the arrangements as set out in the Constitution provide for. Following the departure of Chief Executive in 2016 the Mayor, according to LCC's website, was responsible for the "day to day running of the organisation". While he did not and could not have the statutory title of Head of Paid Services, he chaired management team meetings and sought to cover much of the Chief Executive's responsibilities. The prominent role of the Mayor is evident from the 2018 LGA peer review which concluded that "there is more that could be done for the council to act more corporately and for officers to understand the roles of *servicing the Mayor* and the whole of the council." (emphasis added) While TR has firmly stepped into the Chief Executive role, we have heard testimonies that this confusion over the boundaries of responsibilities still exists and is not confined to the Mayor.

Scrutiny

9.5. It is against the background of the behaviours outlined above that scrutiny takes place. In LCC there are 9 scrutiny committees each with their own area of responsibility and 4 standing task groups as well as ad hoc scrutiny panels. A list of the committees and task groups and their terms of reference can be found at <http://councillors.liverpool.gov.uk/mgListCommittees.aspx?bcr=1> At present there are 6 Officers providing committee support whereas we are informed that this has been reduced from 24 Officers over time .

9.6. Some of the scrutiny work that we have seen is exemplary, such as, the Fractional Investment Scrutiny Panel Report²⁴. However, this work was spearheaded by a longstanding Member of the Council and supported by the select committee Chair rather than from the Mayor or his Cabinet also the involvement of LCC Officers was limited . Overall from what the Inspection Team observed and heard a range of issues were identified, Members

²⁴ <http://councillors.liverpool.gov.uk/documents/s245995/FISP%20Report%20Recommendations%20-%20FINAL%20240720.pdf>

found it difficult to push back, substantial papers were circulated late allowing very little time for them to be considered – in one instance during the inspection a report of over 200 pages was circulated on the day of the meeting, scrutiny committee chairs have been prevented from accessing information they had requested, there were examples where ward councillors were not informed of decisions affecting their ward, there is limited planning/strategy of the scrutiny topics and work that the committees would undertake meaning topics for discussion were ad hoc. It is accepted that the officer resources for scrutiny activity are very limited; however, the fractional investment report showed that it is possible to undertake high quality work in LCC. Members need to be encouraged to do more planning of questioning and use of outside advice to achieve a better result.

- 9.7. LCC chooses to brigade the work of an Audit Committee with scrutiny responsibilities and creating a combined Audit and Governance Committee. This has a number of disbenefits. Firstly, an Audit Committee needs the right to report to full Council and to have its recommendations considered by Cabinet. Currently, although the Mayor is not listed as a Member of the Committee, it was practice that both the Mayor and Mayoral advisers attended all meetings and spoke on any item. In one instance reported to the Inspection Team, the Mayor challenged a significant audit report's finding and the process that led to its commissioning. It is worth noting the CIPFA Audit Committee 2018 guidance, which stipulates that:

“Inviting an executive member onto the committee should be avoided unless the committee has other compensating arrangements to ensure independence, for example, a majority of independent members or an independent chair. The executive member should not chair the committee. The leader of the cabinet, administration or the elected mayor should not be a member of the audit committee. However, the audit committee can invite members of the executive to attend to discuss issues within its remit and to brief the committee on the actions they are taking”

It follows from this that once this task is complete the Cabinet Member should not take any further part in the proceedings.

- 9.8. It is the Inspection Team's view that the LCC practice is not appropriate and undermines the audit function. In addition, CIPFA urges authorities to ensure that Audit Committees are independent not only of the executive but also the scrutiny functions. This position is adopted in the statutory guidance which requires that authorities “ensure a clear division of responsibilities between the scrutiny function and the audit function”. CIPFA also recommends inclusion of an independent member on the committee with appropriate skills

and knowledge to properly contribute to the committee's role which is not the case in LCC. The blurred audit and financial scrutiny role leaves a material and concerning gap in LCC's governance framework.

9.9. The more fundamental issue that was observed was how scrutiny was treated by the leadership of the Regeneration Directorate. The Inspection Team observed examples of Officers that suggested taking decisions to Cabinet and asking for delegated authority was unnecessary red tape that slowed the process down. Officers within Regeneration also challenged what counted as a key decision and there was no culture of going back to Cabinet when a deal Cabinet had signed off was substantially changed even if the new deal went beyond the bounds of the original delegated authority. On a number of occasions Cabinet reports and DAR's were retrofitted at the end of the deal process – they were treated as a piece of paper that needed to be on a file. When DAR's were produced, they were done at speed based on verbal instructions, putting pressure on legal and finance teams to sign matters off without due consideration and diminishing their ability to be LCC's gate keepers. When legal and finance teams had the ability to challenge, they were often ignored by the Regeneration team and/or unsupported by senior officers when the issues they raised were challenged by the Mayor. There was evidence that lawyers often had to sense, and spell-check documents and Officers reminded that they would be published. Further, DARs often had little substance or justification for proposals put forward making it hard for Members to ask questions or challenge. Overall, it was not clear to the Inspection Team, that in all cases, DARs cleared by legal, and finance were the versions sent to the centre.

Training

9.10. Training for Members is essential to enable them to fulfil their various roles within the Authority properly and effectively. The precise training required by any individual Member will depend on whether they are or have an aspiration to be a Cabinet Member, the Chair of a Committee, or are a member of a regulatory committee or involved in scrutiny. All Members should have the opportunity to receive training on how to be an effective Ward Councillor, the perils and opportunities of social media and their obligations when handling confidential or sensitive information.

9.11. Also essential is training to enable Members to understand their obligations under the Code of Conduct for Members, expected behaviour including the registration of Interests and proper disclosure of gifts and hospitality. An understanding of the proper parameters of the role of a councillors in relation to the role of an elected mayor and the distinction between those and the role and responsibilities of officers is also essential. Member development programmes

developed in other local authorities commonly encompass a wide range of such training for a local authority's Members.

- 9.12. Over the review period we found that LCC provided induction training for all new councillors on their election and asked Members to complete mandatory fraud training. When asked for evidence of any further training none was provided by the council. As noted earlier the ethics of some Members and their declarations of interests clearly showed that more work was required to ensure Members understood their obligations.
- 9.13. The Team also found in LCC that both Members and Officers failed to clearly understand their different roles. It was of note that the LGA Corporate Peer Challenge in 2018 recognised that the current Member-Officer Protocol which seeks to address and provide guidance on some of the key issues around these roles and responsibilities and working together effectively required urgent review and this was accepted by LCC.

