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TO FOLLOW AGENDA ITEM

This is a supplement to the original agenda and includes a report that was marked 'to follow'.

NOTTINGHAMSHIRE AND CITY OF NOTTINGHAM FIRE AND RESCUE AUTHORITY

MEETING OF THE AUTHORITY

Date: Friday, 25 September 2015 **Time:** 10.30 am

Venue: Fire and Rescue Services HQ, Bestwood Lodge, Arnold Nottingham NG5 8PD

Constitutional Services Officer: Catherine Ziane-Pryor **Direct Dial:** 0115 8764298

AGENDA

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NOTTINGHAMSHIRE
Fire & Rescue Service
Creating Safer Communities

Nottinghamshire and City of Nottingham
Fire and Rescue Authority

PROPERTY UPDATE

Report of the Chief Fire Officer

Date: 25 September 2015

Purpose of Report:

To inform Members of the response to the investigation into the disposal of Dunkirk fire station.

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1. BACKGROUND

- 1.1 At a meeting of Policy and Strategy Committee on 28 October 2011, Members requested an independent investigation to look into the circumstances surrounding the disposal of Dunkirk fire station and subsequent court case
- 1.2 The subsequent report from the independent investigator was received by the Policy and Strategy Committee on 24 July 2015 and the Chief Fire Officer, in conjunction with the Clerk and Treasurer to the Authority, were tasked with considering the report and formulating a response, setting out any actions that were required.
- 1.3 The report of the Chief Fire Officer was subsequently submitted to the Policy and Strategy Committee on 18 September 2015 and, after receiving that report, Members requested the Chief Fire Officer submit a further report to this meeting attaching an appropriately redacted version of the investigation report and the response to it.

2. REPORT

- 2.1 The Fire Authority is committed to transparency and learning through previous experiences and therefore commissioned an independent report to consider the circumstances surrounding the disposal of Dunkirk fire station and subsequent court case.
- 2.2 Attached at Appendix A is the report of the independent investigator that has been appropriately redacted due to confidentiality clauses regarding the court case. However, this does not materially affect the contents with regards to transparency.
- 2.3 At the meeting of the Policy and Strategy committee on 18 September 2015 the Chief Fire Officer was tasked with presenting an open response to the report providing a summary of findings and any areas considered for improvement or further action.
- 2.4 It must be recognised that the process to dispose of the Dunkirk site commenced over 10 years ago. The context in which the Service now operates has moved forward, and that a significant number of processes and employees have subsequently changed.

Summary of Findings

- 2.5 Throughout the process of the sale, and as the court case unfolded, there was a very complete governance chain ensuring Members were involved in a timely manner and at the correct decision points. This ensured that the Authority was able to give due consideration to the implications and make appropriate decisions based on information and advice available at that time.

- 2.6 The financial regulations of the Authority were followed appropriately and reports were provided to Members to ensure they were involved in the site disposal, consideration of bids received and the impact of the legal challenge. The Treasurer ensured that all budgetary implications were addressed in his regular reports.
- 2.7 Although due diligence was carried out on the developer to substantiate the validity of the bids for the site, there is no requirement within the procedures for this to be formally reported to Members. This is immaterial regarding the outcome of the case, however it is suggested that the procedure is reviewed and formalised to ensure Members are informed as part of the governance reporting process.
- 2.8 The scale of the property deal was the largest the Authority had been involved in for a number of years, and internal experience was limited. It is suggested that the engagement of external professionals is considered for future developments of this magnitude.
- 2.9 The investigation also considers that with the benefit of hindsight it would have worked better if all of the land was in the ownership of the Fire Authority, as this would have separated the land issues from the planning issues, and that in any event there should have been one nominated case officer for all planning enquiries.
- 2.10 There is no criticism of the performance of lawyers or consultants, however there are concerns over the way they were appointed and the suggestion that this could have been more transparent and formalised.
- 2.11 Training was provided for witnesses prior to attendance at court, however, there is an observation that this did not adequately prepare them for the way in which the case progressed in court.
- 2.12 The delay due to operational requirements between the sale of the site and completion was a fundamental issue within the case as the market fell considerably during that time.
- 2.13 It is reassuring to note that there is no evidence to suggest that any Member or Officer of the Authority demonstrated negligence or failure to carry out a duty.

Areas Considered for Improvement and Further Action

2.14 Due Diligence

Due diligence is undertaken as part of any major tendering process, and going forward the outcomes of due diligence reviews will be reported to Members in all cases where the capital costs or capital receipts are likely to exceed £1million, and in all other cases where it is considered necessary by the Chief Fire Officer, Clerk and/or Treasurer.

