



London Borough of Hammersmith & Fulham

AUDIT PENSIONS AND STANDARDS COMMITTEE

14 February 2013

Earls Court Regeneration Scheme - Outcome of investigation by Deloitte

Report of the Chief Executive

Open Report (Appendix A Exempt)

Classification - For Information and For Decision

Key Decision: No

Wards Affected: ALL

Accountable Executive Director: Melbourne Barrett

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1. EXECUTIVE SUMMARY

- 1.1. The Committee is the relevant body to consider on behalf of the Council the external independent report commissioned from Deloitte to look into allegations made against the standards of the Council's work in consulting its statutory tenants about the proposed Earls Court Regeneration Scheme.
- 1.2. Deloitte were appointed to look into this matter because it was decided that an audit firm would best meet the expectations. Their role requires independence and objectivity, as per the standards set out by the Chartered Institute of Internal Auditors. The Council appointed Deloitte from a Framework Agreement which it uses to source its internal audit service. This was an alternative to a full procurement exercise which inevitably would have taken further months. The Framework Contract enabled the Council to be satisfied that price of the work had been competitively tendered as part of the framework set-up.
- 1.3. The Deloitte work has been fully independent. The Deloitte team proposed their own terms of reference; decided who they would interview and are wholly responsible for their conclusions.

- 1.4. The main conclusions of the Deloitte report are:
- Deloitte have not identified any evidence to support the allegation of the existence of an Early Movers List, VIP list or priority listing by any other name
 - Deloitte acknowledge that, based on the interviews conducted, there may have been a perception that one existed and more could have been done to dispel this.
- 1.5. The Committee must now decide whether or not to accept the report and determine that the original allegations have been satisfactorily enquired into, or to commission further work from Deloitte or another party. A number of considerations to inform this decision are set out in the report.

2. RECOMMENDATIONS

- 2.1. It is recommended that the Committee accepts the findings of Deloitte as set out in their report recognising that the Deloitte report is credible and sufficient, and accept, on behalf of the Council, that there is no case for further enquiries at public expense.

3. INTRODUCTION AND BACKGROUND

- 3.1. On 11th of September 2012, a package of papers was delivered with a covering letter signed by Mr Rosenberg, to Hammersmith and Fulham Police Force. Copies were sent to other parties, including the Hammersmith and Fulham Council Chief Executive.
- 3.2. The local Borough Commander of the Police Force forwarded the papers to senior officers at Metropolitan Police Headquarters and the paperwork was eventually sent to the Special Enquiry Team
- 3.3. Officers from this unit asked to see senior staff of the Council, and a meeting was held with the Chief Executive, Executive Director of Finance and Corporate Governance and Executive Director of Housing and Regeneration.
- 3.4. At that meeting the Chief Executive indicated that he was proposing to commission an independent third party to review the paperwork to see whether or not there was evidence that any staff had been involved in any conduct which might plausibly be described as unlawful, illegal or such that a disciplinary enquiry under the Council's disciplinary rules ought to be commenced. He offered that such a report, once completed, would be shared with the Metropolitan Police if they would find that helpful.
- 3.5. As confirmed in Detective Inspector Holt's Letter addressed to the Executive Director of Finance and Corporate Governance, dated 8th

November 2012, that in order for the police assessment to be meaningful, considered and structured the Metropolitan Police Service decided that it was “in the interests of transparency and proportionality to agree on this course of action” and that they would subsequently assess the findings of the independent report.