The Remuneration Panel and Special Responsibility Allowances

- 9.14. LCC has adopted a Member Allowances Scheme in accordance with the Local Authorities (Members Allowances) (England) Regulations 2003. These allowances are considered by an independent remuneration panel and recommendations made to full Council generally on an annual basis which enables Full Council, following consideration of those recommendations, to set the allowances payable to Members for their work on the Council.
- 9.15. The Scheme provides for a Special Responsibility Allowance (SRA) to be paid to Members who are Mayoral Leads. The Inspection Team have been told that the appointment and designation of Mayoral Leads is at the discretion of the Mayor and that they are directly accountable to him. Their responsibilities are defined by the priorities identified to them by the Mayor. They may also attend Select Committees. It is of note that not all Mayoral Leads are elected Councillors, over the period of the review six non-elected Mayoral Leads have been appointed by the Mayor. They have been appointed to as leads for: City Wellbeing, Heritage and Design, Asylum and Rough Sleeping (3) Instead of being paid the agreed Mayoral Lead SRA most claim payment at a set daily rate. However, the employer of one Mayoral Lead has been reimbursed their salary, and the cost has been substantially i.e., five times, higher than the current annual SRA. It is of note that no formal, recognised processes for the appointment of such non-elected Mayoral Leads appear to have been undertaken. In this regard it would appear that LCC's HR service have failed to advise appropriately about the appointment of non-Member Mayoral Leads.

Elections

- 9.16. As noted in paragraph 3.7 above, LCC currently elects a Mayor for a 4-year term and in three of four years, elects a third of its Councillors. In addition, elections for the Mayor of the City Region Combined Authority means the whole city is in election mode every year.
- 9.17. The Local Government Boundary Commission for England (LGBCE) has recently commenced a review of LCC's electoral arrangements. This independent process sets the number of Councillors to be elected and their ward boundaries so as to broadly achieve electoral equality both now and in the future. At the start of the process LGBCE invites local authorities to consider their electoral cycle and to provide evidence on their preferred view of Council size. LCC approved their Council size submission in January 2021 which suggested no change to current arrangements. Their submission, which was well documented, did not appear to take particular account of the Combined City Region Authority, which would be expected to remove some Member level workload nor the move of work towards a Mayor, which is a characteristic of other Mayoral Authorities. A submission which better reflected this could be expected to produce a slightly smaller number than currently.
- 9.18. More importantly, LCC being in election mode every year provides less opportunity for scrutiny of a Mayor's actions as, whilst they would be bound by 'purdah rules' this need not slow down or pause the decisions they take. Councils in the recovery phase following an Inspection also need a long-term focus by the whole Council on getting things right, recognising that things may get worse before they get better. Embedding the cultural change needed to understand and comply with Nolan principles also needs a longer-term focus. It is the Inspection Team's considered opinion that this is best delivered by LCC moving to "all-out" elections and for the Council size to be reconsidered in the light of all these influences. Moving to an all-out system would also remove the presumption of a uniform pattern of 3 member wards. It would enable LCC to request a single member ward pattern with a consequent significant improvement in accountability of a Councillor to their electorate. There is much evidence to demonstrate that Councils in difficult circumstances need an electoral reset to ensure a changed approach. Specific examples would include LB Tower Hamlets, Anglesey, and Birmingham. It is, however, always difficult to give up what you know and move to a different system, even though post change reports indicate satisfaction.

9.19. The legislation²⁵ which enables these changes to take place requires consultation before moving to an all-out system and requires a full Council decision taken by a 2/3 majority. The way in which these types of issues have been handled by Members during the currency of this Inspection would not inspire confidence that a long-term view taken in the best interests of democratic leadership of the city would prevail. Nevertheless, the team consider that such a reset is a fundamental part of the changes necessary to secure best value and have framed a recommendation, which, if accepted would enable the Secretary of State to secure change.

9.20. It is understood that LGBCE have delayed their current timetable to provide for any consideration to take place and implementation of their final scheme would not be prejudiced.

²⁵ [Local Government and Public Involvement in Health Act 2007](#) and the [Local Democracy, Economic Development and Construction Act 2009](#)

10. Conclusions

- 10.1. Undertaking this Inspection, at a time of COVID based restrictions and overlain by a major police investigation, to meet a timetable impacted by election purdah has been extremely challenging. The Inspection uncovered major gaps in what would be normal documentary evidence to support the decisions and actions of LCC at both Member and Officer level. In the functions subject to the Inspection, compliance with LCC's Standing Orders, regulations and the overriding legislation was clearly not part of the culture of the organisation and is only now being introduced as part of the actions by TR, although some elements are resisting this.
- 10.2. The failure to comply with the rules relating to Key Decisions, Scrutiny, Exempt reports and probity was evident but there appeared to be no action to address this until TR took up post. Processes exist to ensure these matters can be drawn out, even by writing to the external auditor, if it is too difficult to raise internally but there is no evidence this was done. It is clear from the evidence that some middle ranking officers could see what was happening and tried to draw attention to the risks and losses incurred by LCC. In some parts of LCC those concerns could not be seen in the round because of structures/resource limitations/reporting lines and in other parts, there was evidence that those Officers were not supported and exposed to aggressive challenge.
- 10.3. Yet it is possible to make changes and move towards good governance and action. TR took early steps to move functions around to improve control and compliance. This is starting to have an impact. The leadership that TR has provided is becoming evidenced in the most recent actions of LCC and it is clear many officers want to move on and do things properly. However, what TR is doing needs to be supported by wider group of senior officers. The top team are carrying a significant additional load due to the suspensions and arrests and unless additional capacity is found, it will take too long to make improvements happen organically. There is a perceived unwillingness from LCC to consider and act on the necessary reports or to allow interim support to be employed at the top of the organisation. This might be addressed following the completion of the disciplinary process relating to the Regeneration Director. Even so, it is clear that there is insufficient resource at the top and in the corporate centre of LCC to drive changes and embed them Council wide, given the recovery challenge.
- 10.4. LCC delivers some services through a range of LATCo' s. They were not a major focus of this Inspection and the team have only reviewed the two that were integral to the Inspection, LSSL and LFH. What became clear in this Inspection was that the failings reported in the recent non-statutory reviews of Nottingham City Council and London Borough of Croydon are reflected in what

the team noted at LCC.