2.15 Expertise of Officers

The Authority now employs a Head of Procurement and Resources who is professionally qualified in the area of estates management. Over the past six years they have put in place a number of processes that ensure a full feasibility study is undertaken for any site considered for refurbishment, redevelopment or sale.

2.16 The feasibility studies produce a range of options for consideration, each one articulating the level of risk, complexity and potential costs involved. These studies also guide Officers to consider if expertise exists within the organisation, or if the assistance of specialist consultants is required.

2.17 When a particular course of action is agreed, a project team is established comprised of internal Officers and external consultants and specialists considered most appropriate to the scheme, and an appropriate single point of contact is nominated.

2.18 There is now substantial evidence from recent major projects that demonstrates this approach is effective, and leads to very positive outcomes and therefore no further improvements are required at this time.

2.19 Appointment of Lawyers

Lawyers have been, and continue to be, appointed through a regional framework which was established following a tendering process. Lawyers are currently selected from this framework (East Midlands Lawshare) on a case by case basis dependant on scale and nature of the issue, and the relevant expertise available.

2.19 The current framework contains a robust process that ensures instructions for services are transparent, clearly recorded and agreed by both parties, therefore no further action is required in this area.

2.20 Appointment of Consultant Surveyors

Where appropriate within the financial regulations of the Authority, a tender process is undertaken for the procurement of goods and/or services. However, it is common for the procurement to fall below the quantum required to trigger a formal tender process and therefore Officers are able to use their discretion to appoint the most suitable supplier.

2.21 It is recognised that approaching a single supplier is not the most transparent route, therefore to mitigate any concerns a robust single supplier process has been adopted as part of the procurement policy since 2013. This requires the rationale to be approved by the Head of Procurement and Resources and results in a transparent audit trail regarding the services required and the reasoning for selection of supplier, therefore no further action is required in this area.

2.22 Witness Training and Support

It has been identified that during and after the court case the witness training provided did not fully prepare them for the event. In the future, if Officers or Members are required to appear in court on behalf of the Authority, much greater consideration will be given to this area to ensure they are fully prepared and supported relative to the context of the case.

2.23 Delay in the Sale

The delay from the agreement for sale to the completion of contract is a significant factor in the case. This risk is considered as part of the feasibility study process undertaken when considering the disposal of a site.

2.24 Although following this course of action is not completely ruled out, where there is a delay in the completion of a contract, significant consideration is given to the risks and mechanisms to mitigate the potential impacts of them, therefore no further action is required within this area.

3. FINANCIAL IMPLICATIONS

There are no direct financial implications arising from this report, however the independent investigation has resulted in fees and expenses totalling £28,634, of which £4,141 was paid in 2011/12 and the remainder of £24,493 was paid in 2013/14.

4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS

There are no human resources or learning and development implications arising from this report.

5. EQUALITIES IMPLICATIONS

An equality impact assessment has not been undertaken as this report does seek to change policy or service provision.

6. CRIME AND DISORDER IMPLICATIONS

There are no crime and disorder implications arising from this report.

7. LEGAL IMPLICATIONS

The investigation report attached at Appendix A has been appropriately redacted to ensure that there are no legal implications arising from this report.

8. RISK MANAGEMENT IMPLICATIONS

It is important that the Authority use every opportunity to ensure that policies and processes are as robust as possible. The instigation of an independent investigation, and subsequent receipt of the report and actions, will assist greatly in that process to mitigate risks going forward.

9. RECOMMENDATIONS

It is recommended that Members:

- 9.1 Note the contents of the report;
- 9.2 Task the Chief Fire Officer to ensure that all areas considered for improvement or further action as identified within the report at 2.14 to 2.24 are implemented with immediate effect.

10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)

None.

John Buckley
CHIEF FIRE OFFICER



Disposal of the Dunkirk Fire Station

AN INVESTIGATION

RICHARD HARBORD

MRF UK LIMITED

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1. INTRODUCTION

1. This has not been a straightforward investigation. There are a number of things which set it apart from the usual.
2. I was appointed to carry out this Inquiry in January 2012. By February 2012 it was apparent that there was to be further legal action. I continued to read the court transcripts (something over a thousand pages in all) but in April 2012 I was asked to stand down whilst further court action took place.
3. It was January 2014 before that was satisfactorily disposed of and I was asked to re-commence.
4. Other matters setting this apart from inquiries of a similar nature are as I have already mentioned the sheer volume of paper. In fact much of this was not very helpful to the Inquiry but nevertheless needed to be examined.
5. There was also a very long lapse of time from the start of the project until the start of the Inquiry. That was depending on the choice of starting point around 10 years.
6. There have also been understandable difficulties over the availability of confidential reports. These were all resolved but lead to delay in reaching this final report.