- 3.6. The Chief Executive and Executive Director of Finance and Corporate Governance considered how to source an independent third party to complete the agreed enquiries. We identified that we wanted an organisation which was experienced in work of a similar nature; had a brand and reputation that would ensure high standards and had sufficient familiarity with the policy context in local government. We decided that an audit firm would meet these expectations and proposed to use the Framework Agreement which we use to source our internal audit service from Deloitte. This framework had been set up following a formal procurement exercise led by the London Borough of Croydon which can assure the Council that it is achieving value for money.
- 3.7. Consideration was given as to whether Deloitte had any substantial conflict of interest in any other relationships with the Council. Given the size and scale and reputation of Deloitte, the conclusion was that Deloitte could be trusted to manage the work in a professional, objective and independent fashion.
- 3.8. Deloitte were invited in to discuss the possible commission and made it clear from the outset that if they were to be appointed they would expect operational independence. This had been the intention all along and it was proposed that Deloitte should draft their own terms of reference and determine a schedule of those that they thought they would need to interview.
- 3.9. After finalising terms of reference, Deloitte were so appointed. Mr Piero Ionta, the Council’s Principal Litigation Lawyer was appointed as liaison with the Deloitte team. The judgement was that his line of management duties to the Council’s Monitoring Officer (Tasnim Shawkat, Director of Law) offered additional assurance that the Council would make good its promise on complete co-operation with Deloitte in relation to any enquiries they felt necessary to make.
- 3.10. Deloitte proposed that they complete a first phase of enquiries on the basis of fact finding and evaluation of what they had heard and would then report to the Council and the Council would need to decide whether or not to instruct them for any further enquiries thereafter.
- 3.11. The Deloitte work was delayed from an original timetable due to having the reschedule a number of interviews for dates later than proposed in addition to the ill health of one of the parties that they wished to interview. Three extra individuals were added to the interview schedule during the course of their Investigation.

4. PROPOSAL AND ISSUES

- 4.1. A redacted version of the report of Deloitte is attached to this report as **Appendix A**. Members have received the full version of the report as part of the exempt supplementary agenda.

5. OPTIONS AND ANALYSIS OF OPTIONS

- 5.1. There would appear to be two options that the Members of this Committee can consider.

First Option

- 5.2. A first option is that the Committee can conclude that the Deloitte report is credible and sufficient and accept, on behalf of the Council, that there is no case for further enquiries at public expense.
- 5.3. The Committee would know that the Deloitte report will, in due course, be considered by the Metropolitan Police and they of course can make up their own mind as to whether or not to initiate any further enquiries or investigation.
- 5.4. The Council has special duties towards the cohort of statutory tenants living in homes that it owns. The Council has more general duties towards other parts of the local population and indeed the wider population of the borough who will also be affected by the benefits and collateral impacts of both the building works and the built development, if it proceeds.
- 5.5. The Council has been transparent in its presentation of the facts around the consultation. The analysis of the consultation put to Cabinet on 3 September showed that 18% of the statutory tenants consulted are in favour of the development and that 35% were against but that 45% offered no opinion and 2% offered an opinion which suggested they were uncertain.
- 5.6. Honourable Mr Justice Mitting's Order (attached at Appendix C), which refused an application for Judicial Review against the Council, states that the Council's "...analysis of the consultation responses put to Cabinet on 23 April 2012 and 3 September 2012 was balanced and fair." This affirms the Council's position that concerns reported on behalf of the minority of the cohort who said they were against the development were balanced with the Council's responsibilities towards other sectors of the local population.
- 5.7. The Council has recently announced that it has signed the Conditional Land Sale Agreement with Capital and Counties plc. This is a strong signal from the Council that it wishes the development to go ahead. The Planning Committees of Kensington and Chelsea and Hammersmith and

Fulham Councils have resolved to grant planning permission, subject to the finalisation of Section 106 Agreements and a referral to the Mayor of London for his consideration. The Secretary of State at the Department for Communities and Local Government has also asked for detail and has the right to “call in” one or both of the planning applications and cause a public enquiry to be held.

- 5.8. All of these issues have inevitably caused extended concern and uncertainty for the larger group of local residents and the Committee will want to consider how to balance the need for a proportionate response to concern expressed on behalf of the minority, with the legitimate expectations of others that there will be the earliest clarity on whether or not the scheme will proceed and that therefore they can begin to plan their individual futures, within such a context.
- 5.9. Finally staff of the Council have been put to great anxiety over the suggestion that they might be guilty of some criminal misconduct. Whilst staff must expect to co-operate fully with any enquiry which follows, they are entitled to think that their employer will not permit such anxiety to continue indefinitely or endorse such allegations without proper cause. A number of the staff most directly involved in past events have now, further to natural career development, moved to other employment. A wide range of other staff are watching with interest. Such staff, employed to do complex work in demanding circumstances, are entitled to know that their reasonable efforts will not be constantly undermined and they are not required to work in a climate of fear where their reasonable efforts are maligned and deliberately misrepresented.