- 10.5. Had LFH continued in its current form, the accumulation of LCC funded debt based on highly marginal schemes, not forecast to come good for many years, would have presented major problems. Some of the propositions put forward to the LFH board included schemes that LCC had been involved in through the sale and development process and which would not recover their costs if disposed of on the open market.
- 10.6. LSSL is reported on in Section 5. This demonstrates that the principles of good company governance in a local authority context were not understood and best value clearly not delivered. In reality, LSSL looked more like an old-style Highways DLO than a company.
- 10.7. Some councils clearly do understand the purpose and rules for these structures but LATCo's should not be used as a way of hiding a problem the council does not want to deal with in plain sight. This is an issue worthy of wider and further consideration.
- 10.8. The Inspection Team conclude, on the basis of the documentary and oral evidence considered, that LCC have failed to demonstrate compliance with the statutory requirements with respect to best value in the areas of the Inspection. The changes required need to be radical and delivered at pace so as to restore confidence in the integrity of LCC decision taking and implementation.

11. Recommendations

The Secretary of State for Housing, Communities and Local Government is recommended to:

1. Appoint Commissioners to oversee and approve or otherwise, the Council and its officers in preparing and delivering the Improvement journey of LCC, for an initial period of 3 years. This only to be extended if LCC fails to make satisfactory progress in implementing and embedding the changes necessary to deliver best value in its governance and operations.
2. Remove the power of LCC to seek to change its electoral arrangements under the Local Government and Public Involvement in Health Act 2007 and the Local Democracy, Economic Development and Construction Act 2009 and, instead, delegate these powers to the Commissioners to consider and consult upon a proposal to change the LCC electoral cycle to an all-out elections once every 4 years, with a reduced number of Councillors elected on a single member ward basis to be implemented as part of the current boundary review being undertaken by the Local Government Boundary Commission for England.
3. Direct LCC to prepare and implement an Improvement Plan, to the satisfaction of the Commissioners with, as a minimum, the following components:
 - a. In the first 12 months review and implement changes to the Council's constitution which will
 - i. Improve the ethical governance framework to best practice incorporating the LGA model code and a fully functioning Standards Committee.
 - ii. Constitute the Audit Committee as a stand-alone committee with a direct reporting line to Council and a right to have its recommendations considered by the Executive Mayor and Cabinet, with either an independent Chair or an Independent Technical Advisor.
 - iii. To re-establish Scrutiny activity in line with Statutory Guidance ensuring that Councillor leadership of the activity is on a cross party basis and with appropriate officer support.
 - iv. Introduce best practice Standing Orders and Regulations for contracts and property disposals.
 - v. Review the scope, content and reporting of all delegated powers.
 - vi. Establish a specific code of conduct for all Members in connection with dealing with Planning and Licencing matters.
 - vii. Require mandatory training of members in key activities, including behaviours, before participation in Council activities other than full Council.

- viii. Improve the content and updating of declarations of interests and gifts and hospitality, for both Members and Officers.
 - b. Require the consent of Commissioners before LCC at either Member or Officer level agree Heads of Terms for any property transaction and subsequent consent before any legally binding commitment is entered into.
 - c. In the first 24 months, review the roles and case for continuing with each subsidiary company of LCC. For those companies that it is agreed to continue, ensuring that the Directors appointed by LCC are appropriately skilled in either technical or company governance matters to ensure each Board functions effectively under the terms of an explicit shareholder agreement and a nominated shareholder representative. For those companies which it is determined not to continue with in this form, to establish a plan to internalise, close or sell as appropriate.
 - d. To consider and approve a suitable officer structure for LCC which provides sufficient resources to deliver LCC functions in an effective way, including the Improvement Plan and its monitoring and reporting within 6 months.
 - e. To oversee a detailed structure and strategy for the Highways function in short and medium term as set out in the Highways section of this report
 - f. Establish a plan to deliver an effective file management system so that LCC can more easily comply with its statutory and managerial responsibilities.
 - g. Devise and implement a programme of cultural change which ensure both Members and Officers understand their respective roles and the way in which the Council and its activities are regulated and governed and the way in which this is monitored, and breaches rectified.
4. For the direction period, to
- a. Obtain prior agreement of commissioners to any dismissal or suspension of a person who has been designated a Statutory Officer or the Assistant Director Governance, Audit and Assurance or equivalent.
 - b. Ensure any appointments of a person to a position the holder of which is to be designated as a statutory officer or the head of internal audit are conducted under the direction of and to the satisfaction of any commissioners.



Max Caller CBE
Lead Inspector



Viv Geary
Assistant Inspector



Mervyn Greer
Assistant Inspector

12. Case Studies

A : Former Toxteth Community College – 68 Falkner Street L8, Blackburne House

The above property, having been surplus to requirements, was initially marketed in 2012. It had been agreed this would be leased to Blackburne House on a 10 year fully repairing and insuring lease basis. There is a valuation on file, ascribing a capital value and a consequent ground rent to support this proposition.

Blackburne House (BH) is a well-respected registered charity in Liverpool offering a range of services, primarily to women in the education and training fields. It was established in 1983 and has a significant track record.

For whatever reason, the deal noted above seemed to have stalled.

In 2014 an unsolicited offer was received from the Elliot Group (ELG) to construct a multistorey mixed use scheme block providing around 8000sqft of space on the ground floor to provide for BH interest together with 132 apartments. The file notes that as ELG did not express an interest at the time of the 2012 marketing competition would be required to demonstrate best value compliance.

A brief option appraisal was carried out and, although the valuation on the file is prepared on a basis which overestimates the costs and does not reflect the options actually considered, it suggested that there were 3 main options: remarket; accept the ELG offer which would involve a sale of the freehold for £425,000 and the provision of a ground floor space to be leased back to LCC for a term of 999 years at a peppercorn, which would be let on to BH under a 125 year internal repairing and insuring lease; or straight sale producing a receipt of £525,000. An alternative basis for valuation which actually reflects these options could have produced values of some £0.5m more.

The option providing for BH was endorsed at officer level.

A scheme was worked up on this basis, providing for a shell construction of 8052 sq.ft. on the ground floor and some 109 apartments. From correspondence on the file, it is clear that BH believed that they had a side agreement with ELG that in exchange for supporting the scheme and helping with consultation they would get a fitted-out unit in which to carry out their work. They clearly thought that ELG would instruct their professional team to produce a design and deliver the works as part of the main construction. This would have been reinforced by a consultation leaflet produced by the Developer in December 2016 stating that BH were to occupy the GF.

This was not the basis of LCC's proposed deal with ELG. It was a straightforward sale of freehold with a leaseback of ground floor space that could be passed on.

One could criticise BH for being naïve, and not getting, at least, an exchange of letters to confirm their understanding but it is also true that nothing was done to disabuse them of that understanding.