HISTORY

7. Merely to set the background to the inquiry I give a brief synopsis of events leading up to the events surrounding the sale of the Dunkirk site.
8. In fact I have been supplied with three detailed chronologies. For the purpose of this report I am reproducing my own abbreviated summary of those three in order to set the scene.
9. In fact the start can be traced back to around 2002/2003 and the approach made to the Fire Authority by a developer for the disposal for redevelopment of Beeston Fire Station. The partners in that redevelopment were Broxtowe Borough Council and meetings were held with them. The Fire Authority's position was that whilst they were not looking to sell Beeston Fire Station they would look at such a possibility if a way could be found to have a combined station for Beeston and Dunkirk.
10. Broxtowe Borough Council did indeed come back with a possibility which lead to the Fire Authority selling them Beeston Fire Station for development in exchange for, as part of the deal, a site at Hasssocks Lane.
11. After consideration of various operational matters the Fire Authority agreed to make the Dunkirk site available for sale.
12. In preparation for the sale a report was commissioned from consultants, Henry Mein . This seems to have been commissioned around early 2004 and a report was received in April 2004. The report suggested that student accommodation was a suitable use and suggested around 400 units as being

achievable. At some point and by someone this was revised to 450 units. This revision is not significant. The purpose of the report was to establish a possible use and to provide a platform for discussion with planners.

13. As is inevitable the market had learned of the possibility of the site being sold and some speculative bids were received. At this time one of the unresolved issues was the access to the site. That is to say there was no access for a development which would be acceptable to the highway authority. Also the surveyors had informally made it known that the site was available and that it could accommodate around 450 units. This did stimulate some interest
14. A number of actions were undertaken in the next 12 months or so including asking Browne Jacobson to resolve issues around unregistered land and correspondence with the City Planners over possible uses. Because of the access the planners were unable to be very helpful over possible uses but one of the unsolicited bids claimed to have had discussions with the planners and their bid was on the assumption of student accommodation.
15. In view of the apparent interest in the site and to give a benchmark for the offers being received the District Valuer was asked to value the site. That valuation would have been for the possible disposal for student accommodation. Their valuation was received on 12th September 2005 and was for £3million, this was broadly in line with market expectations. In passing I note that the Judge found it suspicious that the valuation was only for student housing. That was however the use being discussed and the purpose that bids were arriving. There is nothing untoward or irregular about this.
16. Meanwhile in August a meeting was held with senior planners about the Dunkirk site and they could think of no more appropriate use than student or key worker housing. For the first time they raised the possibility of the City selling its adjacent site which would allow for proper access and potentially add considerable "marriage" value to the site.
17. A meeting was held between the Fire Authority officers and ward councillors in September 2005. In earlier conversations with the planners they had expressed concern that a ward councillor would be implacably opposed to the use of the site for student accommodation. I merely note in passing that this is often the case in a democracy and that such opposition does not mean, as seems to have been assumed at times in the papers, that this necessarily meant that planning consent would not be achieved. In the event the councillor was pragmatic and pointed out that he was there to put forward the views of his constituents but he could also see the financial benefits to the City Council.
18. The key issue in this process was the mailing out of the marketing particulars which took place between 27th July and 4th September 2006. There is no doubt that these were clumsily framed and led to a considerable amount of time and discussion in court. It seems that the City Council site was roughly half the size of the Fire Authority land and the agents calculated that if 400 units would go on the original site then 600 would go on the enhanced site. Unfortunately the wording stated that "Our clients estimate that the Fire Station

site alone would accommodate approximately 600 bedrooms for key workers/ students”.

19. Best bids were received on 26th October 2006. And the joint agent produced a report on these bids on 1st November 2006.

2 TERMS OF REFERENCE

1. The Terms of Reference for the Inquiry are reproduced here for information. The Terms of Reference were set by a Working Party of Authority Members.

Inquiry into sale of Dunkirk Fire Station

Background

Dunkirk Fire Station and adjacent land owned by the City Council were jointly marketed in 2006, with the sale proceeds to be split 70/30 between the Fire and Rescue Authority and the City Council. The preferred bid, on an unconditional planning basis, was £6m from Gladman Commercial Properties, and a 10% deposit was paid. However, Gladman declined to complete the purchase, alleging fraudulent misrepresentation by the vendors on the suitability of the site for student accommodation. This claim was strongly denied by the Fire Authority and City Council. An attempt at mediation was not successful and the case to enforce the contract came to the High Court in March 2011. After hearing evidence from the selling agents and officers from the Fire Authority and City Council, the judge strongly urged an out-of-court settlement. This was reached in late September 2011,

Members of the Fire Authority have asked for an independent inquiry into why the outcome was so different to what they expected.