Second Option

- 5.10. A second option would be to ask the Chief Executive to commission further work from Deloitte or any other appropriate party which is agreed, to conduct further enquiries. These enquiries would focus on interviewing all the tenants on the estate on the basis that Mr Rosenberg suggested that the allegations are based on accounts of 22 residents whose identity he has not disclosed to Deloitte.
- 5.11. Such further enquiries might be deemed necessary further to consideration of Deloitte’s report, should the Committee be of the view that the Investigation Remit that Deloitte set itself does not adequately deal with all of the allegations made by Mr Rosenberg relating to the Earl’s Court Regeneration Scheme.
- 5.12. When considering this option, The Committee will also wish to pay particular regard to the fact that Deloitte have not found any evidence that letters were sent to any tenants which set out any inducements or commitments which were in any way improper. No tenant has come forward, showing such a letter was received and no tenant has contacted the Council, in the absence of a complaint, to confirm their expectation of a

particular allocation or commitment by the Council which they wish to confirm.

- 5.13. Members may wish to consider whether or not the absence of any such evidence means that the case made out as cause for concern simply fails to meet the threshold required to consider it both reasonable and proportionate to spend further public money on further enquiries.

Monitoring Officer's Comment

- 5.14. The investigation undertaken by Deloitte has not identified any evidence to support the allegation that there existed an Early Movers List or a VIP list. It has been alleged that officers promised new Council homes in Seagrave Road development to certain residents in exchange for them supporting the demolition. Based on the investigation undertaken by Deloitte these allegations cannot be substantiated.
- 5.15. The allegations made were of the most serious nature and if found to be true could have led to disciplinary action and possible criminal proceedings against individuals. When such serious allegations are made the threshold for the required evidence is high. The more serious the allegation the more cogent the evidence needs to be to establish wrongdoing.
- 5.16. This report has set out two options for Members to consider. One option would be to accept the findings of Deloitte and the other would be to commission further work. It is a matter for Members whether they wish to explore the option of commissioning further work. However, Members will have to consider the following issues:
- Quality of the investigation undertaken so far
 - Intrusive nature of such investigation
 - Proportionality of further investigation in the light of the findings in the report produced by Deloitte
 - Likelihood of finding any further evidence to support the allegation, bearing in mind the allegations are very serious and thus cogent and clear evidence would be needed
 - Justification for using further public funds in the circumstances
 - Other processes available to pursue the complaint such as possible investigation by the police, who will need to consider whether it is in the interest of justice to pursue an investigation
- 5.17. It should be noted that at para 4.4 (e) Deloitte suggest that there might be more evidence that is not being disclosed. Arguably only the police could possibly gather such evidence, possibly with an order of the court requiring a journalist to reveal his sources, which the courts are reluctant to do. Therefore Members may wish to consider the merit of any further council funded investigation other than a criminal investigation, which is a matter for the police to decide.

- 5.18. The Chief Executive's recommendation is that the Committee accepts the findings of Deloitte set out in their report. It is the view of the Monitoring Officer that in the circumstances it would be reasonable for the Committee to accept the recommendation.

6. EQUALITY IMPLICATIONS

- 6.1. Not applicable

7. LEGAL IMPLICATIONS

- 7.1. The Director of Law has considered this report and any legal comments are contained within the content of this Report.
- 7.2. Implications verified/completed by: Janette Mullins, Head of Litigation, 020 8753 2744

8. FINANCIAL AND RESOURCES IMPLICATIONS

- 8.1. The Deloitte's investigation to date has been at a cost of approximately £20,000.
- 8.2. Any further investigative work would need to be much more speculative as there are no further direct allegations or witnesses to follow up. Although difficult to project a likely cost for a further investigation, it is clear the cost would be significantly more than the Deloitte investigation to date.
- 8.3. Implications verified/completed by: Jane West, Executive Director of Finance and Corporate Governance, 020 8753 1900

LOCAL GOVERNMENT ACT 2000 **LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1	Letter from DI Holt to Jane West	Jane West	FCS, Zone 3, HTH
2	Order dated 21 st January 2013 from the Honourable Mr Justice Mitting	Jane West	FCS, Zone 3, HTH