At this stage there did not appear to be any specific Member authority to cover the officer actions. Negotiations were commenced on a proposed lease back arrangement, which from the correspondence were extremely difficult and fractious. Eventually, in March 2016, a Delegated Action Report (DAR) was signed to provide the first authority for the action taken. This provided for the consideration of £425,000 for the freehold sale plus fees, a 125-year leaseback of the ground floor at a peppercorn and BH to be responsible for their own fitout works. This DAR was not submitted to Select Committee as required by Standing Orders so it could not have been scrutinised.

At the same time as this was signed it was clear that in an undocumented negotiation between the Director and ELG the consideration was now £325,000, because 'it was the only way to offset the S106 costs' estimated at around £300,000. So, the DAR was not correct and the officer authorising this must have known this.

Planning consent was granted although subject to a S106 agreement which was not actually completed and signed off until practical completion some two years later. The driver for this completion was in fact due to the Special Purpose Vehicle set up by ELG to deliver this development wanted to sell the completed development to a Jersey based ground rent investment company. This deal was in fact, completed in July 2018 for £1.496m as the S106 was paid up and completed on 29th June 2018.

At this point, BH realised that ELG were not going to keep what BH thought they had been promised. No design had been progressed so the shell construction was to the minimum standards that could be delivered.

BH then sought LCC's help to get a design and works completed to the empty shell that has now been constructed. Officers issue what they call 'a letter of comfort' authorising BH to commit to design expenditure which it is said will be recovered from the developer. This is not in accordance with the property deal entered into by LCC. On the basis of that letter BH run a process that appoints a design and build contractor to fit out their space. LCC make it clear that, whilst they will fund the works up front, they will recover these costs via the ground rent for the underlease they will offer BH.

A second DAR in June 2018 is authorised changing the basis of the lease back from 125 years to 999 years, but the consideration is not corrected to the £325k negotiated between the Director and ELG.

During 2018 it becomes clear that the as built does not match the design brief for the shell and no real assessment had been done of demand on services. There are issues over water supply, drainage, and power. As the costs of the fit out become

clear, LCC/BH realise they are unaffordable for BH alone. This results in BH agreeing to take half the space originally on offer and the remainder being converted into 6 dwellings which would then be passed on to LFH to manage on a market rent basis. None of this appears to be authorised by Members. Various drafts of Cabinet reports circulate during the first quarter of 2019 before being pulled from the agenda due to Purdah!

Eventually Cabinet gets a report which sets some of this out in June 2019 and identifies a capital demand of around £1.1m to pay for both housing and BH works. This is the point that LCC finds out that the freeholder is New Emerald Ground Rent Trustees registered in Jersey and that their consent is required for the works to proceed. By November 2019 it was clear that the costs cannot be contained and Cabinet authority for spend will be exceeded. A significant part of the additional costs arises from the under provision of water supply which could have been anticipated at original lease drafting. A further series of drafts of Cabinet reports appear which provide a range of cost estimates to complete the work, identifying errors in the original report calculations. There are also concerns that at this level of costs it will be a very marginal scheme for LFH to take on as the market rent will not be high enough to guarantee the necessary margin.

Pending consideration by Cabinet of additional funding to complete the build, a further DAR is signed by the Director to enable an interim payment to the builders working on site but, as a result, apparently exceeding the budget previously authorised by Cabinet at this point.

Eventually, in January 2020 a Cabinet report is signed off and the budget is increased to provide authority to spend just under £1.6m to finalise the construction.

B: Tarmacademy

This Case Study concerns the acquisition of 4 areas of industrial land of approximately 2.84ha in total in the Derby Road area of north of Liverpool for over £4m.

In 2015 proposals came forward from Knowsley Construction Ltd trading as King Construction²⁶ (Kings) to develop a training and apprenticeship facility (with classroom, IT suites, changing areas and office space) together with an asphalt plant to be operated by Cemex, in the Derby Road area of North Liverpool. This was known as Tarmacademy. The facility was to provide 45 new jobs for local people and support 1000 trainees from unemployment into jobs and apprenticeships over a five-year period.

In December 2015 Regeneration submitted a report to Cabinet signed off by Legal and Finance about the Tarmacademy proposals noting that a new company had been set up by Kings to deliver and run the training facility (Tarmacademy (Liverpool) Ltd (TLL)). The report states that the initial investment by TLL and Cemex is £2.32m, however, it later transpires that this investment is by Cemex alone). Although Cabinet agrees to assist Kings (and so TLL and Cemex) to acquire sites in the north Docks area of Liverpool and authorises Officers to acquire suitable sites and negotiate suitable leases with Kings (and thereby TLL and Cemex) to deliver the project no clear business case or clear reasoning why the Council should assist Kings (or TLL or Cemex) by purchasing the land or any assessment of risk of providing such support is provided. A budget limited to £3.5 m (funded from borrowing) for the land acquisition is also agreed. Again, no reasoning is provided for the budget proposed and agreed. There is no explanation why Kings or Cemex or the new company, TLL, should receive such preferential treatment and support from the Council and why, if the Council considered the proposal to have merit, it did not consider alternative ways of delivering the training facility or encouraging Cemex to open a new facility in the north Liverpool area.

The £3.5m budget was provided subject to financial, legal and property due diligence, and the submission of robust and sustainable business cases which confirm best consideration for the land and revenue returns which more than mitigate the costs of borrowing within 3 years. When the report is submitted to Cabinet it is asserted that the decision is urgent and so it is not subject to call-in and scrutiny and so no further consideration of the merits of the proposed training facility, desirability of a new asphalt plant or the process for delivery takes place.

What happens next involves the completion of a series of Delegated Action Reports (DARs) ostensibly sanctioning the purchase and disposal of land but which fundamentally fail to comply with the authority delegated by Cabinet, and reveal

²⁶ Kings Construction is now under new ownership and the current owners have no connections with the principals involved at the time.

(inter alia) a complete failure by the Council to show that the best value duty has been complied with.

At the time of the Cabinet meeting, although this is not made clear in the report, four parcels of land had already been identified for purchase. The then owner, C&PS Ltd (CPS) seeks £4m for their interest in the sites. The internal valuation for the sites carried out in December 2014 was between £2.38 and £3.075m. It was noted at that time that one site had previously been marketed at offers in excess of £2m but that this was considered by the valuer to be well in excess of the market value and this is confirmed in a further, external, valuation received in January 2016. The external valuer provided three different valuations based on specific assumptions, therefore if any of those assumptions were incorrect or became unachievable the valuations would inevitably change and whether the Council was achieving best consideration would be adversely affected. The lowest external valuation assumes that three of the sites are cleared of old industrial buildings and values the land at £1.22m. If two of the sites are leased by the Council to Kings and Cemex as planned for £50k per year for each site, with no rent-free periods or break clauses, and 18 wind turbines are installed across the sites an annual income would be generated of £205k and the capital land value rises to nearly £2.3m. However, if initial discussions for a digital advertising display on one of the sites is successful and a lease entered into, the additional income generated of £150k per year increases the value of the four sites to £4.05m.