Terms of Reference for the Inquiry

The terms of reference for the inquiry to include, but not be limited to:

- Obtain the views of all staff and advisers closely involved with the court case on why the outcome was not as expected;
- Examine, report and comment on the methods and frequency of reporting to Fire Authority Members from inception to final settlement;
- Examine, report and comment on the methods and frequency of internal reporting to senior officers from inception to final settlement;
- List the agents and advisers who were commissioned to work on behalf of the Fire and Rescue Authority and the City Council in the joint marketing of the site. Describe, report and comment on the appointment process;
- Examine, report and comment on the process for the appointment of legal advisers to the Fire and Rescue Service in marketing the site and make comments;
- Examine, report and comment on the engagement of legal advisers to act for the Fire and Rescue Service in seeking to achieve completion of the sale

to Gladman Commercial Properties, the advice that was given by them to Senior Officers and Fire Authority Members and the action taken;

- Inquire into the processes regarding compliance and adherence to Standing Orders, Financial Regulations and reporting procedures;
 - Examine, report and comment on the mediation process prior to the Court proceedings and the reasons why mediation was not successful;
 - Summarise the proceedings during the court case, including the evidence presented by advisers and by officers of the City Council and the Fire and Rescue Service and provide an opinion on how significant this was to the outcome of the case;
 - Consider whether the relationship and joint marketing with the City Council, as planning authority, affected the position of the Fire and Rescue Authority in the out of court settlement;
 - Inquire if any apparent systemic failures within the Fire and Rescue Service or the Fire and Rescue Authority contributed to the out of court settlement;
 - Where the inquiry identifies that any person may have committed a disciplinary offence, the inquiry will make a submission setting out the details to the Fire and Rescue Service. The Fire and Rescue Service will then carry out appropriate investigation and action in accordance with its policies and procedures;
 - Report on any other relevant matters that may come to light during the inquiry from which improvements in procedures should be considered.
2. I have tried to address all parts of the Terms of Reference but many of the issues raised cannot be neatly compartmentalised and the response is a joint one.
 3. One of the difficulties of an Inquiry such as this is that I have had time to consider issues with the benefit of hindsight and knowing the eventual outcome. Participants in this project clearly had to make decisions swiftly in a very unusual legal position and not having any idea what the outcome of their decisions would be. The difficulty of dealing with decisions around legal action cannot be minimised. Costs rack up extremely quickly and using public money wisely means that risk taking is not on the agenda. These matters have to be borne in mind when looking at the decisions taken at the time.
 4. I do not believe that there is anyone at the Fire Authority where there should be consideration of disciplinary proceedings. There is no evidence of negligence or failure to carry out a duty as far as I have discovered.
 5. However perhaps with the benefit of hindsight I will make a number of recommendations for future practice where I believe better practice could have been used. There are, I think a number of lessons to be learnt from the experience of this project.
 6. On the next page I list the main players with a note about the action I have taken with each. There is a considerably longer list of those involved in the

Court Case. However my report is to the Fire Authority and I had no brief to go any wider than that.

CONTACTS

Peter Hurford
Treasurer to the Fire Authority

Frank Swann
Chief Fire Officer for much of the project

Neil Timms
Assistant Chief Officer and Head of Finance and Resources at the Nottinghamshire Fire and Recue Service.

Jon Bishop
Chartered Surveyor
Fisher Hargreaves Proctor

Jonathon Seitler QC
Wilberforce Chambers

Mark Aldrich
Solicitor
Browne Jacobson

Richard Murphy
Legal Services
Nottingham City Council

Malcolm Townroe
Clerk to the Fire Authority.

Notes:

I am aware that there was a joint Chartered Surveyor who was very adversely affected by the Court Case and I was asked to exclude him from my interviews. I did so and Jon Bishop, as far as he was able, answered comprehensively for both.

I know that the Property Manager at the Fire and Rescue Service at the time was Edward Pratt. His role was largely uncontentious and I have relied on Neil Timms for matters relating to him.

Malcolm Townroe has a dual role as Clerk to the Authority and Head of Legal Services to the City. As agreed I only interviewed him in his role of Clerk to the Authority.

There were many people involved at the City in terms particularly of Planning and Property. The agreement with the City Council was that Richard Murphy would, as far as he was able, answer for all.

Normally I would have out of courtesy seen the Chief Executive of the City Council but the holder of that post had changed.

I should express my gratitude to all those who have seen me and been very open and honest in their views.

REVIEW OF REPORTS TO THE FIRE AUTHORITY

1. I have had supplied to me those reports of direct relevance to the scheme.

Briefly I have described the contents beneath to demonstrate how the governance issues of this disposal were covered.

2. 8TH December 2006

This report was necessary under the Financial Regulations of the Fire Authority to approve the disposal of any land or buildings.

The report reports on the recent tender process for the joint marketing process.

It indicated that the relative shares of proceeds are 70:30 in favour of the Fire Authority. Members are told that on an area basis the City Council share is 25.5% but the scheme would not be at all possible without the City Council land and the 70:30 share reflects that.

Ten tenders were received on a "subject to planning" basis and there were 3 unconditional bids.

The report notes that the District Valuer had valued the site at £3m for the Fire Authority's share. The report imputes a District Valuer valuation for the whole site of £4.5m. That was used as a yardstick to measure the bids received.

The bids themselves are interesting.

The conditional bids ranged from £2.75m for a hotel with all the other 9 bids being for student accommodation or a mix of student accommodation and key worker accommodation. The range of these offers is £4.4m to £9.0m.

The number of units ranges from 474 to 700. This clearly indicates to me that bidders had made their own decisions on the number of units that could be accommodated.

The unconditional bids ranged from £3.5m to £6m.

Gladman were by far the highest bidders at £6.0m and £9.0m

The conditional offer was very conditional and the Fire Authority were told of the risks in accepting the £9.0m offer. There was a feeling that the figure would reduce in the course of time. The Fire Authority's agents calculated that it would be difficult to make a reasonable profit at £9m but this was feasible at £6m.

There was a full discussion in the report of the various pros and cons and a clear recommendation that the Fire Authority accept Gladman's £6m unconditional offer which would have given the Fire Authority £4.2m which was above the benchmark £3m.

There was to be a 10% deposit paid on exchange of contracts and a delayed completion because of the operational needs of the Fire Authority.

One of the reasons for going for the unconditional offer is that the report notes the City Council were advising against student accommodation and conditional bids would be put at risk.

I will return to this issue in a future part of my report and also the lack of any comprehensive due diligence report on Gladman to elected members at this early stage although it is apparent that some form of due diligence was undertaken.

There was, of course, no reason to suppose that the Fire Authority were approving anything other than a straightforward disposal of land. One would have expected this matter to move to completion.

3. 30th January 2009

This is to update members on the latest position.

The report recaps on the decision to sell the land unconditionally. The 10% deposit was paid on exchange and because of the need to retain the Station as an operational unit completion was deferred until after the end of January 2009.

Notice had been issued to Gladman in accordance with the contract and the Fire Authority's lawyers had "used a variety of legal means to encourage completion of the sale." There had been no response to these requests but the City Council had received a letter from Gladman alleging misrepresentation over the sale of the site.

The legal advice given in the Report is that there is no evidence of misrepresentation and "consequently any legal action which the Authority wish to take to enforce the contract is likely to be successful".

The Authority are given three options:

1. To commence legal action to force them to complete. The report states this would undoubtedly go in favour of the Authority and they would probably get an award of costs and interest. It does sound the warning that Gladman's accounts lead to the conclusion they are not financially sound and the action may force them into liquidation
2. Meet with Gladman to negotiate improved payment terms or a price reduction.

3. To remarket the site. Clearly this was the worst option as the market had fallen dramatically and the Authority would need to wait for signs of improvement.

The recommendation was to take any legal action necessary to secure completion.

4. 4th February 2011

The report informs members of the current position. Browne Jacobson and the in house lawyers for the City have been unsuccessful in forcing completion. Both Authorities are alleged to be guilty of fraudulent misrepresentation. The matter is to go to Court, Jonathan Seidler Q.C has been appointed and the case is due to commence on 7th March 2011. The report recommends that mediation is tried and authorises Neil Timms to attend.

Legal advisers now give chances of success at 60:40 but both solicitors and Q.C. are advising that "courts can be fickle and much will depend on the judge in this case".



The current financial implications are clearly shown in the report.

5. 18th May 2011

The report sets out the latest position. It states that the case has progressed from what was originally a fairly straightforward matter where the Authority had a high probability of success to the current situation "where success is much less likely and where the authority is being advised by the Q.C. to consider settlement terms in view of future risks".

The report states that what originally seemed merely completion compliance has become complicated and as the trial has gone on the prospects of success are reduced. Gladman are about to come forward with a large damages claim and the case has not gone well and the Judge has constantly been looking to the parties to settle before judgement. The Fire Authority's legal advisers are worried that if the City lose the judge will not rule in favour of completion with the Fire Authority and if the City settle and the Fire Authority don't this will not find favour with the Judge.

The report informs members that the mediation which was subject of the February Report failed as the demands being made by Gladman were considered to be unrealistic.

An offer has been put to the City Council but that will mean the Fire Authority accepting a position outside that already authorised.

The Report says that the whole site with planning is now worth around £2m a considerable reduction on the 2005 position. Further the value of the Fire Authority's land without planning could be as low as £125,000.