Ostensibly on the basis of the authority provided by Cabinet, on 22 January 2016, the Regeneration and Finance authorised a DAR which sets out the initial Heads of Terms for the Tarmacademy proposal. The DAR agrees payment for the sites of £3.728m including stamp duty together with the grant of 20-year leases for £50k per year to both Kings and Cemex with initial 6 month rent free periods to be completed back-to-back with the land purchases. On these terms the rent-free period adversely impacts on the valuation of the land, but more specifically the price exceeds the available budget agreed by Cabinet in December. In addition, the report does not provide any evidence of due diligence or the required robust and sustainable business cases to support the best consideration for the land and the income does not mitigate the borrowing costs expected within the requisite 3 years. So, the terms proposed in the DAR exceed the authority agreed by Cabinet the previous month. In addition, although the proposal is to expend over £3.7m this decision was classified as exempt from publication due to commercial sensitivity and was not subject to additional scrutiny through the usual safeguards of the call-in processes.

Despite the terms set out in the DAR, the purchase price of the land continues to be subject to negotiation with CPS. Meanwhile, by March 2016 Cemex has separately negotiated with the Council a longer 12 month rent free period on their proposed lease on one of the sites and the underwriting of their costs of land preparation on the site in the event that they did not finally enter into a lease; the “target date” for the lease referred to in the report was 31 March 2016 (although it actually eventually

completes in May 2017). A further DAR agrees to these changes. However, this further DAR in presenting the financial evaluation of the impact of extra rent-free period misrepresents the basis of the highest external valuation received by failing to correctly state that this was based not only on the absence rent-free periods but also on the generation of £355k per year income through the leases for the land, advertising hoardings and wind turbines referred to above, none of which had been or were close to being successfully achieved. The introduction of the 12-month rent free period fundamentally undermined the borrowing cost recovery within 3 years required by Cabinet. The DAR was expressed as amending the DAR agreed in January but neither DAR complied with Cabinet's explicit preconditions and so did not provide authority for Officers' decisions or actions. Again, the report was expressed to be Exempt and was not subject to Member scrutiny processes.

In the meantime, negotiations for the purchase of the four sites continued and to complete the land transactions the parcels were split into two tranches. On 8 July 2016 a further DAR was authorised by Regeneration and Finance agreeing to the purchase of the largest parcel of land on Brunswick Place for £2m. The DAR again refers to a lease to Kings at £50k per year to mitigate some of the costs and also states that "a further £50,000 per annum will be received from advertising hoarding revenue" even though no agreement with any advertising company had been reached even in principle, and no commercial agreement for the erection of advertising hoarding is ever entered into. The report provides no detail on how the valuation was reached save for reference to a "CBRE Valuation Report- July 2016" which was not attached, cannot be found and CBRE denies was ever made. Again, there is no robust business case or evidence of financial or legal due diligence to support the decision although the report states that consultation has taken place with the City Solicitor, the Director of Finance and Resources, the Mayor and the Cabinet Member for Regeneration. Again, the decision was not subject to any scrutiny by Members, it was declared to be commercially sensitive and so not publicised; further, on this occasion it was stated not to be a Key Decision, not subject to scrutiny call-in and could be implemented immediately. The DAR does not provide any proper authority to purchase the land.

Nonetheless, the land was purchased from CPS the following month, in August 2016, but no back-to-back leases were entered into to secure offsetting income at that point as envisaged by the flawed original DAR, only a license (at no cost) is granted to Cemex in November 2016 to carry out remedial works. Payment was also made of an additional £87.5k for (unverified) bridge repairs undertaken by CPS and mineral rights.

In October 2016 a further DAR is signed by an Assistant Director (apparently in consultation with the Director of Finance and Resources, the City Solicitor and the Mayor) purporting to increase the budget set by Cabinet in December 2015 by £450k plus an amount for stamp duty, to enable delivery of the Tarmacademy. This purports to enable the purchase of the remaining 3 sites for £1.95m. However, it is

not possible for an officer to extend the authority provided by Cabinet. Again, the report is not subject to Member scrutiny. Despite the absence of proper authority, the purchase is completed later that month.

On inspection the report is flawed in so many ways it refers to proposed income from Tarmacademy of £50k from these sites but that is wrong, the Tarmacademy base was to be on the first tranche purchased adjacent to Cemex. Not that TLL ever took the lease so none of Tranche 2 land was required to enable delivery of Tarmacademy which raises the question, why buy it?: the report claims advertising income of £50k which does not exist: the Decision says Cabinet agreed a price (£3.5m) but that was a budget there are no robust business cases or due diligence or back to back leases planned to be entered into as referred to the sites aren't cleared thus affecting value the phantom CBRE valuation is relied on again

On 23 January 2017 a DAR is finally agreed for a 20-year lease to Cemex at £50k per annum for part of the first tranche of land purchased for £2m, land which Cemex has already occupied rent free for several months. However, completion of the lease is to be further delayed until May 2017 thereby providing Cemex with occupation for four more rent free months. The DAR states that rent will become payable on the lease from 1 June 2018 onwards and part of the reasoning is that Cemex has worked on the land at risk. This is not correct as the Council has previously agreed to underwrite Cemex's remediation costs. Cemex has now opened an asphalt plant on the site.

In the five years since the original Cabinet decision to assist Kings to acquire sites to create the Tarmacademy training facility, the Council has itself purchased land for in excess of £4m without evidencing a valuation to support such payments and has incurred ongoing annual borrowing cost, of c£350k with a considerable shortfall in annual income to offset that cost and no lease has been entered into with Kings, TLL or any other body for the training facility. The debt incurred and transactions entered into have not been authorised by Cabinet. Despite the fundamental changes from the position agreed in 2015 there has been no further reference to Cabinet to consider the matter and to determine next steps. Despite the Council's investment no training facility has been set up; the SPV created to support the original proposals never operated and was dissolved in 2016.

All the land transactions linked to this project were outsourced and so the transaction documentation was not held within the Council's Legal Services until the omission was discovered in May 2017 and obtained from the external lawyers.

The Council's Internal Audit team reviewed the transactions referred to above and interviewed the Director of Regeneration in August 2017. Despite the report to Cabinet in December 2015 being submitted in his name and his signing of most of the DARs, the Director stated that specific officers from within Regeneration and Finance had written the reports, that the information in the Cabinet report was

incorrect and also that it was always intended that the occupation of the land was to be rent free. He also stated that he was not aware of an income target for the land.

C: Small Sites Disposal Package 2014

Although this case study starts earlier than the Review Period, it is included because it illustrates the way in which disposal terms were manipulated through the Review Period and the lack of effective oversight by Councillors or compliance with Delegated Powers and Standing Orders.

As part of LCC's approved Housing Strategy 2013-2016, LCC sought submissions from both individuals and organisations to look at acquiring either 1 or 2 small sites or for organisations who wanted a larger portfolio of sites. LCC identified 16 small sites and these were marketed via an advertorial in the Liverpool Echo in early 2014. It was also placed on the Council website and attracted a fair measure of interest. Closing dates for tenders was set in early May 2014 and the offers were opened in accordance with Standing Orders. Despite LCC stating that they were interested in innovative approaches not previously explored, evaluation was quite traditional. Not all sites received a bid and some sites, more than one bid. If the highest offer in each case for the 8 sites that did receive a bid had been accepted a capital receipt of £1,010,000 might have been realised.

One bidder (FG) offered a package for all sites being transferred for £1 for each site with a deal to be negotiated on overage. They did not appear to achieve the highest score on evaluation. Another bidder, employing a local Councillor as a consultant, offered to deliver housing on 4 sites on a profit share basis with a sample calculation to illustrate the potential return.

In September 2014, a DAR was prepared. The DAR relies on the general delegation to the Director of Regeneration to dispose of land and property but use of this delegation is subject to consultation with the Mayor and Cabinet Members, notification of Ward Members and the reporting of the decision (i.e. the DAR) to the next Select Committee and publication in the Members' bulletin.

The DAR reported the LCC valuation as £441,810 and decided to transfer the entire package of 16 sites to FG for a total payment of £552,063 subject to site investigations. The source of this figure is unclear, but no reference is made in the DAR to the nominal payment plus overage in accordance with FG's bid. It recorded that payment would be made on site transfer (i.e., on completion of the sale of the sites) and that transferring the land would save some £16,000 pa on maintenance costs. There is no calculation which seeks to justify why this is best value. However, the analysis in the report does turn the original proposition of seeking new and innovative approaches to housing delivery on its head and rules out everybody else that makes a bid whether conservative or innovative.

There is no reference in the DAR to any consultation or notification of Members as required when using this delegated power and no indication that this was ever

undertaken. Nor is there any indication that use of the DAR was submitted to a Select Committee in the required timeframe.

In the first half of 2015, negotiations were in train to ensure these Heads of Terms were embodied in a contract. It becomes clear at this point that the FG has not offered £552,063 (and in the event no such sum is ever paid). FG is still proceeding on the £1 plus overage basis. As LCC lawyers make clear, this is not really a sale at all but more like an open-ended call option and it is suggested that the whole basis of the DAR is wrong. This provokes the Assistant Director to propose that FB will accept the original DAR proposal but that no payment will be received until the last unit on the last site is sold!

At the same time, two sites were removed from the package as one had already been sold by LCC and the other had title issues which could not be readily resolved. Two different sites were substituted in due course. The changing of sites in the deal becomes a feature.

There is clear legal advice not to do this deal on the basis now proposed. Finance also makes it clear that this will raise issues of State Aid and is not in line with Standing Orders, presumably not being the highest bid received. Further internal consideration ensues and in due course negotiations with the buyer results in a further DAR in August 2015, a year after the original DAR, substantially revising the original terms for disposal and providing for site changes. It provides for the payment of a 5% deposit of the £552,063 “purchase price” on exchange of contracts, payment of a development profit share calculated and paid on the practical completion of the last unit built on each site not on the completion of the sale, and LCC is to be protected by a restriction against disposal by FB registered on each site. The purchase price is also “subject to planning”. There is no provision for the return of the sites following transfer if a development does not proceed.

Eventually contracts are exchanged in August 2015 but for only 14 of the sites and the terms have evolved further during the contract negotiation process. Completion of the sale is agreed to take place when planning permissions are granted; development of housing has to be progressed in a timely way, although there was no absolute obligation to complete the development and so no certainty that the profit share would be payable; the Council receives a 25% profit share but only payable on completion of the sale of the last plot on each site and no certainty that all plots would be sold; and any losses on one site are netted off against profit on another more successful site. Some protection for the Council was expected to be provided by a prohibition on disposal, mortgaging, or charge of the site without the Council’s consent, but in the event, it failed to be registered by the Land Registry and was not pursued.

Later in 2015, it was agreed that the sale could proceed without planning permission for all sites in place and completion on 12 sites took place in January 2016, the 2

outstanding sites completed later. In April 2016 FG wished to sell one of the sites for development by another party and it was agreed that they would not be bound by the profit share arrangements and the obligations would remain with FG. Disposal of sites by FG has continued to be a feature.

At this point, albeit with some changes of sites prior to completion of the disposal, the land transactions derived from the original Small Sites tender process was concluded. However, over a year later, in May 2017 ostensibly under the “Small Sites Build Programme”, a further DAR is signed to dispose of a selection of additional sites to FG in the Lancaster Street/Sterling Way area apparently capable of providing a total of 123 housing units. There is no clear linkage with the original Small Sites disposals although it is asserted that there is and it is apparent that the scale of the potential development on these sites and continued failure to fulfil the original policy aspiration of a new and innovative approach to housing delivery is not consistent with the proposed disposal but there is no further analysis or consideration evident to support this disposal.

The basis of the disposal is the profit share arrangement previously agreed with FG for the earlier sites and this is certified as the best price reasonably obtainable even though no further tender exercise has been carried out to test this premise. As a result, the DAR relies on the General Delegation to the Director of Regeneration to dispose of land and property as referred to above and which is subject to consultation with the Mayor and Cabinet Members, notification of Ward Members, reporting to the next Select Committee and publication in the Members’ bulletin.

The process of disposal by private treaty and not by tender is stated to be authorised by the Property Standing Order (PSO) enabling disposal to a developer proposing a scheme with a regenerating effect and which could be prejudiced by seeking tenders. However, in this instance there is no apparent formal analysis why this approach is appropriate and will achieve the best price, or evidence that the proposed disposal approach was presented to the Mayor and relevant Cabinet Members as required or that the DAR was presented to the Select Committee the relevant timeframe.