[REDACTED]

The risks of completing the case are considerable especially as damages are unknown. The developer had talked of damages of around £70m but that was unsupported and would in any event be subject to the usual evidential requirements.

Committee gave authority to settle on the best terms available.

6. 20th May 2011

Policy and Strategy met for an urgent update. There had been a meeting with the City Council on May 19th. It was agreed to continue to negotiate settlement.

7. 16th September 2011

Since the 20th May there has been a constant dialogue with solicitors and the City Council. On 17th August the City and Chief Fire Officer visited Gladman's offices for a without prejudice discussion. [REDACTED]

8. 28th October 2011

The report brings the matter to a conclusion. [REDACTED]

[REDACTED]. A meeting with the Chair, Lead Opposition Spokesperson and Chief Fire Officer took place on 29th September 2011.

This report sets out the final details of the settlement.

The Fire and Rescue Service were represented by Neil Timms on all days in Court and every evening after the hearing the QC, Mark Aldrich (the solicitor) and Neil Timms met to read the Court Transcripts and discuss tactics. The content of these conversations was fed back by Neil Timms to the Chief Fire Officer.

9. CONCLUSIONS

This is, I think, a very complete Governance chain. It is always difficult in cases like this to know when to call members together and report. It would seem to me that this was carried out on a timely basis and at correct decision points.

In this case the reports chart the matter from a very straightforward case to ensure completion with total chances of success and low risk to a position where the imperative was to get out of the contract, retaining the site and minimising future risk and costs.

The developer was determined not to complete the purchase. It is pointless to speculate on the reasons for this. I note that there seems no reason for him not to complete on his unconditional offer other than changes within the market.

10. I will address some areas which might have helped in my conclusions but I think that given the way in which the court case unfolded meant that as time went on the chances of a successful outcome went down very sharply.

REVIEW OF FINANCIAL REGULATIONS

1. I have reviewed the Financial Regulations of the Fire Authority. Every public body must have Financial Regulations to ensure the interests of the Authority and Employees are safeguarded. In good authorities they are documents that are rarely referred to or discussed because the matters in them tend to be around good sound financial management and reporting. The exceptions to this are around the number of tenders required and other procurement matters.

2. In this case the Fire Authority members were kept informed about the financial implications of the disposal of the Dunkirk site.

There was a full report on the original disposal, all the bids received were reported on and the budgetary effects of the legal settlement explained.

The Treasurer ensured that the full and anticipated costs of the Court proceedings were taken into account in his regular budgetary control reports.

3. I do have concerns over the appointment of consultants and these will be found in my conclusions.

5. ISSUES RAISED WITH ME AND IN THE WITNESS STATEMENTS

1. There were a numbers of relevant issues either in the witness statements to the Court or in the course of my interviews. The interviews were to inform me and I carried them out on a non-attributable basis. Nevertheless I have gathered them all together in this section and then I will deal with relevant ones in my conclusions and recommendations.
2. The supplementary planning guidance figured large in the court case and there was some surprise that the Chartered Surveyors did not know about it. It was first issued in July 2004, which was right at the start of the project. It was adopted as interim planning guidance at that point. It would have been what it said which was guidance and not prescriptive. It was re-issued in June 2005 and refers to a policy of diverting students to purpose built accommodation and encouraged sites around the University. In August 2005 the City Council produced the Council Housing Strategy which said in its foreword that there was an objective to continue to support the provision of purpose built student accommodation., thus helping to reduce the impact of large student concentration on the surrounding community. The 3rd draft was issued in December 2005 and refers to purpose built student accommodation and an encouragement for them to be in the proximity of the university campus but says "Developers should be advised however that applications will be considered on their merits and the guidance in the SPD not applied in isolation." In other words an outline planning application would have tested the SPD and resolved the issue for this site. When the Surveyor wrote to the City Planners the response was that the site was not suitable for practically anything. This was 15th July 2005. When the City Council's Director of Planning met with the chartered surveyors on 1st August 2005 he felt student accommodation was the only solution.
3. The question still remains as to why the developer did not seek outline planning permission for the site.
4. The issue of the number of units on the sales particular also received much comment. These sales particulars were seen in draft by Neil Timms, Edward Pratt, Mr Shafiq at the Council and David Hargreaves. No one spotted the word "alone". It was unfortunate but I support Neil Timms' view that the site was known as the Fire Station site and the significance of that in this case did not strike anyone. It was an unfortunate error only because it gave grounds for the developer to claim he had been misled. His own work on the site would have informed him how many bedrooms could be accommodated.
5. In Court there was some discussion as to why the Authority accepted the £6m unconditional offer rather than the £9m conditional offer claiming that that was because the Fire Authority believed planning consent would not be forthcoming. These offers were fully reported to the Authority in 2006 and the authority, rightly being risk adverse, accepted the unconditional offer. The report to members shows clearly why the £9m is a risky option.
6. I believe the appointment process for the consultants could have been more transparent