This DAR is indicative of a failure to effectively test other options for disposal and redevelopment of these more modest areas of land and continues the disposal of sites to a particular builder (FG) without sound and evidenced reasoning to support the use of private treaty. All this is undertaken without any apparent oversight or challenge through proper scrutiny processes by Members; no opportunity is taken to properly reflect on the appropriateness of the overall model adopted, including the robustness of the profit share structure. Despite this, a short time later, a further disposal takes place with the prospect of 14 houses being built on another modest area of land at Park Street and is authorised by a further DAR purporting to rely on the PSO to sell by private treaty to FB.

Suffice to say, apart from the initial 5% “deposit” paid in respect of the first tranche of sites disposed of, no income has ever been received by LCC from these disposals and at the date of this report 7 sites remain undeveloped or only partially developed. Several sites have in fact been transferred on and either remain vacant or have been developed by others, and an outstanding reconciliation of any potential profit share with FB remains to be undertaken, however the enforceability of the agreed terms for the profit share from FB is untested.

It is notable that to enable housing development on some of the disposed sites LCC has had to make further financial commitments particularly where the properties built or planned to be built could not be sold on the open market as viability reports were produced to show that compliance with normal planning requirements were unaffordable.

Financial support for four of the sites which in the event had been sold on other developers cost LCC a total of £175k in subsidy to aid development because of “significant site abnormal costs.”

LCC’s housing company, LFH was supported with £1.7m funding to acquire the 14 houses built on the Park Street site, one of the last Small Sites disposed of to FG and homes built on Birchfield Street (which had been sold on by FB) were also purchased by LFH supported by funding from the Authority.

In conclusion, despite the positive policy objectives seeking new and innovative approaches to housing delivery expressed when the Small Sites scheme emerged in 2014 this has not been achieved. What is clear is that this extended project has achieved no capital receipt for LCC yet has resulted in material sums being outlaid by the Authority to deliver housing on some challenging sites. In particular, the scheme has enabled a local contractor to construct housing (but only where it chose to) at no risk to itself or its profit margins. This has left numerous sites undeveloped, but now LCC no longer owns or directly controls them.

13. Appendices

Appendix 1: Appointment letter



Ministry of Housing,
Communities &
Local Government

Catherine Frances
Director General, Local Government,
Strategy & Analysis
**Ministry of Housing, Communities
& Local Government**
2 Marsham Street
London SW1P 4DF

Max Caller CBE
By email

17 December 2020

Dear Mr Caller

Appointment under section 10 of the Local Government Act 1999

For some time there have been concerns about planning, highways, regeneration and property management at Liverpool City Council. The current police investigation into these matters has a significant connection to the City Council.

Having had regard to the information below, the Secretary of State has decided to proceed with a best value inspection to provide direct, independent assurance that the council is complying with its Best Value Duty:

- a) The Merseyside Police investigation into fraud, bribery, corruption and misconduct in public office, which involves a significant connection to Liverpool City Council.
- b) The response Liverpool City Council submitted to the department on Friday 11 December 2020 in respect of governance arrangements, oversight and control measures within the Council including details of the measures and controls implemented during the course of the last eighteen months.

It should be noted that having reviewed the information provided by Liverpool City Council, the Secretary of State recognises the steps the council has taken to improve governance and assurance processes, particularly with respect to the authority's planning, highways, regeneration and property management functions, as well as broader measures intended to prevent fraud and corruption. However, the Secretary of State has concluded that, given the seriousness of the issues identified through the police investigation, and to support the council to continue to strengthen its governance, and deliver services

for the people of the city, he would like direct, independent assurance that the council is compliant with its Best Value Duty.

I am therefore writing to inform you that the Secretary of State, in exercise of his powers under section 10 of the Local Government Act 1999, as amended by the Local Audit and Accountability Act 2014 (the 1999 Act), hereby appoints you as the person to carry out an inspection of the compliance of Liverpool City Council with the requirements of Part 1 of the 1999 Act in relation to the authority's planning, highways, regeneration and property management functions and the strength of associated audit and governance arrangements.

The Secretary of State also, in exercise of his powers under section 10(4)(b) of the 1999 Act, gives you the following directions in relation to your undertaking the inspection.

First, in undertaking the inspection in relation to the authority's functions specified above, and without prejudice to the scope of this inspection, you are directed to consider, in the exercise of those specified functions, whether the authority has effective arrangements in place for securing best value in its planning, highways, regeneration and property management functions and the strength of associated audit and governance arrangements.

Second, you are directed to report the findings of the inspection to the Secretary of State by 31 March 2021, or such later date as you may agree with the Secretary of State. The Secretary of State may, following receipt of your report or otherwise, issue further directions to you.

Section 12 of the Local Government Act 1999 provides that the authority to be inspected must pay the Inspector's reasonable fees for carrying out the inspection. As to practicalities of your appointment as inspector, we will provide you with an appropriate administrative team to support you in your role as inspector, and any assistant inspectors whom the Secretary of State may appoint at your request.

Finally, a memorandum of understanding will be developed between Merseyside Police and the Inspector to ensure that:

- a) The inspection is carried out in a way that does not prejudice the ongoing criminal investigation; and
- b) The Inspector(s) share any information that may be relevant to the criminal investigation with the police.

Yours Sincerely

CATHERINE FRANCES

2. Police MOU as released following FOI request.

Protocol of investigative working between

Merseyside Police

and

Max Caller

regarding

Merseyside Police Operation Aloft & The Investigation of Liverpool City Council led by Max Caller on behalf of HM Government

This protocol document recognised that there is not a joint investigation between Merseyside Police and Max Caller and team, but in fact two separate investigations. An information sharing protocol is required so as the investigation led by Max Caller does not prejudice the police investigation.

The operational investigation of the subjects of Operation Aloft is for Merseyside Police to manage. Max Caller has been appointed by the Secretary of State for the Ministry of Housing, Communities & Local Government under the provisions of section 10 of the Local Government Act 1999, as amended by the Local Audit and Accountability Act 2014 (the 1999 Act), as an Inspector to provide independent assurance that the council is complying with its Best Value Duty' or otherwise.

Max Caller and team will treat the sharing of information as an intelligence development process only at this stage.

[REDACTED]

Statement of Intent regarding the investigation

This document records a shared protocol of working between Merseyside Police and Max Caller and team. It relates to the prevention, detection and investigation of offences in relation to fraud, bribery and other serious crimes for Merseyside Police and investigating due process and 'best value' within Liverpool City Council for Max Caller and team

Each organisation will direct the use of its own operational resource by arrangement between the local managers who will ensure the respective skills and resources of each organisation are utilised to best and most efficient effect.

Background

Following [REDACTED] reports produced by Internal Audit, on 16 August 2019 [REDACTED]

[REDACTED] the assessment of this report, the Fraud Investigation Unit

within Merseyside Police's Economic Crime Team commenced investigating allegations of fraud and misconduct in a public office. This formed the basis of the now titled Operation Aloft.

Basis for Disclosure

The fundamental basis for disclosure and data sharing between the Max Caller and Team and Merseyside Police and/or relevant external enforcement agencies relates to issues and procedural irregularities identified as a result of Audit Investigations. In this instance, the relevant legislative provisions are those of GDPR Article 6.1(e) (public task), Article 9.2(g) (substantial public interest) and Data Protection Act 2018 S15 (1)&(2)(a)&(b) and schedule 2, part 1, 2(1)(a) & (b); specifically, the prevention and detection of crime.

It is noted that such a request places no compulsion on Max Caller and Team to disclose information, but should they consider it legitimate and proportionate to provide any requested data, then this should tend to provide necessary reassurance that a disclosure for these purposes is appropriate and in compliance with the Data Protection Act 2018 and UK GDPR.

Operational Objectives

The aim of the Merseyside Police investigation is to:

- Establish the full extent of the suspected criminality;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

The aim of the Inspection is to:

- Proceed with a best value inspection to provide direct, independent assurance that the council is complying with its Best Value Duty.
- Find out whether the authority has effective arrangements in place for securing best value in its planning, highways, regeneration and property management functions and the strength of associated audit and governance arrangements.
- Report the findings of the inspection to the Secretary of State by 31 March 2021, or such later date as they may agree with the Secretary of State.

Information Exchanges

The exchange of information between Merseyside Police and Max Caller and team in respect of the criminal investigation and the statutory inspection shall:

- Be in accordance with the Law and the guidelines issued by Merseyside Police and Max Caller and team.
- Be relevant only to the investigation and aims of the operation to which this protocol applies.

- Merseyside Police and Max Caller and team undertake to store securely all information received under this protocol and only those who have a genuine business need to see the information will have access to it: and
- The information will not be disclosed to any third party unless the owning organisation has been consulted and their authority given in writing.

Disclosure Process

Requests will –

- Be submitted in writing at all times using the DP1 pro-forma using designated and recognised secure email systems.
- State the basis of the request and clearly identify the information required.
- Be lawful and proportionate.
- Be related to the investigation as specified within this protocol.

In response to such a request, Max Caller and team will –

- Consider the request as appropriate in line with its own interpretation of the Data Protection Act 2018 and the UK GDPR.
- Carry out all reasonable endeavours to locate and source requested information.
- Provide a written response to Merseyside Police using designated and recognised secure email systems.
- Maintain appropriate records of the provision, or the decision not to provide, requested information.

In addition –

- Both Merseyside Police and Max Caller and Team will ensure regular meetings take place as agreed by both teams [REDACTED]
- [REDACTED]
- Discussions in relation to the sharing and publication of the final report will be subject to separate discussions.

Data Protection Act 2018 (UK GDPR)

Both Merseyside Police and Max Caller and team shall at all times ensure that they comply with the requirements of the UK GDPR.

Human Rights Compliance

Both Merseyside Police and Max Caller and Team shall consider the implications of the Human Rights Act 1998 where appropriate and shall adhere to its principles of legality, necessity, relevance and proportionality.

Timing

The provisions of this protocol shall commence at the date of signature by both parties and cease upon the conclusion of the case; unless the parties agree otherwise in writing.

Status

This Memorandum of Understanding (MoU) is not intended to be legally binding, and no legal obligations or legal rights will arise between the parties from this MoU. The parties enter the MoU intending to honour all their obligations under the law. This MOU is agreed during a period of post transition of the UK leaving its' membership of the EU. During the lifetime of this agreement the law change from the GDPR (EU 2016/679) to the UK GDPR whereby some aspects of the legislation may change. The parties agree to abide by any new legislation introduced during its use.

Signed on behalf of Merseyside Police by:-

Date:

Signed on behalf of the Max Caller and Team by:-

Date:

Terms of Reference V2.0 (Amended Sept 2018)

Board of Directors

Director (Chair) -	Cllr Wendy Simon (Deputy Mayor)
Director - Neighbourhoods & Waste)	Cllr James Noakes (Cabinet Member for
Director -	Ron Odunaiya (Director of Community Services)

Advisory Officers -

Mike Brown – Chief
Operating Officer Louise
Rice (Human Resources)
Paul Murphy (LSSL
Accountant)
Peter Casterton (Divisional Manager, LCC (Deputy
S151 Officer) Richard Hopkins, LCC (HR)
Gary Wormald, LCC (Legal)

Purpose:

The purpose of the Board of Directors and Chief Operating Officer is to:

1. Develop and maintain the Company Vision and Five Year Business Plan.
2. Provide strategic direction and leadership to the Company in line with the objectives and agreed principles of operation and the approved business plans and budgets.
3. Oversee the running of the Company and be accountable for its success.
4. Be responsible for the Workforce Safety; Health and Environment, including Union and workforce relations. To oversee the activities of the Advisory Officers in respect of managing and addressing Union and workforce related issues.
5. Provide advice, oversight and challenge with regard to the services' performance against the approved business plans and budgets.
6. Hold the officers of the Company (and Advisory Officers) to account for the delivery of the services' business plans, within the approved annual budget and the realisation of the benefits identified.
7. Provide direction in relation to the management of risks and issues that have been escalated by the Advisory Officers, ensuring that effective, mitigating actions are able to be put in place.
8. Request detailed updates as needed from the Advisory Officers or Company Management, particularly where there are concerns about performance.

9. Review and challenge performance and financial monitoring reports quarterly.
10. Resolve operational conflict and remove blockages that have been escalated by the Advisory Officers.

The Role of the Advisory Officer(s)

The advisory officer shall be to:

1. Ensure the effective operation of the Company on a day to day basis.
2. Report to the Board of Directors on all operational issues and matters that may/will impact upon the performance of the Company.
3. Provide technical and specialist advice to the Board so that it can make informed business decisions.
4. Provide annual business plans and report progress against the plans.
5. Manage day to day staffing and workforce matters to ensure the continued performance of the service, including Safety; Health; Environment and Quality of provision.
6. Liaise regularly with the workforce and the Union representatives to ensure matters identified are addressed/ resolved where appropriate for the enhancement and operation of the service.

Signed



Wendy Simon - Deputy Mayor

Director & Chair of Liverpool Streetscene