7. The informal tender meetings were properly dealt with and opened with the Consultant surveyor and 2 members of staff from the City and 3 from the Fire Authority.
8. I am concerned over due diligence on Gladmans. It does appear to have been carried out to some extent as reference is made to the previous findings in a later report, however the outcome was not reported to Members at that time. However, it is not clear to me who actually did it. In this instance however there were no financial consequences arising from this.
9. There was a question about whether the Fire Authority should have been involved in mediation. It is almost a condition these days that in order to save Court time and cost parties are referred to mediation. There is a hope that a settlement will present itself. Generally mediation is only successful if both parties approach it positively and with a willingness to find a solution which is acceptable given the savings of legal costs. I suspect it was never going to work here but it was, nevertheless, necessary to go through it.
10. When the papers went to the QC it was thought that this was merely a case for specific performance. It was only as the case proceeded and it was obvious that the Fire Authority and City's fortunes were linked that it became more apparent that the case may well be lost.
11. The witness statements make it quite clear that Planners had advised that the best use for the site was student accommodation.
12. There was concern expressed about the order of the witnesses being heard. In fact Gladman's witnesses were never heard. The order is agreed between QCs and the Judge with the Judge having final say. The case was to pursue completion and normally the facts around completion would be dealt with first to establish the case. That would explain the order in this case. I am told that the Judge actually wanted the defendants to make the case for fraud first but the availability of witnesses then meant that the Fire Authority and City had to go first.
13. The case lasted 13 days in total. They were the 8th to 18th March 2011. The case was then adjourned as the Fire Authority's QC was booked for another trial. It reconvened to receive some written facts around the wording of the Counter Claim on 11th April 2011 and was then adjourned until 9th May. It was adjourned on the 11th May for settlement discussions until 23rd May 2011.

6. CONCLUSIONS

1. GENERAL

The Fire Authority was caught in set of most unfortunate circumstances. The sale of Dunkirk Fire Station and its merger lead to operational efficiencies. The position of the site and the amount of interest shown in the site was encouraging. The only difficulty was the need to secure access to the site and that meant a partnership deal with the City Council which had implications for the project overall.

Gladman bid strongly for the site and although it might have got away with that if property values had continued to rise or even remained stable, once values began to fall there must have been question marks over the viability of the scheme. At that time its accounts, like most developers, were not good and it may have faced financial difficulties. It has to be remembered that these were very difficult times for new developments.

In an ordinary purchase it may well have been made to complete but a series of circumstances in this case gave it an opportunity to take charge and avoid financial losses.

2. GOVERNANCE

In terms of reporting I found the reports to members were full and straightforward. In cases like this it is not easy to keep members fully informed and as negotiations take time and there will be gaps in which there is nothing much to report.

I am assured that the financial implications were monitored and reported in the overall budget.

Although I have seen a copy of the letter of engagement for the Consultant Surveyors I have not seen anything for the lawyers. Clearly the legal costs were very considerable and although not strictly within my terms of reference I was not clear how that was monitored and checked.

There is nothing in Financial Regulations which was not dealt with in the reports although I will return in due course to the appointments of the Consultants.

3. EXPERTISE

This was the largest property deal that the Fire Authority had been involved in for many years. The Estates officer at the time had no experience of schemes like this. It is my view that although it seemed like a straightforward sale, in fact it never was because of the access requirement, the need to work together with the City Council, the delayed completion and dealing with an established property developer. This was a good example of a scheme that should have been handed over to outside professionals who could have dealt with the whole thing.

4. CONSULTANTS

I cannot judge the professional expertise of the surveyors and lawyers, both are well known, have appropriate experience and have worked before for the Fire Authority. The property consultants have wide experience of working for Fire Authorities.

However the consultant surveyors had a letter of instruction and no formal engagement letter. This could well have caused difficulties in the future.

I have seen little evidence about the appointment of lawyers. I understand they had been procured by a joint local authority procurement exercise and were therefore properly available to the Fire Authority. I am told that there was no formal letter of engagement for this project. Browne Jacobson had been for some time appointed lawyers to the Fire Authority for all property matters. That was a decision following a Regional tender process. All there is is an e mail from the Property Manager asking them to deal with this sale. I am mindful that this started as a straightforward sale but I think this whole project should have been dealt with as a development and that may have led to a wider selection of legal support. There were issues at the start which set this slightly apart from the run of the mill property purchase. Such things as the quantum, the need to keep the operational station and thus delayed completion, the access problems, the joint sale and the need for planning.

5. VALUATION OF SITE

Despite the Judge's comments the appointment of the District Valuer to value the site was certainly the right course of action. This clearly gave a benchmark which was very useful to the Authority in ensuring the bids were of a correct quantum.

6. TENDER PROCESS

I think the concern over the inclusion of the word "alone" in the sale particulars was a little over the top. It was regrettable but no developer in my experience would buy an expensive site based on the seller's assumptions of what could be built on it. A developer would always draw their own plans and test them with the planners normally by way of an outline planning application. This allows land use and density to be sorted at an early stage.

7. TENDER RECOMMENDATION

It was clearly right to go for the £6m unconditional offer as it seemed risk free. The Committee Report clearly set out the risks and concerns with the £9m offer. I have seen some criticism of the recommendation of the £6m offer on the grounds it was so out of line with the other two but I am not sure what proper reason could have been made to not accept it. It was a time of overvalued land and the advice was that it was possible to make a profit at that level.

8. DUE DILIGENCE

I believe that a due diligence report should have gone to members at the same meeting that they accepted the tender. The bid was high and I believe

members needed reassurance that the Developer either had the funds or had an agreement with his bank to provide the funds. As it is I cannot find a report on the financial position of Gladmans at that time although there are hints that the work was done. It is a very important part of the process and should be formalised. As I have said earlier the lack of a report in this instance did not lead to any loss whatsoever.

9. OWNERSHIP

With the benefit of hindsight I am convinced that the whole process would have worked better if the land had been in one ownership. As the City Council were the Planning Authority they should have been asked to consider transferring their land to the Fire Authority. I was told the Fire Authority could not afford this but I cannot accept that. The land could have been transferred with delayed payment or a variety of other devices. It would have made the split in Court much easier as it would only have been the Fire Authority pursuing completion and the planning issues would have been kept at arm's length.

10. PLANNING

The planning needed greater co-ordination. A point, I think which is accepted by the City Council. Ideally there would have been one Case Officer for all enquiries given it was a major development attracting considerable interest. All parties should have had drawn to their attention the City's policy on student accommodation. The decision on calling particular witnesses has to be left to the Authority concerned.

11. WITNESSES

The Court Transcripts showed quite clearly how very difficult the witnesses found the occasion and how stressful it all was. They were not helped by the way in which the case progressed in Court. A witness tells of being ordered to stay in the witness box and get to grips with the Supplementary Guidance which he just could not do and several witnesses have not recovered from their experience.

Being a witness in a High Court case can be unpleasant as it is an adversarial environment. I am assured that witness training was given but I have to question its adequacy. People should have been better prepared. This is a matter for the solicitors. Training was given by a leading firm in this field and consisted of basic training and cross examination training for half a day. The unpleasantness of the Court environment is evidenced by the fact that one witness was very upset that the Judge inferred he was lying etc. whereas the Fire Authority's Q.C. felt that he had been a good witness for the Authority.

12. COMPLETION

Again with the benefit of hindsight the 2 year delay in completion due to the operational needs of the Fire Service was most unwise. It was not the length of time so much as the way the market fell in that time. That made the deal unworkable in the end.

13. SETTLEMENT

The settlement seemed reasonable given the circumstances. The Fire Authority's QC was adamant and explicit in his views that it was essential to settle. He felt that in the end the settlement seemed fair and stressed the view again to me that the Fire Authority had no alternative. He believed the Judge would rule against the City. The Judge would not be able to award completion to the Fire Authority as they were selling a site with no access. Settlements are always very difficult in democratic organisations as they are so time critical and the luxury of a committee decision usually denied. I am aware not all those involved legally felt a settlement was inevitable. The organisation has to decide when the risks of carrying on outweigh the costs of settlement. In this case it was additionally difficult as there were two parties involved and there was a point when their interests became quite different.

14. MEDIATION

As I have said elsewhere Mediation is inescapable. It is seen as a way of saving legal costs by agreeing before actually going to Court. But if mediation is to be successful both sides must want it to happen. In this instance the parties were a long way apart and absolutely no progress was made.

15. PROCESS

There is one area specifically which seem to me to be inefficient and to have caused additional difficulties. This is the fact that the Consultant Surveyors were Fire Authority witnesses but there was a conflict of interest because if the Fire Authority lost they could have sued the surveyors for negligence in order to get their costs back. For this reason Browne Jacobson did not represent the surveyors. They were represented by Beechcrofts who were the lawyers to their insurance company. They only had a watching brief so although present took no part in the proceedings. This was because they were witnesses of fact as opposed to expert witnesses called by a party. The matter was dealt with properly but it left them unrepresented which was in no one's interest.

Richard Harbord